AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Federal Register

12–24–02 Tuesday
Vol. 67 No. 247 Dec. 24, 2002
Pages 78321–78664

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 67 FR 12345.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

**What's NEW!**

**Federal Register** Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

*Online mailing list archives*
*FEDREGTOC-L*
*Join or leave the list*

Then follow the instructions.

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 67, No. 247

Tuesday, December 24, 2002

**Agricultural Marketing Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78410

**Agricultural Research Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78410–78411

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Agricultural Research Service
*See* Animal and Plant Health Inspection Service
*See* Farm Service Agency
*See* Food and Nutrition Service
*See* Forest Service
*See* Rural Business-Cooperative Service
*See* Rural Housing Service
*See* Rural Utilities Service

**Air Force Department**
NOTICES
Global Positioning Systems:
Navstar GPS Space Segment/User Segment L5 Interfaces; L5 Civil Signal interface control document; comment request, 78425
Presidential determinations:
Groom Lake, NV; classified information concerning Air Force operating location, 78425–78426

**Animal and Plant Health Inspection Service**
RULES
Exportation and importation of animals and animal byproducts:
Canadian border ports; Blaine and Lynden, WA; removal as ports of entry, 78332

**Centers for Disease Control and Prevention**
NOTICES
Organization, functions, and authority delegations:
Analysis, Epidemiology and Health Promotion Office, 78474

**Children and Families Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78474–78475
Submission for OMB review; comment request, 78475–78476

**Coast Guard**
RULES
Ports and waterways safety:
Lake Michigan—
Chicago, IL, 78385–78386

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* National Telecommunications and Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78413–78414

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Hong Kong, 78423
Textile and apparel categories:
Illegal transshipment; entry removed—
Macau; Mei Lai, 78423
United States-Caribbean Basin Trade Partnership Act:
Textile and apparel short supply requests; comment request, 78424

**Consumer Product Safety Commission**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 78424–78425

**Copyright Office, Library of Congress**
NOTICES
Small Webcaster Settlement Act of 2002:
Small commercial webcasters; sound recording reproduction and performance agreement; rates and terms, 78510–78513

**Customs Service**
NOTICES
Trade name recordation applications:
Revolutionary Products, Inc., 78565

**Defense Department**
*See* Air Force Department

**Education Department**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78426
Submission for OMB review; comment request, 78426–78428
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Individuals with disabilities programs, 78428–78438

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Industrial Materials for the Future, 78439

**Environmental Protection Agency**
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Automobile and light-duty truck surface coating operations, 78611–78663
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 78446

Submission for OMB review; comment request, 78446–78459
Pesticide, food, and feed additive petitions:
BASF Corp., 78459–78467

**Farm Service Agency**
RULES
Program regulations:
Direct section 502 and 504 single family housing programs; reengineering and reinvention, 78321–78332

**Federal Aviation Administration**
RULES
Class E5 airspace, 78352
IFR altitudes, 78352–78354
PROPOSED RULES
Airworthiness directives:
Mitsubishi Heavy Industries, Ltd., 78393
SOCATA-Groupe Aerospatiale, 78394–78397
Class E5 airspace, 78397–78398
NOTICES
Meetings:
RTCA, Inc., 78560–78561
Passenger facility charges; applications, etc.:
Imperial County Airport, CA, 78561–78562
Richmond International Airport, VA, 78562
Technical standard orders:
Terrain Awareness and Warning System, 78562–78563

**Federal Communications Commission**
RULES
Radio and television broadcasting:
Broadcast and cable EEO rules and policies—
Part-time employee classification, 78387–78388
Radio stations; table of assignments:
Various States, 78386–78387
PROPOSED RULES
Common carrier services:
Satellite communications—
Satellite network earth stations and space stations; rules governing licensing and spectrum usage; streamlining and other revisions, 78399–78400
Radio stations; table of assignments:
Arizona, 78401
Arizona and New Mexico, 78401–78402
Oklahoma, 78400–78401
Texas, 78402–78403

**Federal Energy Regulatory Commission**
NOTICES
Meetings:
Queuing technical conference, 78444–78446
*Applications, hearings, determinations, etc.:*
American Electric Power Service Corp. et al., 78439–78440
Columbia Gas Transmission Corp., 78440
Dominion Transmission, Inc., 78440
Eastern Shore Natural Gas Co., 78440–78441
Enbridge Pipelines (AlaTenn) L.L.C., 78441
Enbridge Pipelines (KPC), 78441–78442
Enbridge Pipelines (Midla) L.L.C., 78441
Kinder Morgan Interstate Gas Transmission LLC, 78442
Northern Border Pipeline Co., 78442–78443
Sea Robin Pipeline Co., 78443
Texas Gas Transmission Corp., 78443–78444
Transcontinental Gas Pipe Line Corp., 78444
Wayne-White Counties Electric Cooperative, 78444

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
La Plata County, CO, 78563
Reports and guidance documents; availability, etc.:
Traffic control devices at highway-rail grade crossings, 78563–78565

**Federal Reserve System**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78467–78473
Banks and bank holding companies:
Change in bank control, 78473
Formations, acquisitions, and mergers, 78474

**Financial Management Service**
*See* Fiscal Service

**Fiscal Service**
RULES
Bonds and notes, U.S. Treasury:
Series HH savings bonds; offering, investment yield, and extended maturity, 78384–78385
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78565–78566
Interest rates:
Renegotiation Board and prompt payment rates, 78566–78567

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Critical habitat designations—
Cushenbury milk-vetch, etc. (five carbonate plants from San Bernardino Mountains, CA), 78569–78610
NOTICES
Endangered and threatened species and marine mammal permit applications, 78504–78505
Marine mammal permit applications, 78506

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Florfenicol, 78356–78357
Lincomycin hydrochloride soluble powder, 78356
Oxytetracycline injection, 78357
Sponsor name and address changes—
Fort Dodge Animal Health, 78354–78356
Phoenix Scientific, Inc., 78354
Trenbolone and estradiol, 78357–78358
NOTICES
Human drugs:
New drug applications—
Trimethobenzamide hydrochloride injection and capsules, 78476–78478
Meetings:
Medical Devices Advisory Committee, 78478

**Food and Nutrition Service**
NOTICES
Reports and guidance documents; availability, etc.:
Electronic benefits transfer systems, 78411–78412

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
California
Tesoro Refining & Marketing Co.; oil refinery complex, 78414
New Mexico, 78414

**Forest Service**
NOTICES
Meetings:
Resource Advisory Committees—
North Central Idaho, 78412

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Industry and Security Bureau**
NOTICES
Meetings:
National Infrastructure Advisory Council, 78415

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* National Park Service

**Internal Revenue Service**
RULES
Income taxes:
Principal residence sale or exchange; exclusion of gain, 78358–78367
Principal residence sale or exchange; reduced maximum exclusion of gain, 78367–78371
Trust treated as part of estate; election, 78371–78383
PROPOSED RULES
Income taxes:
Principal residence sale or exchange; reduced maximum exclusion of gain; cross-reference, 78398–78399

**International Trade Administration**
NOTICES
Antidumping:
Freshwater crawfish tail meat from—
China, 78415
Persulfates from—
China, 78415–78416
Preserved mushrooms from—
India, 78416–78417
Stainless steel butt-weld pipe fittings from—
Taiwan, 78417–78420

**Justice Department**
*See* Justice Programs Office

**Justice Programs Office**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78508–78509

**Labor Department**
*See* Pension and Welfare Benefits Administration

**Land Management Bureau**
NOTICES
Meetings:
Resource Advisory Councils—
Central Montana, 78506
Realty actions; sales, leases, etc.:
New Mexico, 78506–78507

**Library of Congress**
*See* Copyright Office, Library of Congress

**National Institutes of Health**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 78478–78479
Inventions, Government-owned; availability for licensing, 78479–78483
Meetings:
National Center for Complementary and Alternative Medicine, 78483
National Heart, Lung, and Blood Institute, 78483–78484
National Institute of Allergy and Infectious Diseases, 78486–78487
National Institute of Diabetes and Digestive and Kidney Diseases, 78487
National Institute of Environmental Health Sciences, 78487
National Institute of General Medical Sciences, 78487
National Institute of Neurological Disorders and Stroke, 78484–78485
National Institute of Nursing Research, 78485
National Institute on Alcohol Abuse and Alcoholism, 78485–78486
National Library of Medicine, 78487–78488
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Lee's Pharmaceutical (Hong Kong) Ltd., 78488–78489

**National Oceanic and Atmospheric Administration**
RULES
Marine mammals:
Incidental taking—
Southern California; drift gillnet fishing prohibition; loggerhead sea turtles, 78388–78392
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species—
Bluefin tuna, 78404–78409
NOTICES
Meetings:
New England Fishery Management Council, 78420–78421

**National Park Service**
NOTICES
Environmental statements; notice of intent:
Great Falls Park, VA; general management plan, 78507–78508
Native American human remains and associated funerary objects:
California Department of Parks and Recreation, Sacramento, CA—
Inventory from Sulfur Bank Rancheria, CA; ceremonial regalia used by Maru Cult or Big Head Dance of Pomo Indians, 78508

**National Science Foundation**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78514

**National Telecommunications and Information Administration**
NOTICES
Electronic Signatures in Global and National Commerce Act:
State Uniform Commercial Code exception, 78421–78423

**Nuclear Regulatory Commission**
RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants; decommissioning trust provisions, 78332–78352
NOTICES
Committees; establishment, renewal, termination, etc.:
Medical Uses of Isotopes Advisory Committee, 78514–78515
Meetings; Sunshine Act, 78515
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 78515–78528

**Pension and Welfare Benefits Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78509–78510

**Public Debt Bureau**
*See* Fiscal Service

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Research and Special Programs Administration**
RULES
Pipeline safety:
Drug and alcohol testing for pipeline facility employees; random drug testing rate, 78388

**Rural Business-Cooperative Service**
RULES
Program regulations:
Direct section 502 and 504 single family housing programs; reengineering and reinvention, 78321–78332

**Rural Housing Service**
RULES
Program regulations:
Direct section 502 and 504 single family housing programs; reengineering and reinvention, 78321–78332

**Rural Utilities Service**
RULES
Program regulations:
Direct section 502 and 504 single family housing programs; reengineering and reinvention, 78321–78332
NOTICES
Grants and cooperative agreements; availability, etc.:
Weather Radio Transmitter Program, 78412–78413

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 78529–78531
Government Securities Clearing Corp. et al., 78531–78532
National Association of Securities Dealers, Inc., 78532–78554
Pacific Exchange, Inc., 78554–78556
Stock Clearing Corp. of Philadelphia, 78556–78557
*Applications, hearings, determinations, etc.:*
El Paso Electric Co. Inc., 78528–78529
Scania Aktiebolag, 78529

**Small Business Administration**
NOTICES
Disaster loan areas:
Louisiana, 78557
Texas, 78557
Interest rates; quarterly determinations, 78557

**Special Counsel Office**
RULES
Prohibited personnel practice or other prohibited activity; complaints filing; technical amendment, 78321

**State Department**
NOTICES
Art objects; importation for exhibition:
Frida Kahlo, Diego Rivera, and Twentieth-Century Mexican Art: The Jacques and Natasha Gelman Collection, 78558

**Substance Abuse and Mental Health Services Administration**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 78489–78490
Grants and cooperative agreements; availability, etc.:
Community Mental Health Services Performance Partnership, 78490–78504

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Research and Special Programs Administration
PROPOSED RULES
Privacy Act; implementation, 78403–78404
NOTICES
Agency information collection activities:
Proposed collection; comment request, 78558
Submission for OMB review; comment request, 78559
Aviation proceedings:
Agreements filed; weekly receipts, 78559
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 78559–78560

**Treasury Department**
*See* Customs Service
*See* Fiscal Service
*See* Internal Revenue Service

**RULES**
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for foreign shell banks' correspondent accounts and recordkeeping and termination of such accounts, 78383–78384
**NOTICES**
Meetings:
United States Postal Service, President's Commission, 78565

## Separate Parts In This Issue

**Part II**
Interior Department, Fish and Wildlife Service, 78569–78610

**Part III**
Environmental Protection Agency, 78611–78663

## Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

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


**5 CFR**
1800 ..... 78321

**7 CFR**
1806 ..... 78321
1822 ..... 78321
1924 ..... 78321
1925 ..... 78321
1927 ..... 78321
1930 ..... 78321
1940 ..... 78321
1944 ..... 78321
1948 ..... 78321
1950 ..... 78321
1951 ..... 78321
1955 ..... 78321
1965 ..... 78321
1980 ..... 78321
3550 ..... 78321

**9 CFR**
93 ..... 78332
98 ..... 78332

**10 CFR**
50 ..... 78332
72 ..... 78332

**14 CFR**
71 ..... 78352
95 ..... 78352

**Proposed Rules:**
39 (2 documents) ..... 78393, 78394
71 ..... 78397

**21 CFR**
510 (2 documents) ..... 78354
520 (3 documents) ..... 78354, 78356
522 (3 documents) ..... 78354, 78357
524 ..... 78354
556 ..... 78356

**26 CFR**
1 (3 documents) ..... 78358, 78367, 78371
301 ..... 78371
602 ..... 78371

**Proposed Rules:**
1 ..... 78398

**31 CFR**
103 ..... 78383
352 ..... 78384

**33 CFR**
165 ..... 78385

**40 CFR**

**Proposed Rules:**
63 ..... 78614
264 ..... 78614
265 ..... 78614

**47 CFR**
73 (2 documents) ..... 78386, 78387
76 ..... 78387

**Proposed Rules:**
25 ..... 78399
73 (4 documents) ..... 78400, 78401, 78402

**49 CFR**
199 ..... 78388

**Proposed Rules:**
10 ..... 78403

**50 CFR**
17 ..... 78570
223 ..... 78388

**Proposed Rules:**
635 ..... 78404

# Rules and Regulations

Federal Register
Vol. 67, No. 247
Tuesday, December 24, 2002

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

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

## OFFICE OF SPECIAL COUNSEL

### 5 CFR Part 1800

### Correction to Statutory Citation

**AGENCY:** Office of Special Counsel

**ACTION:** Final Rule; Technical Amendment

**SUMMARY:** The Office of Special Counsel (OSC) is correcting a statutory citation in its regulation on filing complaints of prohibited personnel practices or other prohibited activity at 5 CFR 1800.1.

**DATES:** This rule is effective on **December 24, 2002.**

**FOR FURTHER INFORMATION CONTACT:** Kathryn Stackhouse, Planning and Advice Division, by telephone at (202) 653–8971, or by fax at (202) 653–5161.

**SUPPLEMENTARY INFORMATION:** This action is directed to the public in general, and to current and former Federal employees and applicants for Federal employment in particular, who may want to allege a prohibited personnel practice or other violation of civil service law, rule, or regulation by a Federal agency.

OSC is correcting an erroneous statutory citation to federal merit system principles in its regulation on filing complaints of prohibited personnel practices at 5 C.F.R. 1800.1(a)(12). The citation in the current regulation refers to 5 U.S.C. 2302(b)(1). This citation, however, is incorrect, and should read 5 U.S.C. 2301(b).

This action is taken under the Special Counsel's authority, at 5 U.S.C. 1212(e), to publish regulations in the Federal Register. Under the Administrative Procedure Act, at 5 U.S.C. 553(b)(3)(B), statutory procedures for agency rulemaking do not apply ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' OSC finds that such notice and public procedure are unnecessary and contrary to the public interest, on the grounds that: (1) this amendment is technical and non-substantive; and (2) the public benefits from early correction of an incorrect statutory citation.

OSC is submitting this final rule to Congress and the General Accounting Office pursuant to the Congressional Review Act. The rule is effective upon publication, as permitted by 5 U.S.C. 808. Pursuant to 5 U.S.C. 808(2), OSC finds that good cause exists for this effective date, based on the reasons cited in the preceding paragraph.

**List of Subjects in 5 CFR Part 1800**

Equal employment opportunity, Government employees, Reporting and recordkeeping requirements, Whistleblowing

For the reasons set forth in the preamble, the Office of Special Counsel is amending title 5, part 1800 as follows:

### Part 1800 - Filing of Complaints and Allegations

1. The authority citation for Part 1800 continues to read as follows:

**Authority:** 5 U.S.C. 1212(e).

2. Replace the statutory citation in § 1800.1(a)(12) that reads ''5 U.S.C. 2302(b)(1)'' with ''5 U.S.C. 2301(b)''.

Dated: December 16, 2002.

**Elaine D. Kaplan,**

*Special Counsel.*

[FR Doc. 02–32375 Filed 12–23–02; 8:45 am]

BILLING CODE 7405–01–S

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business—Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Parts 1806, 1822, 1924, 1925, 1927, 1930, 1940, 1944, 1948, 1950, 1951, 1955, 1965, 1980, and 3550

**RIN 0575–AB99**

### Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing (SFH) Programs

**AGENCIES:** Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS), published an interim final rule on November 22, 1996 (61 FR 59761–59802) requesting comments on the Single Family Housing regulations. This action incorporates the changes made as a result of the comments received and is taken to further reduce unnecessary Federal regulations, improve customer service, and improve the agency's ability to achieve greater efficiency, flexibility and effectiveness in managing its SFH portfolio. The intended effect of this action is to improve service to rural America and comply with the Administration's goal of reducing unnecessary Federal regulations.

**EFFECTIVE DATE:** January 23, 2003 except 3550.63 (the maximum loan limit) will be effective on March 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Senior Loan Specialist, Single Family Housing, Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Stop 0783, 1400 Independence Avenue, SW., Washington, DC 20250–0783, telephone (202) 720–1474.

**SUPPLEMENTARY INFORMATION:**

**Classification**

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

**Paperwork Reduction Act of 1995**

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0172, in accordance with the Paperwork Reduction Act (PRA) of 1995. This rule does not impose any new or modified information collection requirements.

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Programs Affected**

The following programs are affected by this final rule: 10.410 Very Low to Moderate Income Housing Loans, 10.417 Very Low-Income Housing Repair Loans and Grants, 10.770 Water and Waste Disposal Loans and Grants (Section 306C).

**Intergovernmental Consultation**

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V, only the Water and Waste Disposal Loans and Grants are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

**Background Information**

The RHS published an interim final rule on November 22, 1996 (61 FR 59761–59802) for reengineering and reinventing how direct loans and grants under sections 502 and 504 of the Housing Act of 1949 are made and serviced. The Agency made the decision to publish this as an interim final rule in order to give the public the opportunity to comment on four particular sections. These sections cover areas where the Agency needed further comment and analysis completed to determine the impact of the changes on the section 502 program. The areas that were of most concern to the RHS related to payment subsidies and defining modest housing. Analyses and research were done based on the comments received, and the Agency has made revisions to the definition of modest housing, which will increase our level of customer service and reduce costs to the taxpayer by increasing the modest housing limit in areas where the limit was too low to finance modest homes, especially new construction, and lowering the limit in other areas where the financing of housing was considered more than ''modest.'' The result will be a more equitable and flexible program serving more customers at a lower cost to the taxpayer.

**Implementation of This Rule**

This final rule includes provisions pertaining to the definition of a modest dwelling and the maximum loan limit that an applicant can receive to purchase a single-family residence. In order to implement this rule, States must gather certain data on improved lot sales for each county in their state. States will be allowed up to 45 days to gather the information, conduct an analysis, and prepare a recommendation to be submitted to the Administrator. Upon receipt, the Administrator will review and, if acceptable, approve the State's recommendation during the next 45-day period. Once the State receives approval, they will make the new maximum loan limits available in the State Office and their local offices.

All provisions of this rule are effective 30 days after publication in the **Federal Register**, except the maximum loan limit, which will be effective 90 days from the date of publication. All pending applications will be subject to this final rule unless the applicant received Form RD 1944–59, ''Certificate of Eligibility,'' or submitted a contract for the purchase of a property or to build a home prior to the effective date of the new maximum loan limits. Details of the provisions adopted in this rule are given in the ''Discussion of Comments'' section.

**Discussion of Comments**

The interim final rule was published in the **Federal Register** on November 22, 1996, with a 30-day comment period that ended December 26, 1996. Seven comments were received from Rural Development personnel, housing advocacy groups, developers, builders, housing authorities, housing organizations, and other interested parties. Written comments were requested specifically for the following four sections: 3550.53(g), 3550.57(a), 3550.63, and 3550.68. These comments are discussed below. Comments also were received on three additional sections: 3550.53(a), 3550.53(h), and 3550.56(b). These unsolicited comments have not been addressed.

*Section 3550.53(g) Repayment Ability*

Six comments were received on this section. Two comments were in favor of using the same principal, interest, taxes and insurance (PITI) ratio of 33 percent for both low and very low-income applicants. They felt this would be simpler and fairer for both income groups. One commentor felt that using 29 percent promoted very low-income applicants to carry more debt. Two commentors felt that the PITI ratio

should be capped at 29 percent for both low and very low-income applicants. One commentor felt that the 29 percent cap coupled with exclusively using the equivalent interest rate method of payment assistance would promote applicants' shopping for more affordable housing. The other commentor felt that using 29 percent PITI would make the program consistent with the Guaranteed Housing Program.

The Agency considered these comments and determined that there is merit in having different PITI ratios for very low- and low-income applicants. Low-income applicants have relatively more disposable income for PITI and can afford to pay a higher amount for PITI than very low-income applicants. The Agency determined that the two separate PITI ratios at 29 percent for very low-income and 33 percent for low-income should continue. The lower PITI ratio for very low-income applicants allows them to pay a more affordable payment and keeps the overall subsidy provided at a lower rate. Very low-income applicants have less disposable income available with which to make payments. The amount of subsidy will be lower due to the overall lower payment. As for the total debt (TD) load of very low-income applicants, the 41 percent ratio allows a very low-income applicant to carry some debt load considered a necessity, such as medical expenses or a car payment.

One commentor recommended lowering the PITI ratios because of the high cost of construction in the commentor's particular State and the fact that many people in the State live a subsistence lifestyle with little or no cash income. The issue in this comment had more to do with cash for repayment. The program is a loan program. The program requires that eligible recipients repay their loan and; therefore, some type of adequate cash income is needed to do so.

One commentor agreed that the ratios set forth in the interim final rule are fair and similar to those in other mortgage lending programs.

*Section 3550.57(a) Modest Dwelling*

Five comments were received regarding the definition of modest dwelling. Four of these agreed that the use of 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is the best way to determine modest housing. Two of these were of the opinion that there are many areas where some reduction from these limits is in order. The Agency has studied the effect of the use of the section 203(b) limits of the National Housing Act and the cost of modest housing in rural areas. The adoption of the section 203(b) limits of the National Housing Act has led in many areas to the financing of housing that RHS believes to be more than ''modest.'' In addition, the limits are so low in other areas, and are not based on rural statistics, that the Agency is unable to finance homes (especially new construction). A modification of the loan limits is needed because of the desire to serve as many low and very low—income rural residents as possible and to ensure that the Agency is clearly financing only modest homes.

Several possibilities were explored for defining modest housing. One of these compared the adjusted county median income to typical loan amounts made during fiscal years 1991 through 1995, while square footage limitations defined modest housing. The response to this proposal was generally negative. Some thought it was too complicated while others thought that the section 203(b) limit of the National Housing Act is more recognized and understood, whereas median income is not.

The Agency then conducted an historical analysis of the relationship between the section 203(b) limit of the National Housing Act and section 502 loan amounts. This analysis showed that in most States, the 203(b) limit of the National Housing Act exceeds the cost of historically modest housing. It was clear that the 203(b) limit of the National Housing Act has little or no correlation to the actual price of rural housing, particularly in counties that are not ''high cost.'' In addition, the historical data supported the claim that in the majority of counties, RHS has made loans significantly lower than 203(b) of the National Housing Act.

Also, the Agency utilized a nationally recognized source for providing residential cost data related to new construction to assist in this endeavor. The vehicle calculated costs for new construction on a county by county basis throughout the country, based on parameters that closely defined modest housing in terms of size and amenities. These numbers did not include the cost of an improved site. States were requested to establish the market value of improved sites including the market value of the lot, the cost of water and sewer hookup or well and a septic system, driveway and landscaping, based upon their own market analysis of comparable sales or other substantiated data. Each Rural Development State Office was provided the construction cost numbers and was asked to add the market value of an improved site to these numbers to arrive at a maximum loan limit. A majority of the states indicated that this loan limit most closely represented the type of modest housing being constructed in their State.

In addition, consideration was given to allow States to use a recognized established loan limit such as those set by a State Housing Authority as long as the limits were within a close percentage (5 to 10 percent) of the limit for construction cost plus market value of the unimproved site discussed above.

Another commentor was concerned that lower cost should not be confused with low quality, and that quality construction with good insulation and structural soundness will decrease the likelihood of defaults. The Agency supports quality construction. In accordance with 42 U.S.C. 1479(a), the Agency requires in § 3550.57 that new homes to be built in accordance with the building code for the particular area of the country where the house is being constructed. Additionally, 7 CFR part 1924, subpart A, exhibit D requires that houses be insulated according to the Model Energy Code (MEC) appropriate for the area.

The discussion of modest housing limits and maximum loan amounts are closely related. See §3550.63, Maximum loan amount, for a full discussion of these comments. In sum, the Agency has determined that ''modest housing'' generally may not have a market value in excess of the maximum loan limit under that section.

*Section 3550.63 Maximum Loan Amount*

The comments under this section were essentially identical to those received on §§ 3550.53(g), 3550.57(a), and 3550.68. The Agency received six comments on the maximum loan amounts. One of the commentors felt that using State non-metro average income would be a better way to determine maximum loan amount. While it is true that housing fair market values are higher in areas of higher income, based on the Agency's past experience, there is no consistent direct relationship between income and housing values across the country. In other words, housing values are more related to location. Areas across the country with similar median incomes do not necessarily have similar housing values. Therefore, this comment was not adopted.

Another commentor recommended a provision for exceeding the appraised value when another affordable housing agency or non-profit is providing forgivable loans for closing or down payment assistance. The Agency allows the appraised value to be exceeded by the cost of an appraisal and other

allowable closing costs, regardless of where the financing is obtained. However, the Agency agrees that some flexibility should be allowed when forgivable loans or grants are provided for the purpose of down payment assistance and closing costs. The Agency has determined that in those cases where there is a grant or forgivable subordinate affordable housing products, the total debt may exceed the market value by the amount of the forgivable loan or grant up to 5 percent. This will provide the needed flexibility and not put the Agency at undue risk of loss. Any additional amount above the appraised value is not authorized and would leave the Agency unsecured in the event of default. The Agency also has revised the security requirements at § 3550.59(a)(2) accordingly to allow a junior lien if the junior lien will not interfere with the purpose of repayment of the RHS loan. If the junior lien involves a grant or forgivable subordinate affordable housing product, the total debt may exceed the market value by the amount of the forgivable loan or grant up to 5 percent.

Three of the comments received supported the reduction to a percentage of the 203(b) limit of the National Housing Act. Two of these agreed that State Directors should have the ability to determine which areas need higher maximum loan amounts.

After considering all of the comments and the above options, the Agency has concluded that there is no simple solution in determining maximum loan amount. Therefore, the Agency will provide States with some flexibility in determining the maximum loan amount in their State. The Agency will provide each State with the option of choosing between the cost data plus the market value of an improved lot, or the State Housing Authority (SHA) limit, as long as the SHA limit is within 10 percent of the cost data plus the market value of an improved lot. States must determine which value most appropriately reflects the value of modest for the area. However, either option cannot exceed the current 203(b) limit of the National Housing Act.

Both of these methods rely on actual market data for the cost of constructing a dwelling in a specific area, plus data a state collects for the market value of an improved site. The Agency will provide construction cost data to each state annually, and states will be required to publish a State Administrative Notice annually establishing limits that are to be used. The flexibility added to this section negates the need for an area-wide exception to the modest dwelling requirement of § 3550.57, so it has been removed.

*Section 3550.68 Payment Subsidies*

There were four comments received. One commentor stated that only one method of calculating subsidy should be used and recommended using the equivalent interest rate (EIR) method. The same commentor felt that the EIR is the only method that takes the price of a house into consideration when determining affordability and that use of the floor computation does not give the applicant the option of choosing lower priced housing. The floor computation is the relationship between a borrower's adjusted income and the applicable adjusted median income in the area in which the security property is located.

Another commentor suggested that floor payments should be made in one percent increments from 22 to 26 percent. The same commentor went on to propose that the EIR scale should be modified to reflect interest rates divided in ¼ percent interest increments and five percent income increments. This commentor suggested that subsidy would be easier to determine based on a flat percentage of an applicant's adjusted income. Another commentor suggested subsidy based on an applicant paying a flat 30 percent of annual income for principal, interest, taxes, insurance and utilities and maintenance.

In response to these comments, the Agency has made no changes to the policy established in the interim rule. The Agency uses the floor and EIR comparison method of determining payment subsidy to reduce the costs of the program and; therefore, increase the number of families we can assist. This method allows subsidy costs to be at a minimum while maintaining affordability for low and very low-income families. Applicants are not asked to pay any more than 22, 24, or 26 percent of their income, depending on the percent of median income, for total PITI. The Agency has used this formula since 1996 and has experienced no problems with it. The Agency considers these percentages reasonable for a very low- or low-income applicant to pay for housing costs and is not proposing any changes to the payment assistance formula at this time.

**Technical Corrections and Clarifications**

In addition to the changes being made to §§ 3550.53(g), 3550.57(a), and 3550.63, we are also providing the following technical corrections, omission corrections and clarifications of the interim rule. A summary of these technical corrections and clarifications follows. Conforming changes are also being made to update obsolete references in other regulations associated with the Direct Section 502 and 504 programs.

*Section 3550.10 Definitions*

The definition for ''modest housing'' was modified due to the changes in §§ 3550.57(a) and 3550.63 discussed above. This change makes the sections consistent.

*Section 3550.52 Loan Purposes*

A paragraph from the obsolete 7 CFR 1944.22(c) was inadvertently omitted in this section in the interim rule. This paragraph allows for refinancing of a non-RHS debt if the loan is $5,000 or more and is necessary for repairs to correct major deficiencies and make the dwelling decent, safe and sanitary and the refinancing is necessary for the borrower to show repayment ability, regardless of the delinquency. This final rule corrects that omission.

*Section 3550.53 Eligibility Requirements*

The credit requirements of this section have been interpreted inconsistently. The language is confusing because it includes both installment debts such as a car loan and credit card debt. These two distinct types of credit must be looked at in their own context. Therefore, we are clarifying the indicators of unacceptable credit to include payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months and payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period. A correction was made to state that Agency debts that were debt settled within the last 36 months or are being considered for debt settlement is considered adverse credit. Corrections were also made to this section by renumbering and redesignating paragraphs.

In addition to addressing the above comments, we added an omission from the obsolete 7 CFR 1944.8(a)(2)(i), which required an applicant to have adequate and dependable income. Dependably available income is a basic eligibility requirement, which necessitates the need to re-introduce this into the calculation of repayment ability. The determination of income dependability will include consideration of an applicant's past history of annual income.

*Section 3550.54 Calculation of Income and Assets*

A correction was made to this section to change wording from family member to household member in calculating adjusted income. This is necessary to make the section internally consistent, as all household income must be included in determining annual and adjusted income.

*Section 3550.59 Security Requirements*

A correction was made to this section to clarify how the market value may be exceeded up to 5 percent when a junior lien involves a grant or a forgivable affordable housing product.

*Section 3550.66 Interest Rate*

This section has been changed for clarity to remove the reference to the non-program interest rate. This section is for program loans only.

*Section 3550.70 Conditional Commitments*

Spelling and grammatical corrections have been made to the first paragraph.

*Section 3550.100 OMB Control Number*

This section has been changed to correct the OMB control number from 0575–0166 to 0575–0172.

*Subpart C—Section 504 Origination*

This subpart has been modified to include a section on the Consolidated Farm and Rural Development Act section 306C (7 U.S.C. 1926c) Water and Waste Disposal Grants to individuals. The information on section 306C was previously included in 7 CFR part 1944, subpart J, Exhibit D, which was eliminated by the interim rule. Putting this information in 7 CFR part 3550 corrects the omission.

*Section 3550.101 Program Objectives*

This section has been modified to include a statement that the subpart also covers section 306C Water and Waste Disposal Grants.

*Section 3550.103 Eligibility Requirements*

This section was modified to clarify the indicators of unacceptable credit to include payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months and payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period. A correction was made to state that Agency debts that were debt settled within the last 36 months or are being considered for debt settlement is considered adverse credit. Corrections were also made to this section by renumbering and redesignating paragraphs.

*Section 3550.106 Dwelling Requirements*

This section has been corrected to remove the reference to the HUD Section 203(b) limit. This is necessary due to the change in the definition of modest dwelling.

*Section 3550.108 Security Requirements (Loans Only)*

This section has been modified to increase from $2,500 to $7,500 the dollar amount required before a mortgage must be obtained, due to section 702 of the American Homeownership and Economic Opportunity Act of 2000, Public Law 106–569 that amended § 504(a) of the Housing Act of 1949. This section is for section 504 loans only.

*Section 3550.114 Repayment Agreement (Grants Only)*

A correction has been made to state that the grant must be repaid if the property is sold in less than 3 years from the date the grant agreement was signed rather than when the grant was approved. This clarifies and provides consistency in determining the applicable 3-year timeframe.

*Sections 3550.115 Through 3550.119 Section 306C WWD Grant Program*

These sections have been added to include a section on 306C Water and Waste Disposal Grants. The information on Section 306C was previously included in 7 CFR part 1944, subpart J, Exhibit D which was eliminated by the interim rule. Putting this information in 7 CFR part 3550 corrects the omission.

*Section 3550.150 OMB Control Number*

This section has been changed to correct the OMB control number from 0575–0166 to 0575–0172.

*Section 3550.162 Recapture*

This section has been modified to clarify and provide additional guidance on how value appreciation of a property with a cross-collateralized loan is to be determined.

*Section 3550.163 Transfer of Security and Assumption of Indebtedness*

A correction has been made to this section for clarity to change the wording from selling security property to transferring title to secured property. This provides additional guidance for approval of assumptions of property regardless of how title is transferred.

*Section 3550.200 OMB Control Number*

This section has been changed to correct the OMB control number from 0575-0166 to 0575–0172.

*Section 3550.208 Reamortization Using Promissory Note Interest Rate*

A sixth servicing action example has been added to further clarify when an account may be reamortized using the promissory note interest rate.

*Section 3550.211 Liquidation*

This section has been corrected to state that RHS may accept partial payments on an accelerated loan and continue with the foreclosure if allowed by state law.

*Section 3550.250 OMB Control Number*

This section has been changed to correct the OMB control number from 0575-0166 to 0575–0172.

*Section 3550.251 Property Management and Disposition*

This section has been modified to clarify that program Real Estate Owned (REO) properties are reserved for buyers eligible for Rural Housing Direct or Guaranteed SFH programs rather than just Direct program eligible applicants. The section has also been clarified to state that an offer from a buyer on a program REO property who does not qualify for Direct or Guaranteed financing will be considered to have been received the day after the reservation period ends. This changes the sentence from reading ''section 502 program loan'' to ''Direct or Guaranteed loan.''

*Section 3550.300 OMB Control Number*

This section has been changed to correct the OMB control number from 0575–0166 to 0575–0172.

Conforming changes and technical corrections have been made to parts 1806, 1822, 1924, 1925, 1927, 1930, 1940, 1944, 1948, 1950, 1951, 1955, 1965, and 1980 accordingly.

**List of Subjects**

*7 CFR Part 1806*

Buildings, Community development, Disaster assistance, Flood plains, Housing, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Real property insurance, Rural areas.

*7 CFR Part 1822*

Loan programs—Housing and community development, Low and

moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

*7 CFR Part 1924*

Agriculture, Claims, Construction complaints, Construction defects, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

*7 CFR Part 1925*

Real property taxes, Taxes.

*7 CFR Part 1927*

Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

*7 CFR Part 1930*

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

*7 CFR Part 1940*

Administrative practice and procedure, Credit, Legal services, Mortgages, Truth in lending.

*7 CFR Part 1944*

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting requirements, Rural housing, Subsidies.

*7 CFR Part 1948*

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—Housing and community development, Housing, Nuclear energy, Planning, Rural areas, Transportation.

*7 CFR Part 1950*

Accounting, Loan programs—Agriculture, Military personnel.

*7 CFR Part 1951*

Accounting, Account servicing, Credit, Loan programs—Agriculture, Low and moderate income housing loans—Servicing.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure.

*7 CFR Part 1980*

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

*7 CFR Part 3550*

Accounting, Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Grant programs—Housing and community development, Housing, Loan programs—Housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

Therefore, chapters XVIII and XXXV of title 7 of the Code of Federal Regulations are amended as follows:

## CHAPTER XVIII—[AMENDED]

## PART 1806—INSURANCE

1. The authority citation for part 1806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Real Property Insurance

2. Section 1806.6 is amended in the introductory text by revising the words ''§ 1951.310 of subpart G of part 1951 of this chapter'' to read ''7 CFR part 3550.''

### Subpart B—National Flood Insurance

3. Section 1806.28 is amended by revising the words ''§ 1951.310 of subpart G of part 1951 of this chapter'' to read ''7 CFR part 3550.''

## PART 1822—RURAL HOUSING LOANS AND GRANTS

4. The authority citation for part 1822 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

5. Section 1822.263 is amended by revising paragraph (c) to read as follows:

**§ 1822.263 Definitions.**

* * * * *

(c) *Rural area* is open country or rural places as defined in 7 CFR part 3550, subpart A.

* * * * *

6. Section 1822.267 is amended by revising paragraph (l)(1) to read as follows:

**§ 1822.267 Special conditions.**

* * * * *

(l) * * *

(1) The requirements of 7 CFR 3550.70 must be met and a conditional commitment issued prior to the start of construction of the home.

* * * * *

7. Section 1822.275 is amended by revising the last sentence in paragraph (c) to read as follows:

**§ 1822.275 Actions after sites are developed.**

* * * * *

(c) * * * The sites will be released from the mortgage in accordance with 7 CFR part 3550, subpart D or otherwise in accordance with prior approval of the National Office.

## PART 1924—CONSTRUCTION AND REPAIR

8. The authority citation for part 1924 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Planning and Performing Construction and Other Development

9. Section 1924.5 is amended by revising paragraph (g)(4) and the second and third sentences of the introductory text of paragraph (i) to read as follows:

**§ 1924.5 Planning development work.**

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures in 7 CFR part 3550, as appropriate.

* * * * *

(i) * * * Except in cases in which advance commitments are made in accordance with 7 CFR part 3550 or according to § 1924.13(e)(1)(vi)(A) or § 1924.13(e)(2)(ix)(A) of this subpart, no commitments with respect to performing planned development will be made by the Agency or the applicant before the loan is closed. The applicant will be instructed that before the loan is closed, debts should not be incurred for labor or materials, or expenditures made for such purposes, with the expectation of being reimbursed from funds except as provided in subpart A of part 1943 of this chapter, 7 CFR part 3550, and subpart E of part 1944 of this chapter.

* * *

10. Section 1924.6 is amended by revising the last sentence in the

introductory text and the first sentence in paragraph (c) to read as follows:

**§ 1924.6 Performing development work.**

* * * Conditional commitment construction is covered under 7 CFR part 3550.

* * * * *

(c) * * * The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in 7 CFR part 3550. * * *

* * * * *

11. Section 1924.9 is amended in the second sentence of paragraph (a) by revising the words ''in paragraph (b)(3) of this section, in § 1944.17(a)(2)(iii) of FmHA Instruction 2024–A (available in any RECD field office)'' to read ''in paragraph (d) of this section, in 7 CFR part 3550, in RD Instruction 2024–A (available in any Rural Development office).''

12. Exhibit B of subpart A is amended in paragraph VI.A.8. by revising the words ''subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550.''

13. Exhibit J of subpart A is amended:

a. In Part A by revising paragraph V.B.4. to read as follows:

* * * * *

4. 7 CFR part 3550, ''Direct Single Family Housing Loans and Grants.''

* * * * *

b. By revising in Part B, paragraph II.B.4., the words ''§ 1944.11(e) of subpart A of part 1944'' to read ''7 CFR part 3550.''

c. By revising in Part C, paragraph I.B., the words ''paragraph XIV (c)(3) of exhibit F of subpart A of part 1944'' to read ''exhibit D of this subpart.''

d. By revising in Part D, paragraph III, the words ''exhibit F of subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550, subpart B''.

## Subpart F—Complaints and Compensation for Construction Defects

14. Section 1924.253 is amended in paragraph (a)(3) by revising the words ''subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550'' and in paragraph (b)(3) by revising the words ''exhibit F of subpart A of part 1944 of this chapter'' to read ''exhibit J of subpart A of part 1924 of this chapter.''

15. Section 1924.266 is amended:

a. By revising in the introductory text of paragraph (a)(3) the words ''subpart A of part 1955 of this chapter'' to read ''7 CFR part 3550.''

b. By revising in the introductory text of paragraph (a)(3)(i) the words ''subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550,'' and the words ''subpart C of part 1955 of this chapter'' to read ''7 CFR part 3550.''

c. By revising in paragraph (a)(3)(i)(B) the words ''subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550.''

d. By revising in paragraph (a)(3)(ii) the words ''subpart C of part 1955 of this chapter'' to read ''7 CFR part 3550, '' and the words ''subpart A of part 1955 of this chapter'' to read ''7 CFR part 3550.''

e. By revising in paragraph (a)(4)(i)(A) the words ''subpart A of part 1955 of this chapter'' to read ''7 CFR part 3550.''

16. Section 1924.273 is amended in paragraph (a) by revising the words ''subpart B of part 1900 of this chapter'' to read ''7 CFR part 11.''

## PART 1925—TAXES

17. The authority citation for part 1925 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

## Subpart A—Real Estate Tax Servicing

18. Section 1925.1 is amended by revising the words ''§ 1965.105 of subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550.''

19. Section 1925.4 is amended in paragraph (a) by revising the words ''FmHA or its successor Agency under Public Law 103–354 Instructions 1951–A and 1951–G'' to read ''subpart A of part 1951 of this chapter.''

## PART 1927—TITLE CLEARANCE AND LOAN CLOSING

20. The authority citation for part 1927 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

## Subpart B—Real Estate Title Clearance and Loan Closing

21. Section 1927.52 is amended by revising the definitions for ''Program regulations'' and ''State Office'' to read as follows:

**§ 1927.52 Definitions.**

* * * * *

*Program regulations.* The agency regulations for the particular loan program involved (*e.g.*, 7 CFR part 3550 for single family housing (SFH) loans).

* * * * *

*State Office.* For FSA, this term refers to the FSA State Office. For RHS, this term refers to the Rural Development State Director.

* * * * *

22. Section 1927.59 is amended in paragraph (b) by revising the words ''part 1965, subparts A, B, and C, of this chapter'' to read ''subparts A and B of part 1965 of this chapter and 7 CFR part 3550.''

## PART 1930—GENERAL

23. The authority citation for part 1930 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

## Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

24. Exhibit B of subpart C is amended:

a. By revising in paragraph II in the definition for ''Eligibility income'' the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

b. By revising in paragraph II, in the definition for ''Low-income household'' the words ''exhibit C of subpart A of part 1944 of this chapter which is periodically updated (available in any FmHA or its successor agency under Public Law 103–354 Office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office) which is periodically updated.''

c. By revising in paragraph II in the definition for ''Moderate-income household'' the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

d. By revising in paragraph II in the definition for ''Very low-income household'' the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

25. Exhibit E of subpart C is amended in paragraph II.A.1. by revising the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

## PART 1940—GENERAL

26. The authority citation for part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

## Subpart I—Truth In Lending—Real Estate Settlement Procedures

27. Section 1940.401 is amended in paragraph (c)(3)(ii) by revising the words ''§ 1944.37(g) of subpart A of part 1944 and § 1951.315 of subpart G of part 1951 of this chapter'' to read ''7 CFR part 3550'' and in paragraph (c)(3)(iii) by revising the words ''§ 1944.22 of subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550.''

## PART 1944—HOUSING

28. The authority citation for part 1944 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

## Subpart B—Housing Application Packaging Grants

29. Section 1944.73 is amended in paragraph (d) by revising the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office)'' and by revising the words ''exhibit C of FmHA Instruction 1944–A (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

30. Section 1944.75 is amended in the second sentence by revising the words ''Assistant Administrator, Housing'' to read ''Deputy Administrator, Single Family Housing.''

31. Exhibit C of subpart B is amended by revising in paragraph A the words ''exhibit A of subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550'' and by revising paragraph B to read as follows:

### Exhibit C of subpart B—Requirements for Housing Application Packages

* * * * *

B. Section 504—Complete application packages will be submitted in accordance with 7 CFR part 3550. The package must include the forms listed in paragraph A of this exhibit and the following:

The appropriate Agency application form for Rural Housing assistance (non-farm tract) (available in any Rural Development office).

The appropriate Agency form to request verification of employment (available in any Rural Development office).

The appropriate Agency Rural Housing Loan application package (available in any Rural Development office).

Evidence of ownership in accordance with 7 CFR part 3550.

Cost estimates or bid prices for removal of health or safety hazards in accordance with 7 CFR part 3550.

* * * * *

## Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

32. Section 1944.153 is amended in the introductory text of paragraph (3) of the definition of ''Substantial portion of income'' by revising the words ''as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''as stated in Appendix 9 of HB–1–3550 (which is available in any Rural Development office)''.

33. Section 1944.164 is amended in paragraph (j)(2)(ii) by revising the words ''part 1944 subpart A'' to read ''7 CFR part 3550'' and in paragraph (n) by revising the words ''§ 1944.18(b)(5) of part 1944 subpart A'' to read ''7 CFR part 3550.''

34. Section 1944.168 is amended in paragraph (c)(1)(ii) by revising the words ''§ 1944.18 (b)(6) of part 1944 subpart A'' to read ''7 CFR part 3550.''

## Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

35. Section 1944.205 is amended:

a. By revising in the definition for ''Community'' the words ''§ 1944.10 of subpart A of this part 1944'' to read ''7 CFR part 3550.''

b. By revising in the definition for ''Dealer-contractor'' the words ''paragraphs IX and X of exhibit F of subpart A of this part 1944'' to read ''7 CFR part 3550.''

c. By revising in the definition for ''Low-income household'' the words ''exhibit C of subpart A of this part 1944 (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

d. By revising in the definition for ''Moderate-income household'' the words ''exhibit C of subpart A of this part 1944 (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

e. By revising in the definition for ''Very low-income household'' the words ''exhibit C of subpart A of this part 1944 (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

36. Section 1944.222 is amended paragraph (g) by removing the last sentence and in paragraph (h) by revising the words ''subpart A of part 1944'' to read ''7 CFR part 3550.''

37. Section 1944.223 is amended by revising paragraph (e)(4)(iii) to read as follows:

### § 1944.223 Supplemental requirements for manufactured home project development.

* * * * *

(e) * * *

(4) * * *

(iii) Be constructed in compliance with Rural Development thermal performance construction standards as specified in Exhibit D to subpart A of part 1924 of this chapter. The unit must have an affixed label as specified in 7 CFR part 3550 indicating that the unit is constructed to Rural Development thermal requirements for the appropriate winter degree days.

* * * * *

## Subpart I—Self-Help Technical Assistance Grants

38. Section 1944.402 is amended in paragraph (a) by revising the words ''exhibit C of subpart A of this part'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

39. Section 1944.423 is amended by revising the words ''exhibit A of subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550.''

40. Section 1944.424 is amended by revising the words ''subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550.''

41. Section 1944.426 is amended:

a. By revising in paragraph (a)(1) the reference to ''§ 1951.58(j) of FmHA Instruction 1951–B (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''§ 1951.58(k) of RD Instruction 1951–B (available in any Rural Development office).''

b. By revising in paragraph (a)(3) the words ''Subpart M of part 1951 of this chapter'' to read ''7 CFR part 3550.''

## Subpart K—Technical and Supervisory Assistance Grants

42. Section 1944.506 is amended in paragraph (f) by revising the words ''§ 1944.10 of part 1944, subpart A'' to read ''7 CFR part 3550'' and by revising paragraph (d) to read as follows:

### § 1944.506 Definitions.

* * * * *

(d) *Low-income family.* Any household, including those with one

member, whose adjusted annual income, computed in accordance with 7 CFR part 3550, subpart B, does not exceed the maximum low-income limits specified in Appendix 9 of HB–1–3550 (available in any Rural Development office).

* * * * *

### Subpart N—Housing Preservation Grants

43. Section 1944.656 is amended in the definition of ''Low-income'' by revising the words ''exhibit C of subpart A of this part (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

## PART 1948—RURAL DEVELOPMENT

44. The authority citation for part 1948 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note.

### Subpart B—Section 601 Energy Impacted Area Development Assistance Program

45. Section 1948.84 is amended in paragraph (d)(2) by revising the words ''part 1944, subpart A'' to read ''7 CFR part 3550.''

## PART 1950—GENERAL

46. The authority citation for part 1950 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

### Subpart C—Servicing Accounts of Borrowers Entering the Armed Forces

47. Section 1950.105 is amended in paragraph (d) by revising the words ''subpart G of part 1951 of this chapter'' to read ''7 CFR part 3550.''

## PART 1955—PROPERTY MANAGEMENT

48. The authority citation for part 1955 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

49. Section 1955.10 is amended in the introductory text of paragraph (f)(1) by revising the words ''§ 1965.125(a) of Subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550.''

50. Section 1955.15 is amended:

a. By removing in paragraph (b)(2) the third, fourth, and fifth sentences.

b. By revising in the introductory text of paragraph (d)(2)(iv) the words ''subpart G of part 1951 of this chapter'' the first time they appear to read ''7 CFR part 3550'' and the words ''§ 1951.315 of subpart G of part 1951 of this chapter'' to read ''7 CFR part 3550.''

c. By revising in paragraph (d)(2)(iv)(C) the words ''§ 1965.125 of subpart C of part 1965 of this chapter'' in both places they appear to read ''7 CFR part 3550.''

d. By revising in paragraph (d)(2)(iv)(D) the words ''§ 1965.125 of subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550.''

### Subpart B—Management of Property

51. Section 1955.53 is amended in the definition of ''Nonprogram (NP) property'' by revising the words ''FmHA or its successor agency under Public Law 103–354 requirements for existing housing as described in subpart A of part 1944 of this chapter'' to read ''requirements for existing housing as described in 7 CFR part 3550.''

### Subpart C—Disposal of Inventory Property

52. Section 1955.114 is amended in paragraph (a)(5) by revising the words ''subpart A of part 1944 of this chapter'' to read ''7 CFR part 3550.''

53. Section 1955.115 is amended in paragraph (a)(3) by revising the words ''subpart A of Part 1944 of this chapter'' to read ''7 CFR part 3550.''

## PART 1965—REAL PROPERTY

54. The authority citation for part 1965 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart B—Security Servicing for Multiple Housing Loans

55. Section 1965.61 is amended in paragraph (d) by revising the words ''§ 1965.104(c) of subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550'' and in paragraph (e)(3) by revising the words ''§ 1965.113 of subpart C of part 1965 of this chapter'' to read ''7 CFR part 3550.''

### Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

56. Section 1965.202 is amended in the definition for ''Income limits'' by revising the words ''exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''Appendix 9 of HB–1–3550 (available in any Rural Development office).''

## PART 1980—GENERAL

57. The authority citation for part 1980 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart D—Rural Housing Loans

58. Section 1980.312 is amended by revising the words ''§ 1944.10'' to read ''7 CFR part 3550.''

59. Section 1980.353 is amended in paragraph (e)(3) by removing the second sentence and by adding the word ''acceptable'' before ''documentation'' in the first sentence.

## CHAPTER XXXV—[AMENDED]

## PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

60. The authority citation for part 3550 continues to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

### Subpart A—General

61. Section 3550.10 is amended by revising the definition for ''Modest housing'' to read as follows:

#### § 3550.10 Definitions.

* * * * *

*Modest housing.* A property that is considered modest for the area, with a market value that does not exceed the applicable maximum loan limit as established by RHS in accordance with § 3550.63. In addition, the property must not be designed for income producing activities nor have an in-ground swimming pool.

* * * * *

62. Section 3550.50 is amended by revising the OMB control number ''0575-0166'' to read ''0575–0172'' and by removing the third sentence.

### Subpart B—Section 502 Origination

63. Section 3550.52 is amended by revising paragraph (b)(1)(i) and (b)(1)(ii) to read as follows:

#### § 3550.52 Loan purposes.

* * * * *

(a) * * *

(1) * * *

(i) Due to circumstances beyond the applicant's control, the applicant is in danger of losing the property, the debt is over $5,000, and the debt was incurred for eligible program purposes prior to loan application or was a protective advance made by the

mortgagee for items covered by the loan to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs; or

(ii) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies and make the dwelling decent, safe and sanitary and refinancing is necessary for the borrower to show repayment ability, regardless of the delinquency.

* * * * *

64. Section 3550.53 is amended as follows:

a. By revising the introductory text of paragraph (g);

b. By redesignating paragraphs (h)(1)(ii) through (h)(1)(ix) as paragraphs (h)(1)(iii) through (h)(1)(x);

c. By revising paragraph (h)(1)(i);

d. By adding a new paragraph (h)(1)(ii); and

e. By revising newly redesignated paragraphs (h)(1)(v) and (h)(1)(ix).

The revision and addition read as follows:

**§ 3550.53 Eligibility requirements.**

* * * * *

(g) *Repayment ability.* Repayment ability means applicants must demonstrate adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income.

* * * * *

(h) * * *

(1) * * *

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

* * * * *

(v) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded in paragraph (i)(2) of this section.

* * * * *

(ix) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

* * * * *

65. Section 3550.54 is amended in paragraph (c)(1) by revising the word ''family'' to read ''household.''

66. Section 3550.57 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 3550.57 Dwelling requirements.**

(a) *Modest dwelling.* The property must be one that is considered modest for the area, must not be designed for income producing purposes, must not have an in-ground swimming pool or have a market value in excess of the applicable maximum loan limit, in accordance with § 3550.63, unless RHS authorizes an exception under this paragraph. An exception may be granted on a case-by-case basis to accommodate the specific needs of an applicant, such as to serve exceptionally large households or to provide reasonable accommodation for a household member with a disability. Any additional loan amount approved must not exceed the amount required to address the specific need.

* * * * *

67. Section 3550.59 is amended by revising the last sentence of paragraph (a)(2) and adding a new sentence at the end of paragraph (a)(2) to read as follows:

**§ 3550.59 Security requirements.**

* * * * *

(a) * * *

(2) * * * Liens junior to the RHS lien may be allowed at loan closing if the junior lien will not interfere with the purpose or repayment of the RHS loan. When the junior lien involves a grant or a forgivable affordable housing product, the total debt may exceed the market value by the amount of the forgivable loan or grant up to 5 percent.

* * * * *

68. Section 3550.63 is amended by revising the introductory text and paragraph (a) to read as follows:

**§ 3550.63 Maximum loan amount.**

Total secured indebtedness must not exceed the area loan limit or market value limitations specified in paragraphs (a) or (b) of this section, whichever is lower. Any loan amount for the RHS appraisal, tax monitoring fee, and the charge to establish an escrow account for taxes and insurance will not be subject to the limitations specified below. This section does not apply to loans on NP terms.

(a) *Area loan limit.*

(1) The area loan limit is the maximum value of the property RHS will finance in a given locality. Subject to the following, this limit is based on cost data plus the market value of an improved lot, or the State Housing Authority limits, whichever the State Director determines most appropriately reflects the value of modest housing for the area:

(i) The cost of the structure is based upon the cost to construct a modest home and is obtained by RHS from a nationally recognized residential cost provider.

(ii) The market value of an improved site (without the dwelling) is based upon current sales data for typical housing sites and reasonable and typical costs of site improvements.

(iii) The applicable State Housing Authority limit will only be considered if it is within 10 percent of the cost data plus the market value of an improved lot.

(iv) The area loan limit may not exceed the applicable local HUD section 203(b) limit.

(v) All area loan limit data will be updated at least annually and is available in any Rural Development office.

(2) The maximum loan limit calculated under paragraph (a)(1) will be reduced in the following situations:

(i) When the applicant owns the site or is purchasing the site at a sales price below market value, the market value of the lot will be deducted from the maximum loan limit, and

(ii) When an applicant is receiving a housing grant or other form of affordable housing assistance for purposes other than closing costs, the amount(s) of such grants and affordable housing assistance will be deducted from the maximum loan limit.

(3) The maximum loan limit for self-help housing will be calculated by adding the total of the market value of the lot (including reasonable and typical costs of site development), the cost of construction, and the value of sweat equity. The total of these three factors cannot exceed the limit established in paragraph (a)(1) of this section.

* * * * *

69. Section 3550.66 is revised to read as follows:

**§ 3550.66 Interest rate.**

Loans will be written using the applicable RHS interest rate in effect at loan approval or loan closing, whichever is lower. Information about current interest rates is available in any Rural Development office.

70. Section 3550.70 is amended in the introductory text by removing the word ''be'' in the first sentence the first time it appears and by revising the word ''lessor'' to read ''lesser'' and the words ''HUD section 203(b) limit'' to read ''maximum loan limit.''

71. Section 3550.100 is amended by revising the OMB control number ''0575-0166'' to read ''0575–0172'' and by removing the third sentence.

72. The heading of subpart C of part 3550 is revised to read as follows:

## Subpart C—Section 504 Origination and Section 306C Water and Waste Disposal Grants

73. Section 3550.101 is amended by adding a sentence at the end of the section to read as follows:

### § 3550.101 Program objectives.

* * * This subpart also covers Water and Waste Disposal (WWD) Grants to individuals authorized by Section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926c).

74. Section 3550.103 is amended as follows:

a. By redesignating paragraphs (i)(1)(ii) through (i)(1)(viii) as (i)(1)(iii) through (i)(1)(ix) respectively;

b. By revising paragraph (i)(1)(i) and newly redesignated paragraphs (i)(1)(v) and (i)(1)(viii); and

c. By adding a new paragraph (i)(1)(ii).

The revision and addition read as follows:

### § 3550.103 Eligibility requirements.

* * * * *

(i) * * *

(1) * * *

(i) Payments on any account where the amount of the delinquency exceeded one installment for more than 30 days within the last 12 months.

(ii) Payments on any account which was delinquent for more than 30 days on two or more occasions within a 12-month period.

* * * * *

(v) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding or has been outstanding within the last 12 months, except for those excluded by paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

* * * * *

(viii) Agency debts that were debt settled within the last 36 months or are being considered for debt settlement.

* * * * *

75. Section 3550.106 is amended in paragraph (a) by removing the words ''or have a value in excess of the 203(b) limits of the National Housing Act'' to read ''or have a market value in excess of the applicable maximum loan limit, in accordance with § 3550.63.''

76. Section 3550.108 is amended by revising in the introductory text the amount ''$2,500'' to read ''$7,500'' and by revising paragraph (b)(1) to read as follows:

### § 3550.108 Security requirements (loans only).

* * * * *

(b) * * *

(1) Loans where the total RHS indebtedness is less than $7,500; or

* * * * *

77. Section 3550.114 is amended by revising the words ''was approved'' to read ''agreement was signed.''

78. Sections 3550.115 through 3550.119 are added to read as follows:

### § 3550.115 WWD grant program objectives.

The objective of the WWD individual grant program is to facilitate the use of community water and waste disposal systems by the residents of colonias along the border between the U.S. and Mexico. WWD grants are processed the same as Section 504 grants, except as specified in this subpart.

### § 3550.116 Definitions applicable to WWD grants only.

(a) *Colonia.* Any identifiable community designated in writing by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of a potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads, and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

(b) *Individual.* Resident of a colonia located in a rural area.

(c) *Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States.

(d) *System.* A community or central water supply or waste disposal system.

(e) *WWD.* Water and Waste Disposal grants to individuals.

### § 3550.117 WWD grant purposes.

Grant funds may be used to pay the reasonable costs for individuals to:

(a) Extend service lines from the system to their residence.

(b) Connect service lines to residence's plumbing.

(c) Pay reasonable charges or fees for connecting to a system.

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

(f) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant for a purpose provided in paragraph (a) or (b) of this section and is required by local or State law.

(g) Make improvements to individual's residence when needed to allow the use of the water and/or waste disposal system.

### § 3550.118 Grant restrictions.

(a) *Maximum grant.* Lifetime assistance to any individual for initial or subsequent Section 306C WWD grants may not exceed a cumulative total of $5,000.

(b) *Limitation on use of grant funds.* WWD grant funds may not be used to:

(1) Pay any debt or obligation of the grantees other than obligations incurred for purposes listed in § 3550.117.

(2) Pay individuals for their own labor.

### § 3550.119 WWD eligibility requirements.

In addition to the eligibility requirements of § 3550.103, WWD applicants must meet the following requirements:

(a) An applicant need not be 62 years of age or older.

(b) Own and occupy a dwelling located in a colonia. Evidence of ownership will be presented as outlined in § 3550.107.

(c) Have a total taxable income from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services.

(d) Must not be delinquent on any Federal debt.

(e) The household income must be verified at the time they apply for assistance through verification of employment and benefits. Federal tax returns are used as further verification of household income.

79. Section 3550.150 is amended by revising the OMB control number ''0575–0166'' to read ''0575–0172'' and by removing the third sentence.

## Subpart D—Regular Servicing

80. Section 3550.162 is amended by revising paragraph (b)(2) to read as follows:

### § 3550.162 Recapture.

* * * * *

(b) * * *

(2) The value appreciation of property with a cross-collateralized loan is based on the market value of the dwelling and lot. If located on a farm, the lot size would be a typical lot for a single family housing property.

* * * * *

81. Section 3550.163 is amended in the first sentence of paragraph (b)(2) by

revising the words ''sells a'' to read ''transfers title to the.''

82. Section 3550.200 is amended by revising the OMB control number ''0575–0166'' to read ''0575–0172'' and by removing the third sentence.

## Subpart E—Special Servicing

83. Section 3550.208 is amended by revising in paragraph (b) the reference to ''paragraph (a)(6)'' to read ''paragraph (a)(5)'' and by adding a new paragraph (a)(6) to read as follows:

### § 3550.208 Reamortization using promissory note interest rate.

* * * * *

(a) * * *

(6) Bring an account current where the National Appeals Division (NAD) reverses an adverse action, the borrower has adequate repayment ability, and RHS determines the reamortization is in the best interests of the Government and the borrower.

* * * * *

84. Section 3550.211 is amended in paragraph (c) by removing the last two sentences.

85. Section 3550.250 is amended by revising the OMB control number ''0575–0166'' to read ''0575–0172'' and by removing the third sentence.

## Subpart F—Post-Servicing Actions

86. Section 3550.251 is amended in paragraph (c)(5)(i)(A) by revising the words ''program-eligible applicants'' to ''eligible direct or guaranteed single family housing loan applicants'' and by revising paragraphs (c)(4)(i) and (c)(4)(ii) to read as follows:

### § 3550.251 Property management and disposition.

* * * * *

(c) * * *

(4) * * *

(i) Program REO properties are reserved for eligible direct or guaranteed single family housing loans under this part or part 1980, subpart D of this title and nonprofit organizations or public bodies providing transitional housing during the first 60 days after the date of the first notice of sale, and during the first 30 days following any reduction in price or any other change in credit terms or other sale terms. After the expiration of a reservation period, program REO properties can be bought by any buyer.

(ii) An offer on a program REO property from a buyer who does not qualify for a direct or guaranteed single family housing loan may be submitted during a reservation period, but is considered to have been received on the day after the reservation period ends.

* * * * *

87. Section 3550.300 is amended by revising the OMB control number ''0575–0166'' to read ''0575–0172'' and by removing the third sentence.

Dated: December 16, 2002.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

[FR Doc. 02–32190 Filed 12–23–02; 8:45 am]

BILLING CODE 3410–XV–P

---

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Parts 93 and 98

**[Docket No. 02–064–2]**

## Canadian Border Ports; Blaine and Lynden, WA

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On November 8, 2002, the Animal and Plant Health Inspection Service published a direct final rule in the **Federal Register**. (*See* 67 FR 68021–68022, Docket No. 02–064–1.) The direct final rule notified the public of our intention to amend the regulations by removing Blaine and Lynden, WA, from the lists of Canadian border ports designated as ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as January 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**Authority:** 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of December 2002.

**Peter Fernandez,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–32295 Filed 12–23–02; 8:45 am]

BILLING CODE 3410–34–P

---

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Parts 50 and 72

**RIN 3150–AG52**

## Decommissioning Trust Provisions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations relating to decommissioning trust provisions for nuclear power plants. For licensees that are no longer rate-regulated, or no longer have access to a non-bypassable charge for decommissioning, the NRC is requiring that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised this type of oversight authority. With deregulation, this oversight may cease and the NRC needs to take a more active oversight role.

**EFFECTIVE DATE:** December 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a staff requirements memorandum (SRM) dated August 10, 1999, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. This SRM was in response to SECY–99–170 (July 1, 1999), ''Summary of Decommissioning Fund Status Reports,'' in which the NRC staff noted that it intended to continue to review decommissioning trust agreements in license transfers on a case-by-case basis and impose appropriate conditions in the orders approving these transfers. In response to the SRM, the NRC staff issued a rulemaking plan for Decommissioning Trust Provisions, SECY–00–0002, on December 30, 1999. The plan called for amending 10 CFR 50.75 and revising Regulatory Guide

1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors.'' The Commission approved the plan on February 9, 2000, and directed the NRC staff to include specific trust fund terms and conditions necessary to protect funds fully in the rule itself. The Commission also suggested that sample language for trust agreements consistent with the terms and conditions within the rule be provided in the associated regulatory guide.

The NRC published a proposed rule for Decommissioning Trust Provisions on May 30, 2001 (66 FR 29244). That proposed rule required that the trust provisions be in a form acceptable to the NRC and contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. To accomplish this objective, the NRC proposed to modify paragraphs 10 CFR 50.75(e)(1)(i) and (ii), and to add a new paragraph, 10 CFR 50.75(h) to its regulations. The changes in § 50.75(e) specify that the trust should be an external trust fund in the United States, established under a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency. Paragraph 50.75(h) discusses the terms and conditions that the NRC believes are necessary to ensure that funds in the trusts will be available for their intended purpose.

In response to a comment, paragraph 72.30(c)(5) has been modified for consistency with § 50.75(e) and (h), as a conforming change. As an accompaniment to this rulemaking, the NRC has updated Regulatory Guide 1.159, to include sample trust fund language containing these terms and conditions. Draft Regulatory Guide DG–1106, the proposed revision 1 of Regulatory Guide 1.159, was published for comment along with the proposed rule.

## II. Comments on the Proposed Rule

The Commission received 36 letters, from 34 commenters, containing approximately 280 comments on the proposed rule and draft regulatory guide. Seventeen of the commenters were licensees, 11 were representatives of utility groups (many of whose members are licensees), three were State agencies or commissions, one was the National Association of State Regulatory Utility Commissioners (NARUC), and two were investment management companies. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20852.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking at *http://ruleforum.llnl.gov.*

### *1. General Comments on the Proposed Action*

*Comments:* Several of the commenters supported the NRC's goal to maintain regulatory oversight over nuclear decommissioning trust funds, where necessary, and agreed that the NRC may need to take a more active oversight role regarding decommissioning trust agreements. Two other commenters commended the NRC for undertaking this rulemaking and fully supported the NRC's efforts to ensure that a utility industry made more efficient through competition remains a safe and reliable industry. Similarly, one commenter said it understands and agrees with the NRC's concern that the decommissioning trust corpus be safeguarded from investment risks. The Nuclear Energy Institute (NEI) stated that ''[u]pon taking into account the comments and suggestions for improvement * * *, NRC's proposed rulemaking and proposed guidance likely will enhance the assurance for decommissioning funding already provided by the industry and should improve public confidence that all nuclear power reactors will be properly decommissioned.'' Ten commenters endorsed NEI's comments. One of those commenters also endorsed the comments submitted by Winston & Strawn on behalf of the Utility Decommissioning Group and the Tennessee Valley Authority. However, one licensee stated that the NRC should withdraw the notice of proposed rulemaking because existing regulations from the NRC, the Internal Revenue Service (IRS), and the State regulatory agencies are more than adequate to protect the public health and safety. In their view, the proposed rulemaking is duplicative of existing requirements and would add unnecessary regulatory burden without a corresponding safety benefit.

This licensee also believes that the proposed rule is inconsistent with the NRC's regulatory burden reduction initiative. Another commenter expressed similar views and stated that the proposed rule may eliminate some of the flexibility of the existing rule. Yet another commenter opposing the rule said that if the NRC intends to continue to impose decommissioning funding conditions in individual licenses, there is no need for the rule.

Five commenters noted that given the wide variety of trust instruments in effect, it is fitting that the NRC not develop a uniform trust fund agreement that would be mandatory for all licensees. Another commenter stated that the NRC's proposed approach in adopting standard rules regarding decommissioning trust funds is superior to the existing NRC practice of applying specific license conditions on a case-by-case basis.

A commenter stated that NRC's discussion of Test 4 in the statement of considerations for the proposed rule describes that licensees ''generally'' prepare annual reports, etc. and does not specifically list annual calculation of the estimated cost as required by 10 CFR 50.75(b)(2). Further, the Test 4 description specifies that ''* * * these reports can be supplied to the NRC upon request * * *.'' This availability upon request and the biennial reporting appear sufficient. The Test 4 discussion should justify removing 10 CFR 50.75(b)(2), or an explanation of the benefit of annual adjustments to the calculation vs. the biennial frequency of the funding status should be provided.

*Response:* With respect to the comments calling for the NRC to withdraw the rule, the Commission does not intend to do so. The Commission's position, as stated in the proposed rule (66 FR 29244) is that, ''[u]ntil recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised such authority. With deregulation, this oversight may cease and the NRC may need to take a more active oversight role.'' Given that the NRC will not require (except in the one instance where all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before to permanent cessation of operations) the trust provisions of this rulemaking to be imposed on those licensees remaining under State or Federal Energy Regulatory Commission (FERC) regulation, the NRC does not interpret this action as being duplicative of

existing requirements and adding unnecessary regulatory burden.

With respect to the comment stating that there would be no need for the rule if the NRC continues to impose decommissioning funding conditions in individual licenses, the NRC has always believed that it is preferable and more efficient to adopt standard rules, as opposed to applying specific license conditions on a case-by-case basis.

As for the comment on the discussion of Test 4 in the statement of considerations for the proposed rule and the commenter's request to remove 10 CFR 50.75(b)(2), the NRC was not proposing any change to that section by this action and no change is presently under consideration. The NRC still intends to require licensees to calculate their estimated decommissioning costs annually, even if these values are not required to be submitted to the NRC annually.

Following is a listing of the specific comments on the proposed rule and the NRC's response to them. The comments on the draft regulatory guide are then listed and discussed.

*2. Applicability of the Rule*

*Comments:* One of the most often repeated comments dealt with the proposed rule's requirement to be applicable to all licensees, even if they are under FERC or State regulation. The commenters said that the NRC should more clearly explain its conclusion that the proposed rule is necessary to ensure that decommissioning funds will be available when needed. There is no evidence that any reactor licensee has lacked adequate funds to safely complete the decommissioning process. In effect, licensees would have to expend resources to address a problem that has yet to occur. Because licensees are required to report on their funding levels to the NRC every two years (10 CFR 50.75(f)(1)), the reports already allow the NRC time to fashion an appropriate remedy, should one be necessary, to protect public health and safety. The NRC has not reviewed current practices by State or Federal rate regulators to establish a baseline for evaluating any possible changes in the management of decommissioning trust funds in response to deregulation. Another layer of regulatory oversight should not be added where adequate regulatory safeguards exist, such as FERC and/or State oversight. One commenter stated that its State Public Utility Commission (PUC) approved the commenter's decommissioning funding collections and permits funding of items not included in the NRC's definition of ''decommissioning.'' Therefore, additional NRC requirements regarding the use of these funds would hinder the commenter's ability to access and use the funds as approved by the PUC and would unnecessarily intrude on local ratemaking functions that are an exclusive province of State governments.

Two commenters stated that the NRC should include a way for licensees to ascertain whether a conflict of applicable standards between the NRC's proposed rule and existing State and Federal regulations requires the execution of an entirely new trust agreement. Also, the NRC should convene a conference with FERC and NARUC to explore conflicts between existing standards and the NRC's rule.

One commenter stated that licensees who are State entities and who have additional safeguards under State law should be exempt from the proposed rule because it is based on the premise that deregulation will remove existing accounting and financial controls on owners of nuclear power plants. These commenters argued that this rule is not applicable to California Municipal Utilities Association (CMUA) members, who operate under the same regulatory and legal restrictions that applied before the changes to the electric utility industry in California. CMUA members are public agencies bound by the same stringent investment restrictions after deregulation as before.

Two commenters stated that the proposed rule is duplicative of Internal Revenue Code requirements and IRS implementing regulations, that place additional restrictions on the use of qualified nuclear decommissioning trusts. The commenters assert that existing IRS requirements are sufficient to protect the NRC's interest in the proper use of decommissioning funds. Under the IRS regime, licensees may experience tax advantages under the Internal Revenue Code section 468A by commingling funds for all decommissioning purposes and depositing them in a tax ''qualified'' fund. The NRC should explicitly permit the use of funds for all decommissioning purposes and eliminate barriers in its regulations to the full collection of funds authorized by rate-setting authorities.

Two other commenters asserted that the final rule should acknowledge the potential of transfers from non-qualified portions of the trust to the qualified portions without the NRC's notice or approval. Similarly, the scope of the proposed rule is not clear because it does not articulate whether the amendments are applicable to all nuclear decommissioning trusts (qualified and unqualified), or whether the amendments are intended to apply to trusts that accumulate funds for expenses not within the NRC definition of ''decommissioning.''

An organization representing the nuclear power industry stated that because there are a variety of ways for licensees to comply with the rule that are equally as binding as the terms of the underlying trust agreement, 10 CFR 50.75(h)(1) should be revised to allow licensees alternatives for achieving rule compliance by inserting the words ''investment guidelines for, or other binding arrangements governing'' so that it would read: ''Licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of, investment guidelines for, or other binding arrangements governing, the trust, escrow account, Government fund, or other account used to segregate and manage the funds * * *.''

Another commenter stated that it is not clear whether provisions in the proposed rule will supersede license conditions previously imposed in license transfer proceedings, or whether licensees with existing license conditions governing decommissioning trusts must apply to amend their licenses and whether these amendment applications would then be subject to hearings. The inference is that the proposed rule would be applicable to all existing and future reactors, as the rule is silent on the matter.

*Response:* The NRC acknowledges that the proposed rule could be burdensome for licensees still regulated by PUCs and FERC, with no significant improvement in the public health and safety. Therefore, the final rule will only apply to licensees that are no longer regulated by State PUCs or FERC, with the exception that all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations. The reason for this is that some licensees, even though continuing to be rate regulated, may make withdrawals without their rate regulator's knowledge. Given that any such withdrawals before permanent cessation of operations are likely to be very rare, the NRC believes that this requirement should not be burdensome. The NRC also excludes from this requirement any withdrawals from one decommissioning fund that are immediately deposited in another decommissioning trust fund either for one unit or between units (*e.g.*, from a non-qualified to a qualified trust fund).

This change would essentially eliminate the potential for conflicts of standards between NRC, and State and Federal regulations. These modifications also eliminate the need for a conference on this subject.

However, the NRC does not agree with the comments that IRS requirements are sufficient to protect the NRC's interest in the proper use of decommissioning funds because these requirements relate primarily to tax treatment of decommissioning funds and may not be sufficient to satisfy the NRC's public health and safety concerns.

As to the comment on the suggested revision to 10 CFR 50.75(h)(1), the change has been made because the NRC recognizes the benefit of allowing alternatives for achieving rule compliance that do not have any adverse impact on the public health and safety.

With respect to the comment seeking clarification about whether the proposed rule supersedes license conditions, the NRC's position is that licensees will have the option of maintaining their existing license conditions or submitting to the new requirements.

Lastly, in response to the same commenter's second question, the rule is to be applicable to all present and future licensees that are or will no longer be under FERC or State rate regulation or that otherwise meet the NRC's definition of ''electric utility,'' with the same exception as noted above. All licensees will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations or if they are not made under a post-shutdown decommissioning activities report or license termination plan.

*3. Notifications and Disbursements*

*Comments:* The section of the proposed rule that generated the greatest number of responses (fourteen) from commenters related to notification of disbursements from the trust. Some commenters claim the 30-day notification is not needed because there is no basis for presuming that an independent trustee will disburse amounts held in the decommissioning trust fund for purposes other than those specified. The notification requirement would impose a significant regulatory burden on both the licensees and the NRC by creating a process for disbursement approvals for decommissioning funds without a public health and safety justification. There are no standards to guide licensees and the NRC staff on whether a disbursement would be permissible. The 30-day disbursement notification would be a major burden on licensees during decommissioning and even during decommissioning planning because notifications would be required frequently.

The commenter stated that at most, the rule should require a one-time notification before initial withdrawals for decommissioning or planning. Also, licensees may incur charges waiting for NRC approval while labor and resources have been staged and ready to work. Trust vendors or service providers would not appreciate having to wait 30 days for payment with the added risk of possibly having the payment disallowed by the NRC. Further, there may be cases where relatively minor day-to-day expenses are incurred or where expenses must be paid promptly and NRC review is not required to meet the agency's regulatory concerns. If so, the NRC could add a *de minimis* exception. These commenters suggested that the NRC could prohibit funds from making two or more simultaneous disbursements of 0.99 percent of trust principal in order to avoid the notification requirement of the proposed rule. The NRC has not identified any case where improper disbursements have been made from a decommissioning trust and does not have enough staff to review invoices from decommissioning contractors that would only increase paperwork.

With respect to the 30 day disbursement notice under proposed 10 CFR 50.75(h), another commenter stated that ''Licensees that have complied with the requirements of 10 CFR 50.82(a)(4) regarding submittal of a Post Shutdown Decommissioning Activities Report (PSDAR) and control trust fund disbursements in accordance with the provisions of 10 CFR 50.82(a)(6), (a)(7), and (a)(8), should be exempt from any further restrictions on disbursements.'' This commenter suggested that its modification to the proposed rule is particularly appropriate because it allows licensees to use the 3 percent of decommissioning trust fund monies for planning activities before plant retirement as provided at 10 CFR 50.82(a)(8)(ii). There is little need for the NRC to require a 30-day advance notice from those facilities utilizing the trusts for pre-planning decommissioning activities. Also, the clarifying wording in Section 2.2.2.4 of DG–1106 needs to be included in 10 CFR 50.75(h)(1)(iii).

The commenter then suggested modifying proposed 10 CFR 50.75(h)(1)(iii) to allow plants in the process of being decommissioned to be grandfathered because the proposed requirement would not add any assurances that funding is available and would duplicate other notifications. Similarly, another commenter stated that 10 CFR 50.75 (h)(1)(iii) proposes to restrict disbursements or payments until final decommissioning has been completed. It is possible that State PUCs could require overfunded trusts to rebate money to ratepayers (rather than merely adjust the future collection rate). This commenter suggested that the rule should allow the NRC to approve such a disbursement following adequate review.

One commenter stated that NRC should revise the proposed 10 CFR 50.75(h)(1)(iii) to indicate the inclusion of nuclear decommissioning trusts (NDTs) in license transfers. In DG–1106, the NRC recognized that the 30-day notice should be provided to the NRC before disbursing funds, but should not apply to plants withdrawing funds under 10 CFR 50.82(a)(8)(i). This exception is not noted in the proposed rule. Another commenter stated that the proposed rule would duplicate reports for those plants active in decommissioning and that the rule should exempt those facilities involved in decommissioning under 10 CFR 50.82. Similarly, 10 CFR 50.75(h)(4) should be modified so that subsection (h) would not apply to any plant which already has an NRC-approved decommissioning plan. Another commenter stated that licensees who have docketed a PSDAR and a site-specific cost estimate under 10 CFR 50.82 should be exempt from the reporting requirements and adjustments to cost estimates of 10 CFR 50.75.

Several commenters noted that ''ordinary expenses'' or ''ordinary administrative expenses'' should be defined, and that those paid periodically from the trust should be exempt from the 30-day disbursement notification. Or, as a commenter noted, the NRC should clarify which specific expenses paid from a fund would require NRC notification. One commenter stated the definition should be consistent with Internal Revenue Code section 468A(e)(4)(B) where expenses are defined as ''administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund.''

*Response:* With respect to the comments on the 30-day notification for disbursements, the NRC needs to have this information in a timely fashion in order to effectively monitor licensees,

especially when a licensee is not in decommissioning under the PSDAR or an approved license termination plan under 10 CFR 50.82.

One concern with the 30-day disbursement notice was the problems it would potentially cause for licensees during the process of decommissioning or decommissioning planning. The proposed rule did not explicitly indicate that licensees who have complied with 10 CFR 50.82(a)(4) would be exempt from restrictions on disbursements. The NRC agrees with this comment and this change has been made in the final rule because, as a commenter noted, the proposed requirement would not add any assurances that funding is available and would duplicate notification requirements at § 50.82.

Other comments focused on the need for definitions of ''ordinary expenses'' and ''ordinary administrative expenses.'' The NRC, as a matter of consistency and expediency, decided to make use of the IRS Code section 468A(e)(4)(B) definition of expenses where they are defined as ''administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund.''

For clarification and consistency, the final rule includes the words of Section 2.2.2.4 of DG–1106 in 10 CFR 50.75(h)(1)(iii), as suggested by one commenter. Further, the rule language has been changed throughout from ''30 days'' to ''30 working days.''

*4. Restrictions on Funds*

A. ''Investment Grade''

*Comments:* Another major area of concern for twelve commenters in the proposed 10 CFR 50.75(h)(1)(i)(B) was the requirement that the trust hold only ''investment grade'' securities. As one commenter noted, a requirement of ''investment grade'' investments in the trust is unnecessary because of applicable standards under State law, the proposed 10 CFR 50.75(h)(1)(i)(C), and the ''prudent investor'' standard used and defined by the FERC. Adoption of a different standard by another regulatory agency would be problematic. The ''prudent investor'' standard should apply in situations where other regulators have not mandated an investment standard or specific investment restrictions to eliminate the possibility of conflicts between NRC and other requirements. Also, this requirement goes beyond conditions imposed in license transfer orders. Another commenter suggests that the ''investment grade'' standard apply at the time of purchase and not require immediate sale of the investment at the time of downgrade. This commenter stated that the use of the term ''investment grade'' in the proposed rule is not necessary and that the ''prudent investor'' standard, as defined in FERC regulations should be used. ''Investment grade'' is not clearly defined in the regulation, would be subject to the vagaries of future regulatory interpretation, and is unnecessarily restrictive.

*Response:* The NRC agrees that the term ''investment grade'' is redundant because the ''prudent investor'' standard is an appropriate standard defined by the FERC. (Equivalent standards established under State law would also be acceptable.) Therefore, ''investment grade'' was deleted from the final rule and ''prudent investor'' is used in its place.

B. Investment in Nuclear Power Reactor Licensees

*Comments:* Five commenters called for the elimination of the prohibition of a trust ownership of securities of other nuclear power reactor licensees, or for the NRC to set a limit on the amount of assets in entities owning one or more nuclear power plants. These commenters argued that the NRC has not provided a clear basis for categorically excluding investments in any entity with an ownership interest in a nuclear power plant. According to another commenter, the proposed prohibition in a trust's ownership interest in ''one or more nuclear power plants'' should be deferred to applicable investment guidelines under State law. One commenter stated that, by prohibiting investment in securities of other nuclear power plant licensees, NRC is implying the ownership of a nuclear power reactor is a risky investment. The commenter also stated that such a prohibition was possibly out of the NRC's jurisdiction. Further, placing these restrictions on fund managers is not practical and has no clear connection to protection of the public health and safety. Any final rule should permit a *de minimis* investment in otherwise prohibited securities.

The proposed ''nuclear securities'' restriction is very ambiguous as it would apply to fixed income investments. Investment opportunities that are limited by ambiguous regulations will unnecessarily result in lower investment returns than otherwise would be the case. Still another commenter pointed out that the proposed restriction on ownership of securities with nuclear exposure is inconsistent with use of the ''prudent investor standard.''

One commenter noted that public systems are concerned that the proposed rule not be used to prevent a municipal licensee from investing in securities issued by the State government, another municipality, or other instruments of the State in which the municipal licensee is located. If the NRC rejects this proposal, the commenters request that debt securities and like instruments already held in decommissioning trust accounts be exempted from this restriction.

Seven commenters opined that 10 CFR 50.75(h)(1)(i)(A) should be modified to clarify the term ''non-nuclear sector mutual funds'' and to permit investments in bank-maintained nonnuclear sector collective or commingled funds, such as ''Common Trust Funds.'' One commenter did not find the proposed 10 CFR 50.75(h)(1)(i)(A) clear with respect to ''any other entity owning one or more nuclear power plants'' and asked: Is the rule intending to allow investment in securities of an entity that is part owner of a nuclear power plant? Is the rule intending to disallow investment in a mutual fund in which 2 percent of the fund is invested in securities of a parent company whose subsidiary is a minority owner of a foreign or domestic nuclear power plant? Is the term ''nuclear power plant'' inclusive of those being decommissioned and those licensed to operate?

One final related comment was that licensees, and trustees in the absence of directions from licensees, should be authorized to prudently allocate trust assets across the entire risk/return spectrum. Prudent diversification can be beneficial for all stakeholders.

*Response:* The proposed prohibition of ownership in securities of other nuclear power reactor licensees was instituted to forestall members of the nuclear industry from solely investing their nuclear decommissioning funds in each other's securities. Contrary to one commenter's assertion that the prohibition implies that nuclear power is a risky investment and possibly out of the NRC's jurisdiction, the NRC believes that this requirement is consistent with fund diversification.

The NRC agrees with the suggestion that the requirement permit a *de minimis* investment in otherwise prohibited mutual fund investments. The final rule sets the *de minimis* level at 10 percent of the total value of a decommissioning trust account, at or below which investments in securities of companies owning nuclear power plants would be allowed.

With respect to the comment referring to the ambiguity of the proposed restriction as it would apply to fixed income investments, the Commission continues to believe that such a restriction should apply. However, because the rule will not apply to licensees that meet the definition of ''electric utility'' and that a *de minimis* level of investment is now permitted, any effect of such a restriction should be substantially mitigated.

As to the comment suggesting that the proposed prohibition in the trust's ownership of municipal or State-owned nuclear power plants be deferred to applicable State law, by having the rule apply to only those licensees not meeting the NRC's definition of ''electric utility'' that includes cooperatives and public power entities, this issue is rendered moot. The concern relating to the proposed rule not allowing a municipal licensee from investing in securities issued by a State government is likewise rendered moot. The NRC notes that even if the proposed rule were adopted as written, it would not have prevented municipal licensees from investing in State instruments as long as those instruments were not specifically tied to the nuclear plants.

Some commenters wanted clarification of the term ''non-nuclear sector mutual funds.'' This term can be understood in the context of the NRC's definition of ''nuclear sector mutual funds.'' The NRC interprets these funds as being ones in which the fund invests primarily in entities owning nuclear power plants. Funds that invest in electric utilities would be nuclear sector mutual funds if the majority of the value of securities were from NRC licensees. As stated previously, a licensee may invest in nuclear sector mutual funds as long as its share of the licensee's portfolio is less than 10 percent.

In response to some of the specific questions asked, the NRC considers partial owners of a nuclear power plant to be the same as full owners and thus should be counted within the 10 percent *de minimis* restriction for their respective shares of decommissioning trust assets. The rule will disallow investment in a mutual fund in which at least 50 percent of the fund is invested in securities of a parent company whose subsidiary is an owner of a domestic nuclear power plant either fully or partially. Similarly, the term ''nuclear power plant'' is inclusive of those being decommissioned and those licensed to operate.

C. Fund Management

*Comments:* One commenter stated that the proposed 10 CFR 50.75(h)(1)(i)(D) should be deleted. The commenter's position is that the ''prudent investor standard'' implies that if the trusts may be more broadly diversified to include alternative investments such as private equity, then the company should be able to select funds and managers it considers the best qualified. This is not ''day-to-day'' management of the funds, but strategic management of the funds. Virginia Electric and Power Company suggested that day-to-day investment decisions should be defined as ''the hands on management of a stock or bond portfolio, which includes making decisions to buy and sell individual stocks and bonds.'' It should not include formation of the trust's investment policy and the selection of investment advisors, mutual funds, pooled funds, collective funds, and limited partnerships. Licensees should be empowered to make strategic decisions to ensure that the best strategies and advisors are employed for the trust. Licensees' interests are aligned with those of the trust, they have superior knowledge of the decommissioning liability, and they have a broad base of financial and investment expertise. Requiring a third party manager to administer strategic investment decisions when the utility is well qualified to do so is fiscally inefficient and increases the cost of managing the funds.

Similarly, several commenters stated that the NRC should more specifically define the ''day-to-day management'' activities that would be prohibited by the rule. Alternatively, these commenters suggested that the NRC eliminate this prohibition entirely and allow licensees to prudently determine the level of their involvement necessary to adequately administer their decommissioning trust. Also, under the proposed 10 CFR 50.75(h) the NRC could interpret a trust investment direction as being ''day-to-day investment management control'' and cause the trust to pay for external investment management services to direct the trusts investment. This prohibition is overly broad. Licensees should be allowed to give some direction to fund managers when it comes to the licensee's decommissioning fund. A commenter suggested that this prohibition be eliminated, or, if the NRC has examples where licensees who have outside managers have engaged in ''day-to-day management'' of the fund in a detrimental way, this prohibition should be better defined. Another stated that the proposal is overly burdensome in that it would increase costs without providing any added protection of the public health and safety.

Several commenters stated that the NRC's proposed limitation on licensee involvement in investment decisions in 10 CFR 50.75(h)(1)(i)(D) should be changed to restrict licensees from engaging in this activity, rather than trustees who do not ordinarily engage in this type of activity. Also, it would require licensees to spend more money to use commercial investment management services without an adequate explanation from the NRC as to whether the benefits to be derived from this requirement, if any, would outweigh the added regulatory burden that would result. These commenters also stated that governmental agencies should be granted an exception from 10 CFR 50.75(h)(1)(i)(D) when decommissioning trust fund investments, as directed by the governmental agency, are limited to investments permitted for the investment of public funds under applicable State law. Further, the selling of the investments could conflict with an existing contract or require a licensee to suffer additional compliance costs. The NRC must recognize and accommodate circumstances when current State law already provides sufficient safeguards. These commenters concluded that 10 CFR 50.75(h)(1)(i)(D) would add costs, reduce accountability, and is unnecessary to achieve the stated purposes of the proposed amendments.

Similarly, another commenter stated that the proposed rule is flawed because it limits the right of public power owners to direct trust fund assets to investments that are permitted and regulated under State and local law, (*e.g.*, investments in securities issued by the State government of a municipal licensee or other State or local municipality) the selling of which would conflict with an existing contract or require a licensee to suffer additional compliance costs without Federal compensation, or that might affect the rights of public power minority owners upon license transfers of owner-operators. Two commenters said that an exception should be made to 10 CFR 50.75(h)(1)(i) for political subdivisions of States when investment management is addressed by State statute and meets ''prudent man'' standards.

One commenter representing several licensees suggested adding the following to the proposed 10 CFR 50.75(h)(1)(i)(D): ''* * *, except in the case of passive fund management of trust funds where such management is limited to investments tracking market indices.'' The commenter stated that

this would permit passive index fund management by a licensee, its affiliates or subsidiaries, but would not constitute ''day-to-day management.'' Passive index funds replicate the performance of established index funds and do not require active or day to day stock or security selection. Commenter asserted that these funds also satisfy the ''prudent investor standard.'' Further, this activity could provide substantial cost savings to licensees, because the licensee, rather than an outside fund manager, can perform the mechanics necessary to participate in the index fund at a savings to the decommissioning trust fund. The commenter stated that the bottom line is that it is cheaper to run large amounts of index funds in-house by the sponsor than pay an investment manager several basis points to perform the same function.

*Response:* The Commission agrees with many of the comments raised in this section. For example, the limitation on fund management in the final rule was modified to state that licensees may provide day-to-day direction to the trustee for buying and selling index funds, such as ''Standard and Poors 500.'' The final rule was further modified as the result of another comment by restricting licensee involvement in investment decisions as opposed to trustee involvement as was originally proposed. The comments calling for an exception for licensees that are governmental agencies or for licensees located in States in which State statutes mandate investment management were addressed in the final rule by specifying that § 50.75(h)(1) applies to those licensees that are not ''electric utilities.'' Governmental agencies, by the NRC's definition in § 50.2 are considered electric utilities as are those licensees still under State regulation. The NRC agrees with the last comment that suggested a modification which would permit passive index fund management by a licensee, its affiliates or subsidiaries, and the final rule was changed accordingly. The proposed solutions have no negative impact on public health and safety, but they provide savings and efficiencies, and clarity compared to the proposed rule. Changes have been made in the regulatory guide to reflect these modifications.

D. Credit for Decommissioning Trust Earnings

*Comments:* Five commenters stated that NRC should allow licensees to take credit for decommissioning trust earnings through the entire projected decommissioning period. Other commenters stated that, even if a plant is dismantled and decommissioned after shutdown, the credit should be allowed during the dismantlement period because decommissioning activities will not be completed immediately after the termination of operation. Also, licensees should be allowed to assume up to a maximum of ten years of earnings credit through the decommissioning period. One commenter suggested modifying the proposed 10 CFR 50.75(h)(1)(iii) because in DG–1106, the NRC recognized that the 30 day notice should be provided to the NRC before disbursing funds but should not apply to plants withdrawing funds under 10 CFR 50.82(a)(8)(i). This exception is not noted in the proposed rule. The commenter also noted that their modification to the proposed rule is particularly appropriate because it allows licensees to use the 3 percent of decommissioning trust fund monies for planning activities before plant retirement as provided at 10 CFR 50.82(a)(8)(ii). There is little need for the NRC to require a 30-day advance notice from those facilities utilizing the trusts for pre-planning decommissioning activities. Another commenter noted that NRC should permit all licensees to take credit for expected earnings during operation using the 2 percent figure during the decommissioning period, at least for the period coincident with DECON (*i.e.*, approximately 7 years). This interpretation should also apply for a greater period if the licensee submits appropriate preliminary site-specific cost estimates and/or decommissioning planning information to the NRC.

Two commenters stated that 10 CFR 50.75(e)(1)(i) and (ii) should be modified to allow credit for decommissioning trust earnings during periods of safe storage, final dismantlement, and license termination, regardless of whether a licensee uses a site-specific cost estimate or the NRC ''formula amount.''

Lastly, a commenter noted that one possible interpretation of the regulations does not take into account the actual process by which decommissioning will occur. As a consequence, a licensee could end up collecting substantially more money than would be necessary for decommissioning funding simply because of unrealistic assumptions concerning the timing of decommissioning and expenditures for decommissioning shutdown. However, a licensee is not going to expend all decommissioning funds immediately after shutdown. Even when the licensee adopts an immediate dismantlement option for decommissioning, that process will still require several years to complete decommissioning. Although the withdrawals from the fund would be made on an ongoing basis, the assets retained would continue to grow. The commenter asserted that given the NRC's interpretation, licensees are being compelled to collect millions of dollars more during plant operation than will be necessary, even under the most conservative assumptions regarding the timing of decommissioning. The commenter suggested that clarification is needed regarding credit for projected earnings during periods of safe storage, final dismantlement, and license termination in the rule because the regulatory guidance is creating a requirement not directed by the rule.

*Response:* First, it should be noted that § 50.75(e)(1) and (2) also require full funding of decommissioning ''at the time termination of operation is expected.'' Thus, the commenters have not provided a complete picture of the situation. Second, the generic formulas are based on immediate dismantlement as the assumed method of decommissioning. Therefore, those licensees certifying to formulas can not take a 2-percent credit into a SAFSTOR period. However, a 2-percent credit can be used when a site-specific estimate is explicitly based on deferred dismantlement. Third, credits may be timed for outlays for decommissioning expenses. Licensees certifying only to the formula amounts (*i.e.*, not a site-specific estimate) can take credit into the dismantlement period (*e.g.*, the first 7 years after shutdown.) The final rule has been revised to reflect these points.

E. Modifications to Trusts

*Comments:* Eight commenters stated that the NRC should define what is meant by a ''material'' modification to a trust that would require a 30-day advance notification to the NRC in more detail. If the proposed rule is adopted as written, the redundant reporting requirements should be deleted. The commenter further stated that the 30-day notification for licensees making material changes to trust agreements should not apply to those changes caused by State or Federal mandated changes. Lastly, the NRC should be required to notify licensees if there were no objections to proposed amendments.

Two commenters noted that the NRC should be aware that certain amendments to trust agreements in the proposed rule may require PUC approval. As an example, two other commenters noted that their PUCs approved the way the different types of decommissioning funds are handled in a single external trust, and any

significant change in this handling would require PUC notification and review. Therefore, the commenters wish to be able to continue with this commingling of funds through the completion of the commenters' plant decommissioning. The proposed 10 CFR 50.75(h)(1)(iii) would preclude such a commingling of funds in a single external trust account, because withdrawals from the fund under the proposed rule would be allowed only for radiological decommissioning costs. The commenter is concerned that the withdrawals it has been able to make would not be possible under the proposed rule, even though NRC has pre-approved: (1) The construction and associated costs of a dry storage facility; (2) the schedule for this construction and for incurring these costs; and (3) the schedule for and manner of (commingling) accumulating funds to cover these costs.

Two commenters suggested an addition to the rule that ''* * * any amendment to the license of a utilization facility which does no more than delete specific conditions relating to terms and conditions of decommissioning trust agreements involves 'no significant hazards consideration.' '' The commenters stated that licensees should be provided relief from any conflicts or inconsistencies between the final rule and specific license conditions. Licensees that currently have separate license conditions in this area should have the option to amend their licenses to remove those conditions. The commenters also stated that a generic finding of no significant hazards consideration would facilitate the review and approval of these administrative amendments.

*Response:* The NRC's definition of ''material'' modifications includes actions such as a change of a trustee, changes of provisions relating to withdrawals from the trust, changes relating to the beneficiary, changes relating to the duration or term of the trust, or other changes potentially affecting the ability of the trust agreement to provide reasonable assurance of decommissioning funds. Modifications that are not material would include, for example, changes in fee structures paid to a trustee, changes in arbitration provisions between the trustee and the licensee, changes in the investment advisor, if applicable, or investments, provided the changes comply with other aspects of this rule.

As to the second comment in this section relating to PUC approval, it has been noted that much of this rule will not apply to licensees under PUC regulation. Further, with respect to commingling of funds, the Commission does not object to that practice as long as the licensees are able to provide a separate accounting showing the amount of funds earmarked for radiological decommissioning versus utilities not subsumed under the NRC's definition of decommissioning in 10 CFR 50.2.

The last comment suggested an addition to the rule to provide relief from any conflicts or inconsistencies between the final rule and specific license conditions. Licensees will be able to decide for themselves whether they prefer to keep or eliminate their specific license conditions. Because these changes would be to conditions that resulted from license amendments (*i.e.*, license transfers) that already generically involve ''no significant hazards'' considerations, any amendments to conform or eliminate these conditions would likewise involve ''no significant hazards.''

F. Foreign Trustees

*Comments:* Two commenters stated that the rule should not preclude foreign financial institutions from serving as trustees (proposed 10 CFR 50.75(e)(1)(ii)) if a licensee can demonstrate that there would be an equivalent level of assurance. The proposed amendment to § 50.75(e) would require the trust to be overseen by an entity that is an appropriate State or Federal government agency or whose operations are regulated by a State or Federal agency. The commenters also stated that clarification is needed as to what this amendment would actually require, who would qualify as an appropriate agency, and what role that agency would have in the administration of the decommissioning trust. The amendment would also preclude the use of an insurance product, which the NRC presently allows, to satisfy decommissioning funding requirements. Many of the presently used insurance companies are domiciled outside of the U.S. The commenters further stated that it is not clear why there should be a requirement that only companies regulated by State or Federal agencies can be trustees for decommissioning purposes, when such a requirement does not apply to insurers used to satisfy financial assurance requirements for operating reactors.

*Response:* A licensee may have a foreign financial institution serving as trustee if the licensee can demonstrate to the NRC that there would be an equivalent level of assurance as there would be under a U.S. trustee. At a minimum, the foreign trustee would need to have a business branch in the U.S. that is regulated by a State or Federal entity. Also, the amendments in these regulations only apply to trust agreements, not insurance coverage. Thus, licensees who choose to use insurance for decommissioning assurance may use foreign insurers.

G. Non-radiological Decommissioning Funds

*Comments:* Seven commenters stated that the proposed 10 CFR 50.75(h)(1)(iii) fails to acknowledge the possible accumulation of trust funds for purposes of funding spent fuel management and non-radiological decommissioning costs, but that such an accumulation should be encouraged by the NRC. Several of the commenters suggested that restrictions should not apply to funds held in trust for purposes other than radiological decommissioning, *e.g.*, spent fuel storage or non-radiological decommissioning costs. The commenters asserted that a licensee cannot completely fulfill its NRC regulatory decommissioning obligation while fuel resides in the spent fuel pool and in keeping with the principle that the beneficiaries of the plant's production should pay the full life-cycle costs, respectively. Collection of these funds is usually encouraged or required by PUCs. Also, complete ''greenfield'' decommissioning is usually required if the property is not owned by the licensee. The commenters stated that if the NRC determines that these funds should be placed in separate trusts or sub-accounts to avoid the proposed restrictions, the NRC should provide licensees an opportunity to move these funds into separate trusts or accounts before the implementation of the new rule.

Alternatively, a commenter noted that NRC should clarify that the proposed 10 CFR 50.75(h)(1)(iii) disbursement restrictions apply only to funds held in trust for radiological decommissioning, not non-radiological decommissioning. Some decommissioning trust funds are required by non-NRC regulatory agencies to include decommissioning activities that NRC does not require and their estimates would then exceed those of the NRC. The commenter wishes to ensure its continued ability to protect ratepayers from any financial risks associated with nuclear decommissioning. However, the proposed 10 CFR 50.75(h)(1)(iii) would restrict disbursements from the trust, escrow account, Government fund, or other account to ordinary administrative expenses, decommissioning expenses, or transfer to another financial

assurance method until final decommissioning has been completed. The commenter suggested that even though separate trust funds could theoretically be established for NRC radiological decommissioning and other decommissioning activities, it would not necessarily be practical or cost-effective to require the physical demolition and waste disposition work activities to institute artificial accounting to ensure which fund pays for which activities. Likewise, if demolition funds were estimated assuming an area might be radiologically contaminated, those funds would have to be transferred to a different trust fund in order to pay for demolition if the area was determined to not be contaminated during the actual decommissioning.

Two commenters noted that the proposed rule and draft guidance restrict the use of the trust funds for specified purposes including ''decommissioning expenses.'' The NRC's definition of ''decommissioning'' excludes a range of public benefit activities that rate-setting authorities often find necessary and appropriate for public funding, *e.g.*, returning a site to ''greenfield'' condition. The commenters stated that the proposed rule and guidance must clearly state that a nuclear decommissioning trust may disburse funds for these other purposes as long as funds have been authorized by a public rate-setting authority, such as a PUC, and have been collected for these purposes.

Additional commenters also noted that the NRC's rules on the use of decommissioning trust funds should permit cleanup of non-radiological substances and structures. Dual jurisdiction over the nuclear power industry gives States the authority over the economics of nuclear generation costs. New York State has exercised this authority by allowing utilities to place collected monies from ratepayers in the decommissioning trust funds to pay for both the radiological and non-radiological segments of the decommissioning process. These commenters suggested that the NRC should clarify that the funds may be used to remove non-radiological substances and structures, and restore the sites back to greenfield conditions. Also, the NRC should allow licensees to withdraw funds for non-radiological purposes before the completion of the radiological decommissioning activities.

For about 8 years, another commenter has been withdrawing monies from its trust fund under 10 CFR 50.82(a)(8)(i), as necessary to accomplish radiological decommissioning activities, spent fuel management activities, and some non-radiological decommissioning activities according to the expenditure schedule detailed in the plant-approved cost estimate and funding plan. This commenter stated that combining radiological decommissioning, non-radiological, and spent fuel funds has been economically and functionally advantageous.

*Response:* The first comment in this section calls on the NRC to encourage the accumulation of trust funds for the purposes of spent fuel management and non-radiological decommissioning costs. The collection of funds for spent fuel management is already addressed in 10 CFR 50.54(bb) where it indicates that licensees need to have a plan, including financing, for spent fuel management. Any NRC requirements with respect to the accumulation of funds for non-radiological decommissioning costs would be beyond the range of the NRC's legal authority. The NRC does not object to licensees mingling funds for decommissioning activities as defined by the NRC and for other activities outside the NRC's definition. However, if funds are mingled in this way, licensees need to ensure that separate sub-accounts are established so funds for each type of activity are appropriately identified.

As to the statement made by commenters that restrictions should not apply to funds held in trust for purposes other than radiological decommissioning, the Commission's position is that withdrawals for non-radioactive decommissioning expenses that do not affect the amount of funds remaining for radiation decommissioning costs are not covered by this rule. However, the Commission is not proposing that licensees institute separate trusts to account for the different types of activity. The Commission appreciates the benefits that some licensees may derive from their use of a single trust fund for all of their decommissioning costs, both radiological and not; but, as stated above, a licensee must be able to identify the individual amounts contained within its single trust.

The remainder of the comments relating to State jurisdiction and licensees already in decommissioning become moot because this rule will not apply to licensees under State or FERC regulation or to licensees withdrawing monies under 10 CFR 50.82.

H. Implementation of the New Rule

*Comments:* Eleven commenters noted that the proposed rule does not contain any plans for transition from the existing provisions to the new requirements. The rule provides neither a period for an effective date nor any plans for transition from existing trust agreements to the requirements of the proposed rule. These commenters stated that it is also not clear if the new rule only applies to licenses in a deregulated environment or licensees who are pursuing renewal or license transfer of all licenses. The NRC should clarify what actions licensees must take with regard to existing trust agreements and when these actions must be completed if the proposed rule becomes final. The NRC should allow licensees sufficient time to review and conform trust documents to comply with the final rule to avoid, or at least minimize, adverse financial impact on decommissioning funds resulting from compliance with the proposed rule. These commenters suggested that grandfathering or a reasonable transition period should be allowed for existing decommissioning funding arrangements that cannot be amended or terminated without substantial penalties.

One commenter stated that the implementation period should be no shorter than 90 days and that the rule should permit case-by-case extensions where there is good cause. A second commenter stated that a transition period of at least six months before the new requirements are made effective is needed. Another commenter suggested that the implementation period should be extended to a period of ''not less than one year'' because a small number of trustees act for a large number of licensees and their trusts. Still another commenter stated that the NRC needs to clearly state its expectations regarding when licensees are expected to modify their trust documents to conform to the proposed rule. The commenter proposed that for plants not undergoing license transfer or license renewal, a two-year period should be specified to allow for a smooth transition to the rule, following its effective date.

Another commenter pointed out that changes may require other non-NRC regulatory approvals. Still another commenter stated that the NRC should make it clear that its silence as to a proposed disbursement, or its approval after objection, will have no effect upon parties' rights under contracts or other regulations governing the expenditure of decommissioning funds. Lastly, another commenter suggested that the proposed investment limitations should be implemented to all new investments 90 days following the implementation of the rule. This commenter noted that requiring changes to the existing portfolios would result in increased

costs because of the fees and there are potential tax consequences. The last comment on this point stated that the implementation statement could include a clause requiring implementation of the rule if ownership will be changing or before elimination of State and FERC oversight of decommissioning funding during the implementation period.

*Response:* The Commission has decided that the implementation of this rule will be one year from its date of publication in the **Federal Register**. This should be sufficient to help licensees avoid negative financial impacts on the decommissioning funds. With respect to the point on parties' rights under contracts, the NRC does not believe that this rule will interpose the NRC in contractual disputes that do not affect protection of public health and safety. The last comment in this section is rendered moot because the rule will not, in general, apply to licensees under FERC or PUC regulation, or who otherwise meet the NRC's definition of ''electric utility.''

I. Backfit

*Comments:* A few commenters stated that the proposed action was, in fact, a backfit, contrary to the NRC's stated position. Therefore, a backfit analysis is required because the NRC already requires a decommissioning fund to be segregated from a licensee's assets and outside its administrative control, and permits withdrawals only for legitimate decommissioning expenditures. These commenters further stated that because the NRC is capable of imposing additional conditions when necessary in license transfer proceedings, the proposed rule does not appear necessary to protect the public health and safety. These commenters asserted that the NRC should not seek to invoke the ''adequate protection'' exception to the Backfit Rule in this case, but should perform the requisite analysis of costs and benefits under the standards of 10 CFR 50.109(a)(3).

Another commenter stated that an adequate backfit analysis has not been performed because the analysis does not mention how this 30-day notice before fund use during actual decommissioning activities will adversely affect licensees. This commenter asserted that the reliance on the effect of the loss of PUC/FERC jurisdiction and oversight due to deregulation fails to acknowledge or consider that many licensees are not deregulated and may never be fully deregulated. The NRC has not articulated why existing rules fail to ensure adequate protection and no example is given of a licensee who lacked financial assurance to complete decommissioning in a safe and timely manner. This commenter further stated that the NRC has not provided any analysis of how the NRC could more effectively ensure the availability of adequate funds for decommissioning in a more efficient and less restrictive manner.

*Response:* The NRC believes that by eliminating most of the requirements that ''electric utility'' licensees comply with the rule and by explicitly eliminating the requirement to provide advance notification of decommissioning fund expenditures when § 50.82 applies, the backfit concern is eliminated. Most of the comments related to the possibility of dual regulation, which is not the case under this final rule. Further, the rule language has been changed from ''30 days'' to ''30 working days.''

*5. Other Comments*

The following comments were submitted by one commenter each and do not fit into one of the major categories listed above.

*Comment:* The proposed rule does not correspond to the ''Discussion'' and ''Section-by-Section Analysis'' in the **Federal Register** notice. The rule's ''Discussion'' section focuses entirely on decommissioning trusts, but this focus is not reflected in the proposed rule. It is particularly unclear if the use of decommissioning trust funds is mandatory under 10 CFR 50.75(e) or if other less formal arrangements are also acceptable. The commenter recommends that use of the trust funds be mandatory unless there are compelling reasons that less formal arrangements can provide equivalent protection. The rule's ''Discussion'' section focuses entirely on decommissioning trusts, but this focus is not reflected in the proposed rule.

*Response:* After 1988 and as amended in 1998, the NRC, under 10 CFR 50.75 has allowed a variety of financial assurance mechanisms. However, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus and emphasis on trusts in this rule.

*Comment:* ''* * * (T)he proposed rule itself would not require decommissioning trusts. An arrangement that is not a trust will not have a trust instrument and may not entrust decommissioning funds to someone with the fiduciary obligations of a trustee.''

*Response:* As stated above, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus and emphasis on trusts in this rule.

*Comment:* Proposed 10 CFR 50.75 (e)(1)(i), states that ''Prepayment is the deposit * * * of cash or liquid assets * * *'' It then goes on to state that ''Prepayment may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of government securities, or other payment acceptable to the NRC.'' This commenter claims that ''Trusts,'' ''escrow accounts,'' and ''Government funds'' are not forms of prepayment.

*Response:* ''Trusts,'' ''escrow accounts,'' and ''Government funds'' may be used as forms of prepayment as long as they are established in accounts that are independent from the licensee. Further, certificates of deposit and deposits of Government securities are among those securities that could be deposited in a prepayment account.

*Comment:* A commenter claimed an inconsistency on several bases between the words of the proposed § 50.75 (e)(1)(i) '' * * * trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established pursuant to a written agreement * * *'' versus the following words in the ''Section-by Section Analysis:'' ''The sentence would call for the trust to be an external trust fund held in the United States, established pursuant to a written agreement * * *''. First, the commenter noted that ''the apparent intent of the rule is to require decommissioning trusts for both prepayments and external sinking funds. Escrow accounts and certificates of deposit are not the same as trusts, although a certificate of deposit could be held within a trust.'' Next the commenter stated that the language is ''confusing'' in that ''government funds, certificates of deposit, government securities and other payments are not 'established pursuant to a written agreement' but rather are types of funding.'' The commenter was not aware of licensees using Government funds for their decommissioning funding. The commenter stated that if these arrangements do not exist and are not expected to be created, the rule should be modified to delete any reference to them. However, if that is not the case and these arrangements do exist, the rule should be written to allow use of Government funds if they ensure the same level of certainty as decommissioning trusts.

*Response:* A major portion of the response to this comment is contained in the previous response. The intent of

the rule is not to require decommissioning trusts for prepayments and sinking funds, but to focus on making these trusts stronger. As indicated, the rule focuses on external trusts because almost all licensees use them. However, the final rule has been modified to state that similar provisions are to be included in escrow accounts and Government funds. Although the commenter apparently was not aware of licensees using Government funds for their decommissioning funding, one State has essentially established a Government fund for the nuclear plant located in its State.

*Comment:* The same commenter stated that ''Government funds are, however, typically within the control of government bodies and may be used for the purposes allowed by law. Judicial enforcement of amended statutory provisions could be much more problematic than judicial enforcement of a trust agreement.''

*Response:* NRC has traditionally granted deference to State ratemaking mechanisms. However, case law has long established Federal preeminence with respect to protection of public health and safety under the Atomic Energy Act of 1954, as amended.

*Comment:* A commenter stated that ''If sinking fund payments and prepayments into external decommissioning trusts are used by virtually all nuclear power plant licensees * * * there would appear to be no good reason for confusing language that would allow less certain arrangements to maintain decommissioning funds.''

*Response:* After 1988 and as amended in 1998, the NRC, under 10 CFR 50.75, has allowed a variety of financial assurance mechanisms. However, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus of this rule on trusts. The NRC sees no need to limit the licensees' available options that the NRC has determined provide equivalent levels of assurance.

*Comment:* The Commission should clarify that replenishment of a decommissioning working capital fund would be a permissible disbursement from the decommissioning trust fund.

*Response:* Because the rule will not apply to those licensees operating under 10 CFR 50.82, the point is moot.

*Comment:* The disbursement process should provide an option for a licensee to be the party presenting the request for disbursements and the party to disburse the funds, rather than the fund trustee. Compliance with the regulations may result in significant cost for a licensee. Along these lines, the commenter believes that the NRC's estimate of 40–80 hours being required for a licensee to revise its trust agreement to comply with the proposed regulations is ''unduly low.'' If the rule would result in a loss in the value of the fund, the existing trust arrangement should be ''grandfathered'' or the licensee should be able to seek a waiver from NRC on this requirement.

*Response:* The NRC agrees with the proposed option for a licensee to be the party presenting the request for disbursement and the party to disburse the funds. The change has been made to the rule to reflect this option. Even though there was only one commenter who questioned the 40 to 80 staff-hour estimate to revise a trust agreement and the Commission believes that its estimate was within the range anticipated by the other commenters, it has increased the estimated range up to 60 to 120 hours. The last comment referred to a potential loss in fund value because of the rule. The Commission does not see this as being a problem because of the allowance of *de minimis* levels of certain types of investments and the one-year implementation of the rule.

*Comment:* The proposed rule does not make clear if the transfer of nuclear plant ownership interests would be facilitated by more uniform decommissioning trust agreements, or if the NRC's intends to require uniform agreements. If the trustee is the sole entity authorized to submit requests for disbursements, this needlessly adds cost and delay to the process and provides no greater assurance of the availability of funds for decommissioning. The NRC should give licensees the option of being the party that submits the disbursement requests and that transmits payments to decommissioning contractors.

*Response:* The Commission is not advocating uniform agreements and is only seeking provisions that enhance public health and safety. Further, as indicated above, the Commission will allow disbursement requests to be submitted by a licensee.

*Comment:* In order to facilitate license transfers, the NRC should clarify that its regulation will have no effect on the allocation of rights, obligations, or liabilities established by contract or directly applicable orders. If uniform trust agreement provisions were required, they may create an unintended impediment to plant transfers in the future. The rule should state that the regulation would not affect in any manner the rights, obligations, and liabilities of the parties involved in the sale of a nuclear power plant ownership interest.

*Response:* The Commission agrees with the first comment that the ''regulation will have no effect on the allocation of rights, obligations, or liabilities established by contract or directly applicable orders.'' With regard to uniform trust provisions, the NRC is not requiring uniform trust provisions except in specified areas, so the point is moot. Finally, the Commission disagrees with the last statement that ''the regulation would not affect in any manner the rights, obligations, and liabilities of the parties involved in the sale of a nuclear power plant ownership interest.'' As stated earlier, the NRC is not mandating uniform trusts but will require certain provisions to protect public health and safety.

*Comment:* The NRC should convene a public technical conference to explore issues relating to the proposed regulation. Also, the NRC should gather more information and issue a revised notice of proposed rulemaking before proceeding.

*Response:* The NRC believes the final rule, which is not applicable to licensees still under State or FERC regulation, except as noted for the reporting requirement, clears much of the confusion apparently caused by the proposed rule. Therefore, the Commission does not believe a conference or the collection of additional information is necessary.

*Comment:* One commenter suggested that the NRC should provide guidance as to what its expectations are with respect to arbitration provisions often contained in trust agreements governing disputes between a trustee and grantor.

*Response:* The NRC has no position on arbitration positions contained in trust agreements because those provisions are beyond the NRC's legal authority.

*Comment:* The NRC should provide a list of the public and private companies that own or operate power reactors within the meaning of the rule.

*Response:* A complete list of licensees/owners of nuclear power plants may be found in ''Owners of Nuclear Power Plants,'' NUREG/CR–6500, Rev. 2, (March 2002). The NRC intends to revise this publication approximately every 2 years.

*Comment:* One commenter stated that the rule should be revised to eliminate the unnecessary requirement for power reactor licensees that maintain an NRC-approved, site-specific decommissioning cost estimate and funding plan to also meet the minimum certification amount under 10 CFR

50.75(c). The rule should be revised to specify that for power reactor licensees that maintain NRC-approved site-specific decommissioning cost estimates and funding plans, the requirements of 10 CFR 50.75(c) do not apply. If such a rule revision is not made, then the subject statement in DG–1106 should be reworded or eliminated.

*Response:* The commenter is incorrect in indicating the rule should be revised. The Commission's position remains that the site-specific estimates may be used as a basis for a funding plan if the amount to be provided is ''* * * at least equal to that stated in paragraph (c)(2) of * * *'' (§ 50.75). The Commission does not intend to allow use of site-specific amounts lower than the formula values. The subject statement in DG–1106 has been addressed.

*Comment:* The NRC should consider conforming changes to 10 CFR 72.30, ''Financial assurance and recordkeeping for decommissioning.'' 10 CFR 72.30(c) and (d) apply to Part 50 power plant licensees who store spent fuel in an Independent Spent Fuel Storage Installation under either a Part 72 specific license or a general license. Compliance between Parts 50 and 72 would be beneficial to both the NRC for enforcement purposes and licensees for compliance purposes.

*Response:* For the sake of consistency, 10 CFR 72.30(c)(5) is being modified to reflect the suggested compliance.

*Comment:* The commenter urged the NRC to continue to recognize the separate and cooperative roles State commissions and the NRC play in regulating nuclear utilities and to work with States on developing mechanisms to protect decommissioning funds.

*Response:* The NRC agrees with the comment. The rule will not be applicable to those licensees under State or FERC rate regulation, except as noted for the reporting requirement. Further, the NRC continues to work with the States through regular periodic contact with State regulatory authorities. Lastly, as the following comment indicates, the NRC believes that the rule continues to give State commissions the flexibility that they need to ensure the adequacy of decommissioning funds while protecting consumers within their jurisdiction.

*Comment:* A commenter stated that in specifying ''that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency'' the proposed rule continues to give State commissions the flexibility that they need to ensure the adequacy of decommissioning funds while protecting consumers within their jurisdiction.

*Response:* The NRC agrees with the comment.

*Comment:* The NRC should be careful to assure that State commission authority to achieve these goals is not inadvertently undermined. As proposed, the NRC's rulemaking appears to provide enough standardization to achieve the goal of ensuring the security of decommissioning funds while allowing enough generality to achieve the goal of maximizing after-tax yields.

*Response:* The Commission agrees with the comment. As indicated throughout this document, the NRC will not impose this rule on licensees remaining under State regulation, except as noted for the reporting requirement.

*Comment:* The NRC should clarify that nothing in its final rule will preempt any State authority from reviewing the transfer of a nuclear facility's assets out of rate base and the impact on ratepayers.

*Response:* The NRC will not do anything in this rule to preempt any State authority from reviewing the transfer of a nuclear facility's assets out of rate base and the impact on ratepayers. This is also consistent with the response to the preceding comment.

*Comment:* An investment management firm claimed the proposed rule would ''unfairly damage'' their business and also deprive nuclear power plant owners of ''a significant investment area for diversification of nuclear decommissioning trust funds.''

*Response:* The Commission believes the 10-percent *de minimis* limit on nuclear sector investments adequately addresses this concern.

*Comment:* Finally, several commenters stated that modifications should be made to the Draft Regulatory Guide to make it consistent with the changes made to the final rule.

*Response:* The Regulatory Guide has been modified to reflect the changes made to the final rule.

*6. Comments on the Draft Regulatory Guide*

Comments were also received on the draft regulatory guide DG–1106. The comments were grouped by section and responded to by the NRC.

I. Comments on Section 1

*Comment:* Section 1.1 should be modified to provide guidance for applying existing rules to potential new reactor designs that are not covered by the existing 10 CFR 50.75(c).

*Response:* The generic formulas can not apply if licensee is not a boiling water reactor or a pressurized water reactor, so any potential new reactor designs must be site specific. The guidance will be modified to highlight this fact.

*Comment:* Section 1.1.1 should recognize that the certification amounts in 10 CFR 50.75 are specific for BWRs and PWRs. Other reactor licensees need to certify they will have adequate funds for decommissioning; however, an exemption is not needed if the amount differs from the BWR and PWR specified formulas. This comment also applies to Section 2.6.1.

*Response:* As noted above, site-specific estimates would need to be developed.

*Comment:* The last sentence of Section 1.1.2 should read ''The level of detail necessary to support the cost estimate is discussed in Regulatory Position 1.3.''

*Response:* This change has been made.

*Comment:* The NRC's discussion of Test 4 describes that licensees ''generally'' prepare annual reports, etc., and does not specifically list annual calculation of the estimated cost as required by 10 CFR 50.75(b)(2). Further, the Test 4 description specifies that ''* * * these reports can be supplied to the NRC upon request * * *'' This availability upon request and the biennial reporting appears sufficient. The Test 4 discussion should justify removing DG Sections 2.2.8 and 1.2 or an explanation of the benefit of annual adjustments to the calculation versus the biennial frequency of the funding status should be provided.

*Response:* Section 50.75(f)(1) states that ''Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 1999, and at least once every 2 years thereafter on the status of its decommissioning funding for each reactor or part of a reactor that it owns.'' Further, the NRC regulations (10 CFR 50.75(c)) provide the tables for the minimum amounts for reasonable decommissioning financial assurance for PWRs and BWRs. Therefore, the Commission sees no need for removing Sections 1.2 and 2.2.8 of the regulatory guide (which refer to these parts) as the commenter requested. The Commission believes that the required biennial reports, along with the right to request more frequent reports because of certain circumstances to protect the public health and safety are the best vehicles to provide this necessary information.

*Comment:* The second and third paragraphs of Section 1.2 are confusing.

*Response:* The NRC believes that the comment and response immediately following adequately address this issue and clarify this Section.

*Comment:* In Section 1.2, the reader should be referred to the guidance provided in the most current revision of NUREG–1307 and then expressly state that the example given in the text is an example of a calculation for a specific year only. As written, there may be conflicting guidance between the NUREG and the Regulatory Guide in future years if each is not revised at the same time.

*Response:* This change has been made.

*Comment:* The last sentence of the last paragraph in Section 1.2 should be separated into a new paragraph because it applies to more than non-electric utility applicants and licensees.

*Response:* This change has been made.

*Comment:* The last paragraph in Section 1.2 should refer to Regulatory Position 1.4, not 1.5.

*Response:* This change has been made.

*Comment:* Section 1.3 also should be modified to provide guidance for applying existing rules to potential new reactor designs that are not covered by the existing 10 CFR 50.75(c).

The section needs to be further modified to clarify that licensees may provide for the funding of spent fuel management and non-radiological decommissioning costs.

*Response:* As noted above, any new reactor design application will need to contain site specific decommissioning cost estimates. In the responses to comments on the proposed rule, the Commission has indicated that licensees may provide for the funding of non-radiological decommissioning costs, that are not under the Commission's legal authority. Also, as indicated in those responses, 10 CFR 50.54(bb) addresses the funding of spent fuel management.

*Comment:* The commenter does not see a need for DG–1085, the draft regulatory guide discussing cost estimates, to be referenced in Section 1.3.

*Response:* The Commission sees nothing wrong in providing information on resources that will be available to assist licensees in this area.

*Comment:* Regulatory position 1.4.1 of DG–1106, states that ''For licensees using site-specific cost estimates (*i.e.*, research and test reactor licensees, power reactor licensees not covered by 10 CFR 50.75(c), or * * *)'' The commenter stated that it is not clear what is meant by ''power reactor licensees not covered by 10 CFR 50.75(c),'' since even licensees who are maintaining site-specific cost estimates are required to meet the minimum certification amount specified in 10 CFR 50.75(c). The commenter strongly supported this statement provided it accompanies an associated revision to the rule to eliminate the unnecessary requirement for power reactor licensees that maintain an NRC-approved, site-specific decommissioning cost estimate and funding plan to also meet the minimum certification amount in 10 CFR 50.75(c).

The rule should be revised to specify that for power reactor licensees that maintain NRC-approved, site-specific decommissioning cost estimates and funding plans, the requirements of 10 CFR 50.75(c) do not apply. If such a rule revision is not made, then the subject statement in DG–1106 should be reworded or eliminated.

*Response:* Licensees not covered by 10 CFR 50.75(c) would include non-PWR and non-BWR reactor designs or those undergoing decommissioning under § 50.82. With regard to the commenter's second comment requesting the elimination of the minimum certification amount in 10 CFR 50.75(c), the Commission has previously considered and rejected the option of allowing licensees to use site-specific estimates less than the minimum amounts. Licensees continue to have the option of submitting an exemption request to the Commission for a lower amount.

*Comment:* Two commenters noted that the last sentence of Regulatory Position 1.4.3 should be revised to replace the reference to ''Regulatory Position 2.2.5.'' to ''Regulatory Position 2.1.5.''

*Response:* This change has been made.

*Comment:* Regulatory Position 1.5, which is referenced in several places of the draft regulatory guide, does not exist. It is not clear if Regulatory Position 1.2, 1.4, 2.2.8 or some other section was the intended reference.

*Response:* The intended reference is Regulatory Position 1.4 and this change has been made.

## II. Comments on Section 2

*Comment:* In Section 2.1.5, the reference to ''Regulatory Position 1.5'' should read 1.4.

*Response:* This change has been made.

*Comment:* The last sentence in Section 2.1.5 should have ''as needed'' added to it.

*Response:* This change has been made.

*Comment:* The annual adjustment frequency in Section 2.1.5 for licensees that are no longer rate regulated or do not have access to a non-bypassable charge is too frequent. Short-term market fluctuations could lead to more frequent adjustments than truly necessary and result in greater administrative costs. Because, decommissioning is normally a long-term investment, frequent changes could lead to losses and increased investment costs. Although the fund's adequacy should be evaluated annually, annual adjustments may not be prudent.

*Response:* The last sentence of Section 2.1.5 has been revised to indicate that adjustments, as needed, to the amount of funds set aside should be made at least once every 2 years, in conjunction with the biennial reporting requirement by licensees that are no longer rate-regulated or do not have access to a non-bypassable charge. Licensees who remain rate regulated should make these adjustments at least every 6 years, in conjunction with rate cases.

*Comment:* Regulatory Position 2.2.1 of DG–1106 should be revised to ''An applicant or licensee using an escrow account, certificate of deposit, or trust agreement * * * may use the sample wording for these methods contained in Appendices B.1, B.2, and B.3, respectively.'' This change is consistent with similar wording in Regulatory Position 2.3.1 of DG–1106.

*Response:* This change has been made.

*Comment:* The funding mechanism will not ensure that adequate information concerning funds is provided to the NRC. It is the licensee's responsibility to do so under the rule. Even the sample instruments in the appendices do not include NRC reporting requirements, nor should they (Section 2.2.1). Also, Section 2.2.2.5 should be revised to delete ''terms relating to the provision of information to the NRC'' from the description of key provisions of a trust.

*Response:* The Commission has deleted what was item (e), ''it will ensure that adequate information concerning the funds is provided to NRC,'' from Draft Regulatory Guide Section 2.2.1. Also, the words ''key terms relating to the provision of information to NRC'' has been deleted from Section 2.2.2.5 of the Draft Regulatory Guide.

*Comment:* Replace the word ''indicia'' in Section 2.2.1 with another word.

*Response:* The word ''indicia'' was replaced with the word ''indicators.''

*Comment:* The methods listed in Section 2.2.1 should be identified in the same order as they are listed in the appendices (*i.e.*, the escrow account should be listed first because it is B–1, and the trust agreement should be listed last because it is B–3.)

*Response:* This change has been made for the sake of consistency.

*Comment:* The first sentence of Section 2.2.1 references Appendices B.1, B.2, and B.3. The appendices are labeled as B–1, B–2, and B–3. The titles should be consistent.

*Response:* This change has been made.

*Comment:* Section 2.2.2.1 should not indicate the need for identification of a license number and NRC docket number. This minor change would reduce the burden of nuclear decommissioning trust agreement amendments necessary to conform to the new NRC rule and guidance.

*Response:* The words ''by license or NRC docket number'' were deleted from the draft regulatory guide. As long as licensees use a plant name or other specific identifier, no specific use of docket or license number is necessary.

*Comment:* Section 2.2.2.2 should have reference to Section 468A eliminated because it is unnecessary. Also, the section should have an addition to indicate that there are existing nuclear decommissioning trust agreements that govern multiple trusts for multiple licensed facilities, an existing practice acceptable to the NRC.

*Response:* The second and last sentences at Section 2.2.2.2 have been modified to now read: ''A single trust agreement may establish two or more Nuclear Decommissioning Funds when a nuclear power plant is owned by two or more licensees. Similarly, a trust agreement may contain both ''qualified'' and ''non-qualified'' decommissioning funds pursuant to Internal Revenue Code 468A.'' Trusts should be segregated by sub-accounts or some other means to clearly identify NRC-defined decommissioning costs for each unit.

*Comment:* Several commenters suggested a reconciliation of a 30-day notice for disbursements with DG–1106. They stated that the rule does not provide for the notice exception contained in the draft regulatory guide Section 2.2.2.4 and that no NRC notification should be required for any expenditure specifically permitted under any of the provisions of 10 CFR 50.82(a)(8), *i.e.*, the exception from notice requirements should include not only 10 CFR 50.82(a)(8)(i), but also 10 CFR 50.82(a)(8)(ii). Lastly, Section 2.2.2.4 should be revised to specifically describe the acceptable forms that a written notice of intent may take to begin expending funds for such purpose. Acceptable forms should include an NRC approval of a site-specific decommissioning cost estimate and funding plan that includes activity costs and schedules related to spent fuel management and non-radiological decommissioning.

*Response:* These comments are all addressed by the fact that decommissioning trust requirements of the final rule do not apply to licensees that are in decommissioning and thus subject to Part 50.82(a)(8). The regulatory guide was modified to address the comment.

*Comment:* The last sentence of Regulatory Position 2.2.2.5 does not contribute to the intent of this revision to the Regulatory Guide to provide more detailed guidance to assist in implementing the changes in the NRC's regulations. Some examples and/or characteristics of changes to trust agreements that would not be considered ''material'' would be of more assistance to licensees wishing to implement the new rule.

*Response:* As previously mentioned, in response to comments received on modifications to trusts, the NRC defines ''material'' modifications to include actions such as change of trustee, change of provisions relating to withdrawals from the trust, changes relating to the beneficiary, changes relating to the duration or term of the trust, or other changes potentially affecting the ability of the trust agreement to provide reasonable assurance of decommissioning funds. Modifications that are not material would include, for example, changes in fee structures paid to a trustee, changes in arbitration provisions between the trustee and the licensee, changes in investment advisor, if applicable, or investments, provided the changes comply with other aspects of this rule.

*Comment:* One commenter suggested that Section 2.2.3 be modified to reflect their comments relating to dual regulation regarding investment standards, re-phrasing the limitations on licensee involvement in investment decisions, and clarification regarding non-nuclear sector collective or commingled funds and pre-existing investments. Another revision in the section is suggested to conform the guidance to the explicit terms of proposed 10 CFR 50.75(h)(1)(i)(A).

*Response:* The Commission considers the proposed revision consistent with its position on dual regulation. The revision clarifies the Commission's intent and the change has been made.

*Comment:* This commenter referred only to paragraph C.2.2.3.3 of Draft Regulatory Guide DG–1106. The commenter urged NRC to drop its prohibition of trust agreements investing ''in securities of other power reactor licensees or any entity owning or operating one or more nuclear power plants'' and suggested that the direct investment be limited ''to 10% or less of trust assets.'' The commenter also claimed that the proposed rule would ''unfairly damage'' their business and also deprive nuclear power plant owners of ''a significant investment area for diversification of nuclear decommissioning trust funds.''

*Response:* The final rule has been modified to allow licensees to own securities of other nuclear power plants, but to limit them to 10 percent or less of trust assets. As a result, Section 2.2.3.3 of the revised regulatory guide has also been modified.

*Comment:* A commenter proposed that the Commission delete Section 2.2.3.5 which recommends that those licensees not under FERC or PUC jurisdiction limit investments to ''investment grade,'' as defined in that section. The commenter noted that use of the generally accepted term ''prudent investor'' standard, as defined by FERC negates the need for the NRC to make use of the term ''investment grade.''

*Response:* The Commission has modified the rule and the guidance so that only the term ''prudent investor'' standard is used. Section 2.2.3.5 has been deleted.

*Comment:* A commenter proposed that the NRC revise Section 2.2.8 to clarify how licensees may take credit for earnings during the decommissioning period. This is problematic for licensees that operate multiple, modular reactors at a single site.

*Response:* With respect to the modular reactors, the assumptions of earnings credit should track the estimated cash flows for decommissioning expenses for each module.

*Comment:* A few commenters noted that the draft regulatory guide contains guidance that is inconsistent with the rule. The 2-percent rate of return credit beyond the period of operation into the safe-storage period is not allowed in Section 2.2.8 of the regulatory guide, but allowed in proposed 10 CFR 50.75(e)(1)(i) and (ii). There are also inconsistencies with the handling of credit for periods of final dismantlement and license termination.

*Response:* As noted in response to a similar comment on the rule, the 2-percent credit can only be used for the period up to shutdown if the amount is

based on the formulas in § 50.75(c). If the amount is based on a site-specific study that explicitly includes SAFSTOR, the licensee can then take the 2-percent credit into the storage period.

*Comment:* In Section 2.3.1, the first sentence references Appendices B.4, B.5, and B.6. The appendices are labeled as B–4, B–5, and B–6. The titles should be consistent.

*Response:* This change has been made.

*Comment:* The third bullet in Section 2.3.2 is confusing.

*Response:* The bulleted item has been modified to read ''For insurance, an original or conformed copy of the insurance policy.''

*Comment:* The appendix in Section 2.4.2 is incorrectly identified in this section. The appendix referred to should be B–3.2.

*Response:* This change has been made.

*Comment:* The regulatory position referred to in Section 2.4.3 should be 2.2.5, not 2.2.2.

*Response:* This change has been made.

*Comment:* In Section 2.6.1, the information which the report must include incorrectly states that ''any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(ii)(C).'' The commenter believed that 10 CFR 50.75(e)(1)(v) is the more appropriate reference. Further, the commenter suggested that this appears to be an ideal location to reiterate the guidance provided in Regulatory Issue Summary (RIS) 2001–07 for the biennial reports.

*Response:* The commenter is correct in noting that 10 CFR 50.75(e)(1)(v) is the more appropriate reference in this section and the change has been made. Reference to RIS 2001–07 was also added to Section 2.6.1.

*Comment:* The content of the periodic report on decommissioning funding as described in Section 2.6.2 appears excessive. If more detailed information is desired for a specific trust, the information can be looked at on a case-by-case basis.

*Response:* The second sentence of Section 2.6.2 has been modified to read '' * * * although it would be helpful if they indicate broad categories of investments as a percent of the total trust portfolio * * *.''

*Comment:* The next to the last sentence in Section 2.6.2 should read '' * * * as provided in 10 CFR 50.75(e)(1)(i) or (ii).''

*Response:* This change has been made.

*Comment:* Regulatory Position 2.7 is redundant and would be more pertinent and focused if it were replaced with ''In 10 CFR 50.82(a)(9), submittal of a license termination plan is required at the time a licensee applies for termination of license. The license termination plan must include an updated site-specific estimate of remaining decommissioning costs, as described in detail in NUREG–1700, ''Standard Review Plan for Evaluating Nuclear Plant Reactor License Termination Plans,'' and RG 1.179, ''Standard Format and Content of License Termination Plans for Nuclear Power Reactors.'''

*Response:* The point raised by the commenter is valid and the change has been made.

**III. Comments on the Appendices**

*Comment:* The definitions of ''qualified decommissioning funds'' and ''non-qualified decommissioning funds'' should be added to the glossary of financial terms provided in DG–1106, Appendix A.

*Response:* The NRC uses the terms in reference to Section 468A of the Internal Revenue Code. A footnote has been added to Section 2.1.5 to clarify this reference.

*Comment:* The methods of financial assurance contained in DG–1106, Appendix B appear to contradict the requirements and allowances in 10 CFR 50.75(e).

*Response:* Appendix B was modified to note that the examples provided in the appendix are for some of the mechanisms allowed in NRC regulations.

*Comment:* Appendix B–1, paragraph 4 should include that remaining funds should be returned to the licensee or other specified party upon receipt of documentation of license termination.

*Response:* This requested change was not made. Although the Commission has no objection to those words being contained in a trust fund provision it is beyond NRC's jurisdiction.

*Comment:* Section 5 of Appendix B–3 ''Sample Trust Fund'' should be revised to reflect the obligations imposed by proposed 10 CFR 50.75(h)(1)(ii) and a commenter's proposed 10 CFR 50.75(h)(1)(iii).

*Response:* This comment reflects the Commission's position that withdrawals made under § 50.82(a)(8) will not be subject to the 30-working day notification requirement. Section 5 of Appendix B–3 was revised.

*Comment:* Section 6 of Appendix B–3 ''Sample Trust Fund'' should be revised to reflect a commenter's statement regarding non-nuclear sector collective or commingled funds and pre-existing investments. Section 6(b) should be deleted because it is an issue that should be addressed in negotiations between the licensees and trustees. Other changes are also proposed to account for a commenter's proposed dual regulation regarding investment standards, the proposed 10 CFR 50.75(h)(1)(i)(D), and the proposed modification on the limitations on licensee involvement in investment decisions.

*Response:* Section 6 has been modified to reflect the Commission's clarification on non-nuclear sector collective or commingled funds and pre-existing investments. Section 6(b) has not been modified because this language has been included only as part of a sample of a trust agreement and does not reflect any NRC requirement that this language be included. Other modifications have been made to reflect the Commission's position on dual regulation, day-to-day investment decisions and licensee involvement in investment decisions.

*Comment:* Section 8 of Appendix B–3 ''Sample Trust Fund'' subsections should be renumbered to correct a typographical error.

*Response:* This change has been made.

*Comment:* Section 15 of Appendix B–3 ''Sample Trust Fund'' should be modified to reflect the requirements of the proposed 10 CFR 50.75(h)(1)(ii).

*Response:* This section has been modified to reflect the 30-working day notification of amendments to the trust agreement.

*Comment:* Appendices B.3.2.2 and B.3.3 should be changed to B–3.2.2 and B–3.3 to be consistent with titles of other appendices.

*Response:* These changes have been made.

*Comment:* In Appendix B–6.5, Item 9, the 120-day time frame should be changed to 180 days to allow sufficient time for action, because the period also included notification and the NRC's review time. Also, in Item 10, the 30 days should be changed to 90 days to allow sufficient time to prepare, review, and approve an alternative financial assurance mechanism.

*Response:* These changes have been made.

**IV. Comments Referring to No Specific Section of the Regulatory Guide**

*Comment:* Appropriate changes should be made to Regulatory Guide 1.159 to correspond to the final rule.

*Response:* The necessary changes were made.

*Comment:* Even though neither insurance nor long term contracts are used by many licensees, it would be useful for the NRC to provide guidance for each as it does for the other methods of financial assurance.

*Response:* First, the guide was written to address the standard, most widely used industry financial assurance methods, which includes trust agreement and guarantees but not insurance and long term contracts. Second, long-term contracts and insurance policies are likely to vary so much that it would be difficult to develop sample language that could encompass all uses of these mechanisms. However, the NRC will consider adding sample language for these mechanisms after it has gained more experience with their use by licensees.

*Comment:* DG–1106 should include guidance for the application of the self-guarantee as allowed by 10 CFR 50.75(e)(1)(iii)(C).

*Response:* When using the self-guarantee mechanism, a licensee needs to pass the financial tests as discussed in 10 CFR part 30, Appendix C—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning.

*Comment:* The commenter suggested modifications to DG–1106 to clarify the NRC's guidance for applying the existing rules to potential new reactor designs that are not covered by the current formula amount in 10 CFR 50.75(c).

*Response:* As indicated above, new reactor designs will be required to use site-specific decommissioning cost estimates.

*Comment:* The guide is inconsistent in the use of recommendations and requirements.

*Response:* The NRC staff reviewed the guide and made changes where necessary. Of course, requirements should only be used in reference to being in compliance with regulations and recommendations in reference to approved ways of meeting requirements, often contained in guidance.

*Comment:* The notification for disbursements and material changes ought to apply to the licensee, rather than the trustee. The proposed rule would require the licensee to notify the NRC of material changes to the trust, while the guide states the trustee is responsible.

*Response:* Sections 2.2.2.4 and 2.2.2.5 of the guide has been changed to indicate that the licensee is responsible for notifying the NRC of material changes to the trust.

*Comment:* Estimated tax deductions should be allowed to be assumed to cover taxes on earnings that will be due when investments are sold to meet decommissioning expenses.

*Response:* The NRC has a long standing policy of not allowing estimated future tax deductions as part of a means to provide decommissioning funding assurance.

*Comment:* The sample agreements in the appendices do not reflect that the rule permits use of funds for decommissioning planning. They would not allow disbursements until decommissioning is in progress. Spending money on planning before starting decommissioning is a prudent use of funds, when possible.

*Response:* Spending funds on planning for decommissioning before permanent shutdown is not precluded by this rulemaking and guidance. The NRC will consider clarifying the timing of the use of trust funds for planning in the future.

*Comment:* For power reactors, a Post Shutdown Decommissioning Activities Report (PSDAR) is submitted rather than a plan until the License Termination Plan is submitted later in the decommissioning. The sample agreements refer to plans and procedures.

*Response:* The guidance has been reviewed to check for consistency. Changes in the words ''plans,'' ''procedures,'' and ''reports'' were made for clarity where necessary.

*Comment:* Some of the samples include certification that the licensee is required to commence decommissioning. For most power reactors, the licensee has decided to commence decommissioning rather than being required to do so.

*Response:* Changes were made to the sample trust fund agreements to indicate that decommissioning ''has commenced,'' not that it was ''required.''

*Comment:* Ongoing activities may give rise to a need for additional work not anticipated at the time of the last ''request.'' Also, guidance does not appear to exist regarding specificity requirements associated with the required fund use requests. Overly broad requests may defeat the purpose of the rule while more specific requests may exclude emergent work activities for 30 days. The proposed rule and the draft guidance are inconsistent with respect to expectations relative to the new 30-day disbursement requirement.

*Response:* The Commission believes that it has addressed this concern by noting that this rule will not be applicable to those licensees in decommissioning under § 50.82.

*Comment:* One commenter concurred that the trust wording in DG–1106 is not expected to be adopted by the licensees, but believes that the NRC should clarify that directions in the proposed rule that certain trust provisions should be included by power reactor licensees in their trusts does not imply that the general language in the regulatory guide sample trust should be used by power reactor licensees.

*Response:* This position has been included in the statement of considerations of the final rule.

**The Final Rule**

The final rule clarifies the Commission's position that these new requirements are applicable only to those licensees that are no longer regulated by a State Public Utility Commission (PUC) or the Federal Energy Regulatory Commission (FERC), with the exception that all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations. Further, any nuclear power plant that is no longer operating and under § 50.82 requirements is not affected by this rule. Also, this rule makes a conforming change to § 72.30.

**Section-by-Section Analysis**

*Section 50.75(e)*

This section is amended by the addition of information to both paragraphs 50.75(e)(1)(i), which describes the prepayment method of financial assurance, and 50.75(e)(1)(ii), which describes the external sinking fund method of financial assurance. The modifications clarify that the trust must be an external trust fund held in the United States, established under a written agreement with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. Additional information is also included about a licensee's taking credit for projected earnings on decommissioning funds.

*Section 50.75(h)*

This is a new section that implements the following conditions applicable to certain power reactor licensees. The trust agreement must prohibit trust investments in securities or other obligations of the reactor owner or its affiliates, successors, or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in securities of a licensee or parent

company whose subsidiary is an owner of a foreign or domestic nuclear power plant. The trust agreement must limit investments to no more than 10 percent of their trust assets in any entity owning one or more nuclear power plants. The trust agreement must stipulate that the agreement cannot be amended in any material respect without 30 working-days prior written notice to the NRC, and that no amendment to the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. The trust agreement must stipulate that the trustee, investment advisor, or anyone else directing investments made by the trust should adhere to a ''prudent investor'' standard. The trust agreement must provide that no disbursements or payments from the trust (other than for payment of routine administrative expenses or for withdrawals being made pursuant to 10 CFR 50.82(a)(8)) may be made by the trustee until the trustee has first given the NRC 30 working-days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. The person directing the investment of the funds may not use the licensee or its affiliates or subsidiaries as the investment manager for the funds or accept day-to-day management direction of the funds' investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds when this management is limited to investments tracking indices.

*Section 72.30(c)(5)*

This section has been modified to make it consistent with the requirements contained in 10 CFR 50.75(e) and (h).

**Availability of Documents**

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

*Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland.

*Rulemaking Web Site (Web).* The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

*NRC's Public Electronic Reading Room (PERR).* The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

*The NRC staff contact (NRC Staff).* Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov.*

| Document | PDR | Web | PERR | NRC Staff |
|---|---|---|---|---|
| Comments received | X | | X | |
| Regulatory Analysis | X | X | ML020910259 | X |
| Regulatory Guide, 1.159, Rev. 1 | X | X | ML020910282 | |

A free single copy of Draft Regulatory Guide DG–1106 may be obtained by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or E-mail: *DISTRIBUTION@nrc.gov,* or Facsimile: (301) 415–2289.

Copies of NUREGS may be purchased from The Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20302–0001; Internet: *bookstore.gpo.gov*; (202)512–1800. Copies are also available from the National Technical Information Service, Springfield, VA 22161–0002; *http://www.ntis.gov;* 1–800–533–6847 or, locally, (703) 605–6000. Some publications in the NUREG series are posted at NRC's technical document Web site *http://www.nrc.gov/NRC/NUREGS/indexnum.html.*

**Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations relating to decommissioning trust provisions for nuclear power plants. This action does not constitute the establishment of a standard that contains generally applicable requirements.

**Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This revision to the NRC's regulations provides licensees with a codification of requirements and guidance that will specify more fully the provisions of the decommissioning trust agreements. These changes would not result in any increased impact on the environment from decommissioning activities as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988) and Draft Supplement 1 (NUREG–0586, Draft Supplement 1, October 2001).[1] Therefore, promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC.

The NRC requested public comments on any environmental justice considerations that may be related to this issue. No comments were received on this issue.

The NRC requested the views of the States on the environmental assessment for this rule. No comments were received from the States on this issue.

**Paperwork Reduction Act Statement**

This final rule amends information collection requirements that are subject to the Paper Work Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for this information collection is estimated to average 6600 to 13,200 hours, including the time for reviewing instructions, searching existing data sources,

[1] Copies of NUREG–0586 and Draft Supplement 1 to NUREG–0586 are available for inspection or copying for a fee from the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20555–0001. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service (NTIS) by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *BJS1@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

**Public Protection Notification**

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

**Regulatory Analysis**

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available as indicated under the Availability of Documents heading of the **SUPPLEMENTARY INFORMATION** section.

**Regulatory Flexibility Analysis**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants.

The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

**Backfit Analysis**

The Regulatory Analysis for the final rule also constitutes the documentation for the evaluation of backfit requirements. No separate backfit analysis has been prepared. As defined in 10 CFR 50.109, the backfit rule applies to

> * * * modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position * * *.

The amendments to NRC's requirements for decommissioning trust provisions of nuclear power plants require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Also, as nuclear power reactors have been sold, the NRC has stipulated in connection with license transfers that certain terms and conditions be added to decommissioning trusts. These sales may involve transfers of nuclear power reactors from regulated public utilities to firms that are not regulated as public utilities. Because rate regulators may, as a consequence of utility deregulation, cease to exercise direct oversight over decommissioning trusts, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements are in a form acceptable to the NRC.

Although some of the changes to the regulations are reporting requirements that are not covered by the backfit rule, other elements in the changes are considered backfits because they would modify, supplement, or clarify the regulations with respect to: (1) The fact that the NRC will need to exercise greater oversight of decommissioning trust funds as State Public Utility Commissions reduce their oversight as a result of deregulation within the electric power generation industry, and (2) the NRC exercising more oversight of decommissioning trusts in evaluating license transfer applications. The NRC has concluded on the basis of the documented evaluation required by 10 CFR 50.109(a)(4) and set forth in the regulatory analysis, that the new or modified requirements are necessary to ensure that nuclear power reactor licensees provide for adequate protection of the public health and safety in the face of a changing competitive and regulatory environment not envisioned when the reactor decommissioning funding regulations were promulgated, and that the changes to the regulations are in accord with the common defense and security. Therefore, the NRC has determined to treat this action as an adequate protection backfit under 10 CFR 50.109(a)(4)(ii). Consequently, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3) do not apply. Further, these changes to the regulations are required to satisfy 10 CFR 50.109(a)(5).

This is not to say that any non-compliance with this rule would place the public health and safety or the common defense and security in immediate jeopardy. Instead, the NRC views these requirements to be necessary to ensure that in the future, at the conclusion of plant operation, adequate funds will be available for decommissioning.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

**List of Subjects**

*10 CFR Part 50*

Antitrust, Classified information, Criminal Penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

*10 CFR Part 72*

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, and Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 50 and part 72.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–

190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.75, the introductory text of paragraph (e)(1) and paragraphs (e)(1)(i) and (e)(1)(ii) are revised, and a new paragraph (h) is added to read as follows:

**§ 50.75 Reporting and recordkeeping for decommissioning planning.**

* * * * *

(e)(1) Financial assurance is to be provided by the following methods.

(i) *Prepayment.* Prepayment is the deposit made preceding the start of operation or the transfer of a license under § 50.80 into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. Prepayment may be in the form of a trust, escrow account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the prepayment deposit is managed are regulated and examined by a Federal or State agency. A licensee that has prepaid funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the prepaid decommissioning trust funds, using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has prepaid funds based on the formulas in § 50.75(c) of this section may take credit for projected earnings on the prepaid decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (i.e., not a site-specific estimate) can take a pro-rata credit during the immediate dismantlement period (i.e., recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used to calculate future fund needs.

(ii) *External sinking fund.* An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the external sinking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (i.e., not a site-specific estimate) can take a pro-rata credit during the dismantlement period (i.e., recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

* * * * *

(h)(1) Licensees that are not ''electric utilities'' as defined in § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the arrangements governing the trust, escrow account, or Government fund, used to segregate and manage the funds that—

(i) The trustee, manager, investment advisor, or other person directing investment of the funds:

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of the power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before the publication date of this rule, provided further that these restrictions do not apply to 10 percent or less of their trust assets in securities of any other entity owning one or more nuclear power plants.

(B) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in investing or otherwise, required by State or Federal law or one or more State or Federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. The term ''prudent investor,'' shall have the same meaning as set forth in the

Federal Energy Regulatory Commission's ''Regulations Governing Nuclear Plant Decommissioning Trust Funds'' at 18 CFR 35.32(a)(3), or any successor regulation.

(ii) The licensee, its affiliates, and its subsidiaries are prohibited from being engaged as investment manager for the funds or from giving day-to-day management direction of the funds' investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds where management is limited to investments tracking market indices.

(iii) The trust, escrow account, Government fund, or other account used to segregate and manage the funds may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the proposed effective date of the amendment. The licensee shall provide the text of the proposed amendment and a statement of the reason for the proposed amendment. The trust, escrow account, Government fund, or other account may not be amended if the person responsible for managing the trust, escrow account, Government fund, or other account receives written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period; and

(iv) Except for withdrawals being made under 10 CFR 50.82(a)(8), no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30-working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC.

(2) Licensees that are ''electric utilities'' under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8), no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30-working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC.

(3) A licensee that is not an ''electric utility'' under § 50.2 and using a surety method, insurance, or other guarantee method to provide financial assurance shall provide that the trust established for decommissioning costs to which the surety or insurance is payable contains in its terms the requirements in paragraphs (h)(1)(i), (ii), (iii), and (iv) of this section.

(4) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves ''no significant hazards consideration.''

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

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

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

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

4. In § 72.30, paragraph (c)(5) is revised to read as follows:

**§ 72.30 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(c) * * *

(5) In the case of licensees who are issued a power reactor license under Part 50 of this chapter, the methods of 10 CFR 50.75(b), (e), and (h), as applicable.

* * * * *

Dated at Rockville, Maryland, this 18th day of December, 2002.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 02–32403 Filed 12–23–02; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 02–ASO–25]**

## Amendment of Class E5 Airspace; Tampa, FA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E5 airspace at Tampa, FL. A Localizer Runway 23 Standard Instrument Approach Procedure (SIAP) has been developed for Vandenberg Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

**EFFECTIVE DATE:** 0901 UTC, March 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

### History

On October 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Tampa, FL (67 FR 63858). This action provides adequate Class E airspace for IFR operations at Vandenberg Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Tampa, FL.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, 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; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Tampa, FL [Revised]**

Tampa International Airport, FL
(Lat. 27°58′32″ N., long. 82°31′59″ W.)
St. Petersburg-Clearwater International Airport
(Lat. 27°54′39″ N., long. 82°41′14″ W.)
MacDill AFB
(Lat. 27°50′57″ N., long. 82°31′17″ W.)
Peter O Knight Airport
(Lat. 27°54′56″ N., long. 82°26′57″ W.)
Albert-Whitted Airport
(Lat. 27°45′54″ N., long. 82°37′38″ W.)
Vandenberg Airport
(Lat. 28°00′50″ N., long. 82°20′43″ W.)
Clearwater Air Park
(Lat. 27°58′35″ N., long. 82°45′31″ W.)
Vandenberg Localizer
(Lat. 28°00′40″ N., long. 82°20′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB, and Peter O Knight Airport, and within a 6.3-mile radius of Albert-Whitted Airport, and Clearwater Air Park, and within a 6.7-mile radius of Vandenberg Airport and within 4 miles south and 8 miles north of the Vandenberg Localizer northeast course extending from the 6.7-mile radius to 16 miles northeast of the airport; excluding that airspace within the Zephyrhills, FL, and Lakeland, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on December 11, 2002.

**Walter R. Cochran,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 02–32415 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 95

**[Docket No. 30345; Amdt. No. 439]**

## IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, January 23, 2003.

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

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

## The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

## Conclusion

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

## List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on December 13, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 439, effective date, January 23, 2003]

| From | To | MEA |
|---|---|---|
| **§ 95.1001 Direct Routes—U.S. Bahamas Routes—2L Is Added To Read** | | |
| Stella Maris, BS NDB | San Salvador, BS NDB | 3,000 |
| **Bahamas Routes—55V Is Amended To Read in Part** | | |
| Seaan, BS FIX | Muvod, BS FIX | *10,000 |
| *1,300—MOCA | | |
| Muvod,BS FIX | BURGO, BS FIX | *16,000 |
| *1,300—MOCA | | |
| **Bahamas Routes—70V Is Amended To Read in Part** | | |
| Freeport, BS VOR/DME | Grreg, BS FIX | 3,500 |
| Grreg, BS FIX | Marsh Harbour, BS NDB | 3,500 |
| **§ 95.6001 Victor Routes—U.S. § 95.6067 VOR Federal Airway 67 Is Amended To read in Part** | | |
| Cedar Rapids, IA VOR/DME | Waterloo, IA VORTAC | 2,900 |
| **§ 95.6385 VOR Federal Airway 385 Is Amended To Read in Part** | | |
| Lubbock, TX VORTAC | *Wagun, TX FIX | **8,000 |
| *8,000—MRA | | |
| **4,600—MOCA | | |
| Wagun, TX FIX | Abilene, TX VORTAC | *8,000 |

| From | To | Changeover points | |
|---|---|---|---|
| | | Distance | From |
| **§ 95.8005 Jet Routes Changeover Points** | | | |
| **J–58 Is Amended To Add Changeover Point** | | | |
| Milford, UT VORTAC | Farmington, NM VORTAC | 92 | Milford |

[FR Doc. 02–32412 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### New Animal Drugs; Change of Sponsor's Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of address for Phoenix Scientific, Inc.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967; e-mail: dnewkirk@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, has informed FDA of a change of address to 3915 South 48th St. Terrace, St. Joseph, MO 64503. Accordingly, the agency is amending the regulations in 21 CFR 510.600 to reflect the change of sponsor's address.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510–NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Phoenix Scientific, Inc.'' and in the table in paragraph (c)(2) by revising the entry for ''059130'' to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503. | 059130 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 059130 | Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503 |
| * * * * * | |

Dated: December 4, 2002.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–32346 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 522, and 524

### New Animal Drugs; Change of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 25 approved new animal drug applications (NADAs) from American Cyanamid to Fort Dodge Animal Health.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** American Cyanamid, Division of American Home Products, P.O. Box 1339, Fort Dodge, IA 50501, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 25 approved NADAs to Fort Dodge Animal Health, Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501:

| NADA Number | Trade Name |
|---|---|
| 006–084 | SULMET Drinking Water Solution |
| 008–774 | SULMET Solution Injectable |
| 011–582 | VETAMOX Soluble Powder |
| 011–644 | FELAC |
| 013–957 | S.E.Z. Drinking Water 6.25% |
| 015–160 | Sodium Sulfachloropyrazine Solution |
| 033–342 | PROBAN Cythioate Tablets 30 mg |
| 033–606 | PROBAN Oral Liquid |
| 033–653 | S.E.Z. Drinking Water Solution |
| 033–654 | S.E.Z. Oblets 15 g |
| 033–655 | S.E.Z. Intravenous Solution |
| 047–033 | S.E.Z. C–R Oblets 15 g |
| 055–012 | AUREOMYCIN Sulmet Soluble Powder |
| 055–018 | AUREOMYCIN Tablets 25 mg |
| 055–020 | AUREOMYCIN Soluble Powder |
| 055–039 | AUREOMYCIN Soluble Oblets |
| 065–071 | AUREOMYCIN Soluble Powder |
| 065–269 | POLYOTIC Soluble Powder |
| 065–270 | POLYOTIC Oblets |
| 065–313 | BACIFERM Soluble 50 |
| 065–440 | AUREOMYCIN Soluble Powder Concentrate |
| 065–441 | POLYOTIC Soluble Powder Concentrate |
| 122–271 | SULMET Oblets |
| 122–272 | SULMET Soluble Powder |

| NADA Number | Trade Name |
|---|---|
| 140–844 | TRAMISOL Pour-On |

Accordingly, the agency is amending the regulations in 21 CFR 520.44, 520.154c, 520.445a, 520.445b, 520.445c, 520.530, 520.531, 520.2184, 520.2240a, 520.2240b, 520.2260a, 520.2261a, 520.2261b, 520.2345c, 520.2345d, 522.940, 522.2240, 522.2260, and 524.1240 to reflect the transfer of ownership and to reflect current format.

Following this change of sponsorship, American Cyanamid is no longer the sponsor of any approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for American Cyanamid.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Parts 520, 522, and 524*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 524 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''American Cyanamid'' and in the table in paragraph (c)(2) by removing the entry for ''010042''.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

**§ 520.44 [Amended]**

4. Section 520.44 *Acetazolamide sodium soluble powder* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.154c [Amended]**

5. Section 520.154c *Bacitracin zinc soluble powder* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.445a [Amended]**

6. Section 520.445a *Chlortetracycline bisulfate/sulfamethazine bisulfate soluble powder* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.445b [Amended]**

7. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraphs (b) and (d)(4)(iii)(C) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.445c [Amended]**

8. Section 520.445c *Chlortetracycline tablets and boluses* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.530 [Amended]**

9. Section 520.530 *Cythioate oral liquid* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.531 [Amended]**

10. Section 520.531 *Cythioate tablets* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2184 [Amended]**

11. Section 520.2184 *Sodium sulfachloropyrazine monohydrate* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2240a [Amended]**

12. Section 520.2240a *Sulfaethoxypyridazine drinking water* is amended in paragraph (c) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2240b [Amended]**

13. Section 520.2240b *Sulfaethoxypyridazine tablets* is amended in paragraph (c) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2260a [Amended]**

14. Section 520.2260a *Sulfamethazine oblet, tablet, and bolus* is amended in paragraph (a)(1) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2261a [Amended]**

15. Section 520.2261a *Sulfamethazine sodium drinking water solution* is amended in paragraph (a) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2261b [Amended]**

16. Section 520.2261b *Sulfamethazine sodium soluble powder* is amended in paragraph (a) by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2345c [Amended]**

17. Section 520.2345c *Tetracycline boluses* is amended in paragraph (b) in the first sentence by removing ''010042'' and by adding in its place ''053501''.

**§ 520.2345d [Amended]**

18. Section 520.2345d *Tetracycline hydrochloride soluble powder* is amended in paragraphs (a)(3), (d)(1)(iii), and (d)(2)(iii) by removing ''010042'' and by adding in its place ''053501''.

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

**§ 522.940 [Amended]**

20. Section 522.940 *Colloidal ferric oxide injection* is amended in paragraph (c)(1) by removing ''010042 and 017800'' and by adding in its place ''017800 and 053501''.

**§ 522.2240 [Amended]**

21. Section 522.2240 *Sulfaethoxypyridazine* is amended in paragraph (c) by removing ''010042'' and by adding in its place ''053501''.

**§ 522.2260 [Amended]**

22. Section 522.2260 *Sulfamethazine injectable solution* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

23. The authority citation for 21 CFR part 524 continues to read as follows:

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

**§ 524.1240 [Amended]**

24. Section 524.1240 *Levamisole* is amended in paragraph (b) by removing ''010042'' and by adding in its place ''053501''.

Dated: November 8, 2002.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–32345 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The supplemental ANADA provides for reducing the preslaughter withdrawal time to zero days for use of lincomycin soluble powder in medicated drinking water for swine.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: jmessenh@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to ANADA 200–189 for Lincomycin (lincomycin HCl) Soluble requesting a reduction in the preslaughter withdrawal time to zero days for use of lincomycin soluble powder in medicated drinking water for swine. The supplemental ANADA is approved as of September 19, 2002, and the regulations are amended in § 520.1263c (21 CFR 520.1263c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under § 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

**§ 520.1263c [Amended]**

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (d)(1)(iii) by removing ''Nos. 046573 and 051259'' and by adding in its place ''No. 051259''.

Dated: December 5, 2002.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–32343 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 520 and 556

### Oral Dosage Form New Animal Drugs; Florfenicol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of a florfenicol concentrate solution to make medicated drinking water for administration to swine for the treatment of respiratory disease. FDA is also amending the regulations to add tolerances for residues of florfenicol in edible tissues of swine.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *jgotthar@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed NADA 141–206 for NUFLOR (florfenicol) 2.3% Concentrate Solution used to make medicated drinking water for administration to swine for the treatment of respiratory disease associated with several bacterial pathogens. The NADA is approved as of September 4, 2002, and the regulations are amended in 21 CFR part 520 by adding § 520.955 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulations are amended in 21 CFR 556.283 to establish tolerances for residues of florfenicol in edible tissues of treated swine and to reflect a current format.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 4, 2002.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 520*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.955 is added to read as follows:

### § 520.955 Florfenicol.

(a) *Specifications*. Each milliliter (mL) contains 23 milligrams (mg) florfenicol.

(b) *Sponsor*. See No. 000061 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.283 of this chapter.

(d) *Conditions of use in swine*—(1) *Amount*. Administer in drinking water *ad libitum* at 400 mg per gallon (100 parts per million (ppm)) for 5 consecutive days.

(2) *Indications for use*. For the treatment of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae*, *Pasteurella multocida*, *Salmonella choleraesuis* and *Streptococcus suis* Type 2.

(3) *Limitations*. Do not slaughter within 16 days of last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

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

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

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

4. Section 556.283 is amended by revising paragraph (b) to read as follows:

### § 556.283 Florfenicol.

* * * * *

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue)*. The tolerance for florfenicol amine (the marker residue) is 3.7 parts per million (ppm).

(ii) *Muscle*. The tolerance for florfenicol amine (the marker residue) is 0.3 ppm.

(2) *Swine*—(i) *Liver (the target tissue)*. The tolerance for parent florfenicol (the marker residue) is 2.5 ppm.

(ii) *Muscle*. The tolerance for parent florfenicol (the marker residue) is 0.2 ppm.

Dated: December 13, 2002.

**Stephen F. Sundolf,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 02–32341 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Boehringer Ingelheim Vetmedica, Inc. The supplemental ANADA provides for the administration of an oxytetracycline injectable solution to lactating dairy cattle.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Julia W. Punderson, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570, e-mail: *jpunder1@cvm.fda.gov*.

**SUPPLEMENTARY INFORMATION:** Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, filed a supplement to approved ANADA 200–008 that provides for the use of BIO–MYCIN 200 (oxytetracycline injection) and OXY–TET 200 (oxytetracycline injection) as treatments for various bacterial diseases in cattle and swine. The supplemental ANADA provides for the administration of these oxytetracycline injectable solutions to lactating dairy cattle. The supplemental application is approved as of September 3, 2002, and the regulations are amended in 21 CFR 522.1660 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

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

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

### § 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (d)(1)(iii) by removing in the eighth sentence ''000010, 059130, and 061623'' and adding in its place''059130 and 061623'', and by removing in the ninth sentence ''For sponsors'' and adding in its place ''For sponsors 000010,''.

Dated: December 4, 2002.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–32276 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The ANADA provides for subcutaneous use of an implant containing trenbolone acetate and estradiol for increased rate of weight gain and improved feed efficiency in feedlot heifers.

**DATES:** This rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Harlan J. Howard, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0231, hhoward@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–346 for COMPONENT TE–H (140 milligrams (mg) trenbolone acetate and 14 mg estradiol, in seven pellets, each pellet containing 20 mg of trenbolone acetate and 2 mg of estradiol) for increased rate of weight gain and improved feed efficiency in heifers fed in confinement for slaughter. Ivy Laboratories' COMPONENT TE–H is approved as a generic copy of Intervet's REVALOR–H, approved under NADA 140–992. The application is approved as of September 27, 2002, and the regulations are amended in 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

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

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

**§ 522.2477 [Amended]**

2. Section 522.2477 *Trenbolone acetate and estradiol* is amended in paragraph (b)(1) by adding ''(d)(2)(i)(A), (d)(2)(ii)(A), (d)(2)(iii),'' after ''(d)(1)(iii),''.

Dated: December 17, 2002.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 02–32342 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9030]**

**RIN 1545–AX28**

## Exclusion of Gain From Sale or Exchange of a Principal Residence

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence. These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998.

**DATES:** *Effective Date:* These regulations are effective December 24, 2002.

*Applicability Date:* For dates of applicability, *see* §§ 1.121–1(f), 1.121–2(c), 1.121–3(l), 1.121–4(l), and 1.1398–3(d).

**FOR FURTHER INFORMATION CONTACT:** Sara Paige Shepherd, (202) 622–4960 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On October 10, 2000, the IRS and the Treasury Department published in the **Federal Register** (65 FR 60136) a notice of proposed rulemaking (REG–105235–99) under section 121 of the Internal Revenue Code. Comments were specifically requested regarding what circumstances should qualify as unforeseen for purposes of the reduced maximum exclusion under section 121(c). Written and electronic comments responding to the notice of proposed rulemaking were received. A public hearing was held on January 26, 2001.

After considering all of the comments, the proposed regulations are adopted as amended by this Treasury decision. Proposed and temporary regulations regarding the reduced maximum exclusion are also published in this issue of the **Federal Register**.

On September 9, 2002, the IRS published Notice 2002–60 (2002–36 I.R.B. 482), which provides that certain taxpayers affected by the September 11, 2001, terrorist attacks may claim a reduced maximum exclusion for a sale or exchange of the taxpayer's principal residence by reason of unforeseen circumstances.

### Explanation and Summary of Comments

*1. Exclusion of Gain From the Sale or Exchange of a Principal Residence*

Under section 121 and the proposed regulations, a taxpayer may exclude up to $250,000 ($500,000 for certain joint returns) of gain realized on the sale or exchange of the taxpayer's principal residence if the taxpayer owned and used the property as the taxpayer's principal residence for at least two years during the five-year period ending on the date of the sale or exchange.

a. Principal Residence

The proposed regulations provide that whether property is used by the taxpayer as the taxpayer's residence, and whether the property is used as the taxpayer's principal residence, depends upon all the facts and circumstances. The proposed regulations further provide that if a taxpayer alternates between two properties, the property that the taxpayer uses a majority of the time during the year will ordinarily be considered the taxpayer's principal residence.

Commentators requested a bright line test or a list of factors to identify a property as the taxpayer's principal residence in the case of a taxpayer with multiple residences. Other commentators questioned whether the property that a taxpayer uses a majority of the time during the year should generally be considered the taxpayer's

principal residence, arguing that the determination of the taxpayer's principal residence should be judged on a day-by-day, rather than a year-by-year, basis.

The final regulations continue to provide that the residence that the taxpayer uses a majority of the time during the year will ordinarily be considered the taxpayer's principal residence. However, this test is not dispositive. The final regulations also include a nonexclusive list of factors that are relevant in identifying a property as a taxpayer's principal residence.

b. Vacant Land

Commentators requested clarification of the circumstances in which vacant land surrounding a residential structure would be treated as part of the residence for purposes of section 121. Several commentators maintained that a taxpayer who sells vacant land should be entitled to the section 121 exclusion if the taxpayer used the vacant land in conjunction with a dwelling unit as the taxpayer's principal residence for at least two years.

Under section 1034 and former section 121, a sale of vacant land that did not include a dwelling unit did not qualify as a sale of the taxpayer's residence. *See* Rev. Rul. 56–420 (1956–2 C.B. 519); Rev. Rul. 83–50 (1983–1 C.B. 41); *O'Barr* v. *Commissioner,* 44 T.C. 501 (1965); *Roy* v. *Commissioner,* T.C. Memo. 1995–23; *Hale* v. *Commissioner,* T.C. Memo. 1982–527. However, if the sale of vacant land was one of a series of transactions that included the sale of the house, and the series of transactions all occurred during the replacement period provided by section 1034 (two years before or after the date of the taxpayer's purchase of a replacement residence), the sale of vacant land and the sale of the house were treated as one sale. *See Bogley* v. *Commissioner,* 263 F.2d 746 (4th Cir. 1959); Rev. Rul. 76–541 (1976–2 C.B. 246).

Consequently, the final regulations provide that section 121 applies to the sale or exchange of vacant land that the taxpayer has owned and used as part of the taxpayer's principal residence if the sale or exchange of the dwelling unit occurs within two years before or after the sale or exchange of the vacant land. The vacant land must be adjacent to land containing the dwelling unit and the sale or exchange of the vacant land must otherwise satisfy the requirements of section 121.

For purposes of sections 121(b)(1) and (2) (regarding the maximum limitation amount of the section 121 exclusion), sales or exchanges of the dwelling unit and vacant land are treated as one sale or exchange. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of the vacant land and dwelling unit. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, gain from the sale or exchange of the dwelling unit, up to the maximum limitation amount under section 121(b)(1) or (2), is excluded first, and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i)(relating to the limitation for certain joint returns) apply. Sales or exchanges of the dwelling unit and adjacent vacant land in separate transactions are disregarded in applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years) to each other but are taken into account as a sale or exchange of a principal residence on the date of each transaction in applying section 121(b)(3) to that transaction and the sale or exchange of any other principal residence.

*2. Use as a Principal Residence*

a. Occupancy Requirement

Numerous commentators asserted that the two-year use requirement of section 121 should not require actual occupancy. Instead, they argued for a facts and circumstances test similar to the test employed under section 1034. Under that test, a taxpayer's non-occupancy of a residence would count as use if the taxpayer did not intend to abandon the property as the taxpayer's principal residence. The final regulations do not adopt this suggestion because it is inconsistent with the statutory approach under section 121 of aggregating periods of use over a five-year period, and with the legislative history that provides that ''a taxpayer must have owned the residence and occupied it as a principal residence for at least two of the five years prior to the sale or exchange.'' *See* H.R. Rep. No. 148, 105th Cong., 1st Sess. 348 (1997), 1997–4 (Vol. 1) C.B. 319, 670; S. Rep. No. 33, 105th Cong., 1st Sess. 37 (1997), 1997–4 (Vol. 2) C.B. 1067, 1117; H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 386 (1997), 1997–4 (Vol. 2) C.B. 1457, 1856.

Commentators proposed a special exception to the occupancy requirement for taxpayers who are absent from the home for an extended period of time due to employment but have not purchased a replacement residence. Other commentators suggested that members of the uniformed services and the United States Foreign Service should be accorded a special exception because they are often away from home for extended periods of time. A commentator also requested that the home daycare industry be exempted from the occupancy requirement because calculating the days of actual occupancy presents a particular difficulty for home daycare providers who often use the same space for residential and business purposes.

The final regulations do not adopt these comments because there is no specific authority under section 121 to provide exceptions to the use requirement except in the cases of property of a deceased spouse (section 121(d)(2)), property of a former spouse (section 121(d)(3)(B)), and out-of-residence care (section 121(d)(7)). Moreover, section 1034 contained a special rule for members of the Armed Forces, which Congress did not include in enacting section 121.

b. Short Temporary Absences

Commentators requested that the regulations specify a maximum period of time that would constitute a short temporary absence from the residence and be considered use for purposes of satisfying the two-year use requirement. One commentator suggested that periods of up to five years away from home due to international employment assignments should be considered short temporary absences.

Because the determination of whether an absence is short and temporary depends on the facts and circumstances, the final regulations do not adopt these suggestions.

c. Property Used in Part as a Principal Residence

The proposed regulations provide that if a taxpayer satisfies the use requirement with respect to only a portion of the property sold or exchanged, section 121 will apply only to the gain allocable to that portion. Thus, if the residence was used partially for residential purposes and partially for business purposes (mixed-use property), only that part of the gain allocable to the residential portion is excludable under section 121.

Under section 121(d)(6), the exclusion does not apply to so much of the gain from the sale of the property as does not exceed depreciation attributable to periods after May 6, 1997. Commentators suggested that the enactment of section 121(d)(6) illustrates legislative intent to eliminate the allocation requirement for mixed-

use property that existed under prior law.

The IRS and Treasury Department have reconsidered the allocation rules of the proposed regulations. The final regulations provide that section 121 will not apply to the gain allocable to any portion of property sold or exchanged with respect to which a taxpayer does not satisfy the use requirement if the non-residential portion is separate from the dwelling unit. Additionally, if the depreciation for periods after May 6, 1997, attributable to the non-residential portion of the property exceeds the gain allocable to the non-residential portion of the property, the excess will not reduce the section 121 exclusion applicable to gain allocable to the residential portion of the property. No allocation of gain is required if both the residential and non-residential portions of the property are within the same dwelling unit, however, section 121 will not apply to the gain to the extent of any post-May 6, 1997, depreciation adjustments. The final regulations provide that the term *dwelling unit* has the same meaning as in section 280A(f)(1), but does not include appurtenant structures or other property.

A commentator asked for clarification regarding how to allocate the basis and the amount realized under the allocation rules between the portions of the property used for business and residential purposes. The commentator suggested that the regulations should require allocation on the same basis used to determine previous depreciation deductions. The regulations adopt this comment and provide that the taxpayer must use the same method to allocate the basis and the amount realized between the business and residential portions of the property as the taxpayer used to allocate the basis for purposes of depreciation, if applicable.

*3. Ownership by Trusts*

Commentators suggested that the regulations adopt the holdings of Rev. Rul. 66–159 (1966–1 C.B. 162) and Rev. Rul. 85–45 (1985–1 C.B. 183) regarding treatment of sales of property by certain trusts. Rev. Rul. 66–159 holds that, in cases in which the grantor is treated as the owner of the entire trust under sections 676 and 671, gain realized from the sale of trust property used by the grantor as the grantor's principal residence qualifies under section 1034 for the rollover of gain into a replacement residence. Because the grantor is treated as the owner of the entire trust, the sale by the trust will be treated for federal income tax purposes as if made by the grantor.

Rev. Rul. 85–45 holds that, in cases in which the beneficiary of a trust is treated as the owner of the entire trust under sections 678 and 671, gain realized from the sale of trust property used by the beneficiary as the beneficiary's principal residence qualifies for the one-time exclusion of gain from the sale of a residence under former section 121. For the period that the beneficiary is treated as the owner of the entire trust, the beneficiary will be treated as owning the property for section 121 purposes, and the sale by the trust will be treated for federal income tax purposes as if made by the beneficiary.

The final regulations adopt these suggestions and provide that, if a residence is held by a trust, a taxpayer is treated as the owner and the seller of the residence during the period that the taxpayer is treated as the owner of the trust or the portion of the trust that includes the residence under sections 671 through 679. The regulations provide similar treatment for certain single-owner entities.

*4. Dollar Limitations Applicable to Jointly Owned Property*

Commentators requested further clarification of the application of the dollar limitations of section 121(b) to non-married taxpayers who are joint owners of a residence. In response, the final regulations provide that each unmarried taxpayer who jointly owns a principal residence may be eligible to exclude from gross income up to $250,000 of gain that is attributable to each taxpayer's interest in the property.

*5. Reduced Maximum Exclusion*

Section 121(c) provides an exclusion of gain in a reduced maximum amount for taxpayers who have owned or used a principal residence for less than two of the five years preceding the sale or exchange or who have excluded gain from another sale or exchange during the last two years. Taxpayers who fail to meet any of these conditions may qualify for the reduced maximum exclusion if the sale or exchange is by reason of a change in place of employment, health, or unforeseen circumstances.

The proposed regulations explain the general rule and the computation of the reduced maximum exclusion but do not provide rules clarifying what is a sale or exchange by reason of a change in place of employment, health, or unforeseen circumstances. Comments were requested regarding what circumstances should qualify as unforeseen. Because the rules formulated in response to the comments are extensive, the IRS and Treasury Department have concluded that it is appropriate to publish proposed and temporary regulations to provide the public with adequate notice and opportunity to comment. These proposed and temporary regulations are published elsewhere in this issue of the **Federal Register**. The final regulations provide guidance regarding the computation of the reduced maximum exclusion.

*6. Property of Deceased Spouse*

Commentators suggested that the regulations allow a surviving spouse to exclude up to $500,000 of gain if the sale or exchange of the marital home occurs within one year of the death of the decedent spouse and the requirements of section 121 are otherwise met. Under section 121(b)(2), the $500,000 exclusion is only available to spouses who file a joint return. A surviving spouse is eligible to file a joint return with the decedent spouse only for the year of the decedent spouse's death. Therefore, the final regulations do not adopt this suggestion.

Commentators also requested clarification regarding the computation of basis and gain for surviving spouses. They asked for guidance regarding the advantages of titling the marital home in the names of both spouses so that a surviving spouse can obtain a step-up in basis and, consequently, realize less gain from the disposition of the marital home. Because the rules regarding the computation of basis and gain are outside the scope of these regulations, the final regulations do not address these issues.

*7. Partial Interests*

Commentators suggested that the regulations clarify that a taxpayer who sells a partial interest in the taxpayer's principal residence and more than two years later sells the remaining interest in the same property is entitled to use up to the full exclusion for each sale.

The final regulations provide that a taxpayer may exclude gain from the sale or exchange of partial interests (other than interests remaining after the sale or exchange of a remainder interest) in the taxpayer's principal residence if the interest sold or exchanged includes an interest in the dwelling unit.

However, the IRS and Treasury Department believe that allowing more than the maximum limitation amount with respect to the same principal residence is contrary to the language and intent of section 121. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of partial interests.

In this regard, for purposes of determining the maximum limitation amount under section 121(b)(1) and (2), the sales or exchanges of partial interests in the same principal residence are treated as one sale or exchange. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, a taxpayer may exclude gain from the first sale or exchange of a partial interest up to the taxpayer's full maximum limitation amount and may exclude gain from the sale or exchange of any other partial interest in the same principal residence to the extent of any remaining maximum limitation amount, and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i) (relating to the limitation for certain joint returns) apply.

For purposes of applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years), each sale or exchange of a partial interest is disregarded with respect to other sales or exchanges of partial interests in the same principal residence, but is taken into account as of the date of the sale or exchange in applying section 121(b)(3) to that sale or exchange and the sale or exchange of any other principal residence.

*8. Elections Under Sections 121(d)(8) and (f)*

Commentators asked for clarification regarding when a taxpayer may make or revoke an election under section 121(d)(8) (election to have the section 121 exclusion apply to a sale or exchange of a remainder interest in the taxpayer's principal residence) or section 121(f) (election to have the section 121 exclusion not apply to a sale or exchange of the taxpayer's principal residence). The final regulations adopt and clarify the provisions of the proposed regulations and provide that a taxpayer may make or revoke either election at any time before the expiration of a three-year period beginning on the last date prescribed by law (determined without regard to extensions) for the filing of the return for the taxable year in which the sale or exchange occurred.

*9. Reporting Sales or Exchanges*

Commentators recommended the creation of a form for taxpayers to use to report the sale or exchange of a principal residence even if the gain is entirely excludable under section 121. The final regulations do not adopt this suggestion because, unlike sales or exchanges under section 1034, no tax attributes of the sold residence carry over to a new residence. Therefore the reporting of excluded gain is unnecessary and would be unduly burdensome for taxpayers.

*10. Election To Apply Regulations Retroactively*

The regulations provide that taxpayers who would otherwise qualify under the provisions of §§ 1.121–1 through 1.121–4 of the final regulations to exclude gain from a sale or exchange before the effective date of the regulations but on or after May 7, 1997, may elect to apply the provisions of the final regulations for any years for which the period of limitation under section 6511 has not expired. A taxpayer may make the election by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. Taxpayers who have filed a return for the taxable year of the sale or exchange may elect to apply the provisions of the final regulations for any years for which the period of limitation under section 6511 has not expired by filing an amended return.

*11. Audit Protection*

The regulations provide that the IRS will not challenge a taxpayer's position that a sale or exchange before the effective date of these regulations but on or after May 7, 1997, qualifies for the section 121 exclusion if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 121. Compliance with the provisions of the proposed regulations that preceded these final regulations generally will be considered a reasonable, good faith effort.

*12. Section 121 Exclusion in Individuals' Title 11 Cases*

The regulations provide that the bankruptcy estate of an individual in a chapter 7 or 11 bankruptcy case under title 11 of the United States Code succeeds to and takes into account the individual's section 121 exclusion if the individual satisfies the requirements of section 121. Although the effective date for this provision is on or after publication of final regulations in the **Federal Register**, in view of the IRS's acquiescence in the case of *Internal Revenue Service* v. *Waldschmidt (In re Bradley)*, 222 B.R. 313 (M.D. Tenn. 1998), AOD CC–1999–009 (August 30, 1999), and Chief Counsel Notice (35)000–162 (August 10, 1999), the IRS will not challenge a position taken prior to the effective date of these regulations that a bankruptcy estate may use the section 121 exclusion if the debtor would otherwise satisfy the section 121 requirements.

*13. Effective Date*

These regulations apply to sales or exchanges on or after December 24, 2002.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Sara Paige Shepherd, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.1398–3 also issued under 26 U.S.C. 1398(g) * * *

**Par. 2.** Sections 1.121–1, 1.121–2, 1.121–3 and 1.121–4 are revised to read as follows:

### § 1.121–1 Exclusion of gain from sale or exchange of a principal residence.

(a) *In general.* Section 121 provides that, under certain circumstances, gross income does not include gain realized on the sale or exchange of property that was owned and used by a taxpayer as the taxpayer's principal residence. Subject to the other provisions of

section 121, a taxpayer may exclude gain only if, during the 5-year period ending on the date of the sale or exchange, the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) *Residence*—(1) *In general.* Whether property is used by the taxpayer as the taxpayer's residence depends upon all the facts and circumstances. A property used by the taxpayer as the taxpayer's residence may include a houseboat, a house trailer, or the house or apartment that the taxpayer is entitled to occupy as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)). Property used by the taxpayer as the taxpayer's residence does not include personal property that is not a fixture under local law.

(2) *Principal residence.* In the case of a taxpayer using more than one property as a residence, whether property is used by the taxpayer as the taxpayer's principal residence depends upon all the facts and circumstances. If a taxpayer alternates between 2 properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence. In addition to the taxpayer's use of the property, relevant factors in determining a taxpayer's principal residence, include, but are not limited to—

(i) The taxpayer's place of employment;

(ii) The principal place of abode of the taxpayer's family members;

(iii) The address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card;

(iv) The taxpayer's mailing address for bills and correspondence;

(v) The location of the taxpayer's banks; and

(vi) The location of religious organizations and recreational clubs with which the taxpayer is affiliated.

(3) *Vacant land*—(i) *In general.* The sale or exchange of vacant land is not a sale or exchange of the taxpayer's principal residence unless—

(A) The vacant land is adjacent to land containing the dwelling unit of the taxpayer's principal residence;

(B) The taxpayer owned and used the vacant land as part of the taxpayer's principal residence;

(C) The taxpayer sells or exchanges the dwelling unit in a sale or exchange that meets the requirements of section 121 within 2 years before or 2 years after the date of the sale or exchange of the vacant land; and

(D) The requirements of section 121 have otherwise been met with respect to the vacant land.

(ii) *Limitations*—(A) *Maximum limitation amount.* For purposes of section 121(b)(1) and (2) (relating to the maximum limitation amount of the section 121 exclusion), the sale or exchange of the dwelling unit and the vacant land are treated as one sale or exchange. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of vacant land and the dwelling unit. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, gain from the sale or exchange of the dwelling unit, up to the maximum limitation amount under section 121(b)(1) or (2), is excluded first and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i) (relating to the limitation for certain joint returns) apply.

(B) *Sale or exchange of more than one principal residence in 2-year period.* If a dwelling unit and vacant land are sold or exchanged in separate transactions that qualify for the section 121 exclusion under this paragraph (b)(3), each of the transactions is disregarded in applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years) to the other transactions but is taken into account as a sale or exchange of a principal residence on the date of the transaction in applying section 121(b)(3) to that transaction and the sale or exchange of any other principal residence.

(C) *Sale or exchange of vacant land before dwelling unit.* If the sale or exchange of the dwelling unit occurs in a later taxable year than the sale or exchange of the vacant land and after the date prescribed by law (including extensions) for the filing of the return for the taxable year of the sale or exchange of the vacant land, any gain from the sale or exchange of the vacant land must be treated as taxable on the taxpayer's return for the taxable year of the sale or exchange of the vacant land. If the taxpayer has reported gain from the sale or exchange of the vacant land as taxable, after satisfying the requirements of this paragraph (b)(3) the taxpayer may claim the section 121 exclusion with regard to the sale or exchange of the vacant land (for any period for which the period of limitation under section 6511 has not expired) by filing an amended return.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

*Example 1.* Taxpayer A owns 2 residences, one in New York and one in Florida. From 1999 through 2004, he lives in the New York residence for 7 months and the Florida residence for 5 months of each year. In the absence of facts and circumstances indicating otherwise, the New York residence is A's principal residence. A would be eligible for the section 121 exclusion of gain from the sale or exchange of the New York residence, but not the Florida residence.

*Example 2.* Taxpayer B owns 2 residences, one in Virginia and one in Maine. During 1999 and 2000, she lives in the Virginia residence. During 2001 and 2002, she lives in the Maine residence. During 2003, she lives in the Virginia residence. B's principal residence during 1999, 2000, and 2003 is the Virginia residence. B's principal residence during 2001 and 2002 is the Maine residence. B would be eligible for the 121 exclusion of gain from the sale or exchange of either residence (but not both) during 2003.

*Example 3.* In 1991 Taxpayer C buys property consisting of a house and 10 acres that she uses as her principal residence. In May 2005 C sells 8 acres of the land and realizes a gain of $110,000. C does not sell the dwelling unit before the due date for filing C's 2005 return, therefore C is not eligible to exclude the $110,000 of gain. In March 2007 C sells the house and remaining 2 acres realizing a gain of $180,000 from the sale of the house. C may exclude the $180,000 of gain. Because the sale of the 8 acres occurred within 2 years from the date of the sale of the dwelling unit, the sale of the 8 acres is treated as a sale of the taxpayer's principal residence under paragraph (b)(3) of this section. C may file an amended return for 2005 to claim an exclusion for $70,000 ($250,000–$180,000 gain previously excluded) of the $110,000 gain from the sale of the 8 acres.

*Example 4.* In 1998 Taxpayer D buys a house and 1 acre that he uses as his principal residence. In 1999 D buys 29 acres adjacent to his house and uses the vacant land as part of his principal residence. In 2003 D sells the house and 1 acre and the 29 acres in 2 separate transactions. D sells the house and 1 acre at a loss of $25,000. D realizes $270,000 of gain from the sale of the 29 acres. D may exclude the $245,000 gain from the 2 sales.

(c) *Ownership and use requirements*—(1) *In general.* The requirements of ownership and use for periods aggregating 2 years or more may be satisfied by establishing ownership and use for 24 full months or for 730 days ($365 \times 2$). The requirements of ownership and use may be satisfied during nonconcurrent periods if both the ownership and use tests are met during the 5-year period ending on the date of the sale or exchange.

(2) *Use.* (i) In establishing whether a taxpayer has satisfied the 2-year use

requirement, occupancy of the residence is required. However, short temporary absences, such as for vacation or other seasonal absence (although accompanied with rental of the residence), are counted as periods of use.

(ii) *Determination of use during periods of out-of-residence care.* If a taxpayer has become physically or mentally incapable of self-care and the taxpayer sells or exchanges property that the taxpayer owned and used as the taxpayer's principal residence for periods aggregating at least 1 year during the 5-year period preceding the sale or exchange, the taxpayer is treated as using the property as the taxpayer's principal residence for any period of time during the 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(3) *Ownership*—(i) *Trusts.* If a residence is owned by a trust, for the period that a taxpayer is treated under sections 671 through 679 (relating to the treatment of grantors and others as substantial owners) as the owner of the trust or the portion of the trust that includes the residence, the taxpayer will be treated as owning the residence for purposes of satisfying the 2-year ownership requirement of section 121, and the sale or exchange by the trust will be treated as if made by the taxpayer.

(ii) *Certain single owner entities.* If a residence is owned by an eligible entity (within the meaning of § 301.7701–3(a) of this chapter) that has a single owner and is disregarded for federal tax purposes as an entity separate from its owner under § 301.7701–3 of this chapter, the owner will be treated as owning the residence for purposes of satisfying the 2-year ownership requirement of section 121, and the sale or exchange by the entity will be treated as if made by the owner.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples. The examples assume that § 1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The examples are as follows:

*Example 1.* Taxpayer A has owned and used his house as his principal residence since 1986. On January 31, 1998, A moves to another state. A rents his house to tenants from that date until April 18, 2000, when he sells it. A is eligible for the section 121 exclusion because he has owned and used the house as his principal residence for at least 2 of the 5 years preceding the sale.

*Example 2.* Taxpayer B owns and uses a house as her principal residence from 1986 to the end of 1997. On January 4, 1998, B moves to another state and ceases to use the house. B's son moves into the house in March 1999 and uses the residence until it is sold on July 1, 2001. B may not exclude gain from the sale under section 121 because she did not use the property as her principal residence for at least 2 years out of the 5 years preceding the sale.

*Example 3.* Taxpayer C lives in a townhouse that he rents from 1993 through 1996. On January 18, 1997, he purchases the townhouse. On February 1, 1998, C moves into his daughter's home. On May 25, 2000, while still living in his daughter's home, C sells his townhouse. The section 121 exclusion will apply to gain from the sale because C owned the townhouse for at least 2 years out of the 5 years preceding the sale (from January 19, 1997 until May 25, 2000) and he used the townhouse as his principal residence for at least 2 years during the 5-year period preceding the sale (from May 25, 1995 until February 1, 1998).

*Example 4.* Taxpayer D, a college professor, purchases and moves into a house on May 1, 1997. He uses the house as his principal residence continuously until September 1, 1998, when he goes abroad for a 1-year sabbatical leave. On October 1, 1999, 1 month after returning from the leave, D sells the house. Because his leave is not considered to be a short temporary absence under paragraph (c)(2) of this section, the period of the sabbatical leave may not be included in determining whether D used the house for periods aggregating 2 years during the 5-year period ending on the date of the sale. Consequently, D is not entitled to exclude gain under section 121 because he did not use the residence for the requisite period.

*Example 5.* Taxpayer E purchases a house on February 1, 1998, that he uses as his principal residence. During 1998 and 1999, E leaves his residence for a 2-month summer vacation. E sells the house on March 1, 2000. Although, in the 5-year period preceding the date of sale, the total time E used his residence is less than 2 years (21 months), the section 121 exclusion will apply to gain from the sale of the residence because, under paragraph (c)(2) of this section, the 2-month vacations are short temporary absences and are counted as periods of use in determining whether E used the residence for the requisite period.

(d) *Depreciation taken after May 6, 1997*—(1) *In general.* The section 121 exclusion does not apply to so much of the gain from the sale or exchange of property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to the property for periods after May 6, 1997. Depreciation adjustments allocable to any portion of the property to which the section 121 exclusion does not apply under paragraph (e) of this section are not taken into account for this purpose.

(2) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* On July 1, 1999, Taxpayer A moves into a house that he owns and had rented to tenants since July 1, 1997. A took depreciation deductions totaling $14,000 for the period that he rented the property. After using the residence as his principal residence for 2 full years, A sells the property on August 1, 2001. A's gain realized from the sale is $40,000. A has no other section 1231 or capital gains or losses for 2001. Only $26,000 ($40,000 gain realized—$14,000 depreciation deductions) may be excluded under section 121. Under section 121(d)(6) and paragraph (d)(1) of this section, A must recognize $14,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h).

(e) *Property used in part as a principal residence*—(1) *Allocation required.* Section 121 will not apply to the gain allocable to any portion (separate from the dwelling unit) of property sold or exchanged with respect to which a taxpayer does not satisfy the use requirement. Thus, if a portion of the property was used for residential purposes and a portion of the property (separate from the dwelling unit) was used for non-residential purposes, only the gain allocable to the residential portion is excludable under section 121. No allocation is required if both the residential and non-residential portions of the property are within the same dwelling unit. However, section 121 does not apply to the gain allocable to the residential portion of the property to the extent provided by paragraph (d) of this section.

(2) *Dwelling unit.* For purposes of this paragraph (e), the term *dwelling unit* has the same meaning as in section 280A(f)(1), but does not include appurtenant structures or other property.

(3) *Method of allocation.* For purposes of determining the amount of gain allocable to the residential and non-residential portions of the property, the taxpayer must allocate the basis and the amount realized between the residential and the non-residential portions of the property using the same method of allocation that the taxpayer used to determine depreciation adjustments (as defined in section 1250(b)(3)), if applicable.

(4) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1. Non-residential use of property not within the dwelling unit.* (i) Taxpayer A owns a property that consists of a house, a stable and 35 acres. A uses the stable and 28 acres for non-residential purposes for more than 3 years during the 5-year period preceding the sale. A uses the entire house

and the remaining 7 acres as his principal residence for at least 2 years during the 5-year period preceding the sale. For periods after May 6, 1997, A claims depreciation deductions of $9,000 for the non-residential use of the stable. A sells the entire property in 2004, realizing a gain of $24,000. A has no other section 1231 or capital gains or losses for 2004.

(ii) Because the stable and the 28 acres used in the business are separate from the dwelling unit, the allocation rules under this paragraph (e) apply and A must allocate the basis and amount realized between the portion of the property that he used as his principal residence and the portion of the property that he used for non-residential purposes. A determines that $14,000 of the gain is allocable to the non-residential-use portion of the property and that $10,000 of the gain is allocable to the portion of the property used as his residence. A must recognize the $14,000 of gain allocable to the non-residential-use portion of the property ($9,000 of which is unrecaptured section 1250 gain within the meaning of section 1(h), and $5,000 of which is adjusted net capital gain). A may exclude $10,000 of the gain from the sale of the property.

*Example 2. Non-residential use of property not within the dwelling unit and rental of the entire property.* (i) In 1998 Taxpayer B buys a property that includes a house, a barn, and 2 acres. B uses the house and 2 acres as her principal residence and the barn for an antiques business. In 2002, B moves out of the house and rents it to tenants. B sells the property in 2004, realizing a gain of $21,000. Between 1998 and 2004 B claims depreciation deductions of $4,800 attributable to the antiques business. Between 2002 and 2004 B claims depreciation deductions of $3,000 attributable to the house. B has no other section 1231 or capital gains or losses for 2004.

(ii) Because the portion of the property used in the antiques business is separate from the dwelling unit, the allocation rules under this paragraph (e) apply. B must allocate basis and amount realized between the portion of the property that she used as her principal residence and the portion of the property that she used for non-residential purposes. B determines that $4,000 of the gain is allocable to the non-residential portion of the property and that $17,000 of the gain is allocable to the portion of the property that she used as her principal residence.

(iii) B must recognize the $4,000 of gain allocable to the non-residential portion of the property (all of which is unrecaptured section 1250 gain within the meaning of section 1(h)). In addition, the section 121 exclusion does not apply to the gain allocable to the residential portion of the property to the extent of the depreciation adjustments attributable to the residential portion of the property for periods after May 6, 1997 ($3,000). Therefore, B may exclude $14,000 of the gain from the sale of the property.

*Example 3. Non-residential use of a separate dwelling unit.* (i) In 2002 Taxpayer C buys a 3-story townhouse and converts the basement level, which has a separate entrance, into a separate apartment by installing a kitchen and bathroom and removing the interior stairway that leads from the basement to the upper floors. After the conversion, the property constitutes 2 dwelling units within the meaning of paragraph (e)(2) of this section. C uses the first and second floors of the townhouse as his principal residence and rents the basement level to tenants from 2003 to 2007. C claims depreciation deductions of $2,000 for that period with respect to the basement apartment. C sells the entire property in 2007, realizing gain of $18,000. C has no other section 1231 or capital gains or losses for 2007.

(ii) Because the basement apartment and the upper floors of the townhouse are separate dwelling units, C must allocate the gain between the portion of the property that he used as his principal residence and the portion of the property that he used for non-residential purposes under paragraph (e) of this section. After allocating the basis and the amount realized between the residential and non-residential portions of the property, C determines that $6,000 of the gain is allocable to the non-residential portion of the property and that $12,000 of the gain is allocable to the portion of the property used as his residence. C must recognize the $6,000 of gain allocable to the non-residential portion of the property ($2,000 of which is unrecaptured section 1250 gain within the meaning of section 1(h), and $4,000 of which is adjusted net capital gain). C may exclude $12,000 of the gain from the sale of the property.

*Example 4. Separate dwelling unit converted to residential use.* The facts are the same as in *Example 3* except that in 2007 C incorporates the basement of the townhouse into his principal residence by eliminating the kitchen and building a new interior stairway to the upper floors. C uses all 3 floors of the townhouse as his principal residence for 2 full years and sells the townhouse in 2010, realizing a gain of $20,000. Under section 121(d)(6) and paragraph (d) of this section, C must recognize $2,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h). Because C used the entire 3 floors of the townhouse as his principal residence for 2 of the 5 years preceding the sale of the property, C may exclude the remaining $18,000 of the gain from the sale of the house.

*Example 5. Non-residential use within the dwelling unit, property depreciated.* Taxpayer D, an attorney, buys a house in 2003. The house constitutes a single dwelling unit but D uses a portion of the house as a law office. D claims depreciation deductions of $2,000 during the period that she owns the house. D sells the house in 2006, realizing a gain of $13,000. D has no other section 1231 or capital gains or losses for 2006. Under section 121(d)(6) and paragraph (d) of this section, D must recognize $2,000 of the gain as unrecaptured section 1250 gain within the meaning of section 1(h). D may exclude the remaining $11,000 of the gain from the sale of her house because, under paragraph (e)(1) of this section, she is not required to allocate gain to the business use within the dwelling unit.

*Example 6. Non-residential use within the dwelling unit, property not depreciated.* The facts are the same as in Example 5, except that D is not entitled to claim any depreciation deductions with respect to her business use of the house. D may exclude $13,000 of the gain from the sale of her house because, under paragraph (e)(1) of this section, she is not required to allocate gain to the business use within the dwelling unit.

(f) *Effective date.* This section is applicable for sales and exchanges on or after Decmeber 24, 2002. For rules on electing to apply the provisions of this section retroactively, see § 1.121–4(j).

**§ 1.121–2 Limitations.**

(a) *Dollar limitations*—(1) *In general.* A taxpayer may exclude from gross income up to $250,000 of gain from the sale or exchange of the taxpayer's principal residence. A taxpayer is eligible for only one maximum exclusion per principal residence.

(2) *Joint owners.* If taxpayers jointly own a principal residence but file separate returns, each taxpayer may exclude from gross income up to $250,000 of gain that is attributable to each taxpayer's interest in the property, if the requirements of section 121 have otherwise been met.

(3) *Special rules for joint returns*—(i) *In general.* A husband and wife who make a joint return for the year of the sale or exchange of a principal residence may exclude up to $500,000 of gain if—

(A) Either spouse meets the 2-year ownership requirements of § 1.121–1(a) and (c);

(B) Both spouses meet the 2-year use requirements of § 1.121–1(a) and (c); and

(C) Neither spouse excluded gain from a prior sale or exchange of property under section 121 within the last 2 years (as determined under paragraph (b) of this section).

(ii) *Other joint returns.* For taxpayers filing jointly, if either spouse fails to meet the requirements of paragraph (a)(3)(i) of this section, the maximum limitation amount to be claimed by the couple is the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. For this purpose, each spouse is treated as owning the property during the period that either spouse owned the property.

(4) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples. The examples assume that § 1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The examples are as follows:

*Example 1.* Unmarried Taxpayers A and B own a house as joint owners, each owning a

50 percent interest in the house. They sell the house after owning and using it as their principal residence for 2 full years. The gain realized from the sale is $256,000. A and B are each eligible to exclude $128,000 of gain because the amount of realized gain allocable to each of them from the sale does not exceed each taxpayer's available limitation amount of $250,000.

*Example 2.* The facts are the same as in *Example 1,* except that A and B are married taxpayers who file a joint return for the taxable year of the sale. A and B are eligible to exclude the entire amount of realized gain ($256,000) from gross income because the gain realized from the sale does not exceed the limitation amount of $500,000 available to A and B as taxpayers filing a joint return.

*Example 3.* During 1999, married Taxpayers H and W each sell a residence that each had separately owned and used as a principal residence before their marriage. Each spouse meets the ownership and use tests for his or her respective residence. Neither spouse meets the use requirement for the other spouse's residence. H and W file a joint return for the year of the sales. The gain realized from the sale of H's residence is $200,000. The gain realized from the sale of W's residence is $300,000. Because the ownership and use requirements are met for each residence by each respective spouse, H and W are each eligible to exclude up to $250,000 of gain from the sale of their individual residences. However, W may not use H's unused exclusion to exclude gain in excess of her limitation amount. Therefore, H and W must recognize $50,000 of the gain realized on the sale of W's residence.

*Example 4.* Married Taxpayers H and W sell their residence and file a joint return for the year of the sale. W, but not H, satisfies the requirements of section 121. They are eligible to exclude up to $250,000 of the gain from the sale of the residence because that is the sum of each spouse's dollar limitation amount determined on a separate basis as if they had not been married ($0 for H, $250,000 for W).

*Example 5.* Married Taxpayers H and W have owned and used their principal residence since 1998. On February 16, 2001, H dies. On September 24, 2001, W sells the residence and realizes a gain of $350,000. Pursuant to section 6013(a)(3), W and H's executor make a joint return for 2001. All $350,000 of the gain from the sale of the residence may be excluded.

*Example 6.* Assume the same facts as *Example 5,* except that W does not sell the residence until January 31, 2002. Because W's filing status for the taxable year of the sale is single, the special rules for joint returns under paragraph (a)(3) of this section do not apply and W may exclude only $250,000 of the gain.

(b) *Application of section 121 to only 1 sale or exchange every 2 years*—(1) *In general.* Except as otherwise provided in § 1.121–3 (relating to the reduced maximum exclusion), a taxpayer may not exclude from gross income gain from the sale or exchange of a principal residence if, during the 2-year period ending on the date of the sale or exchange, the taxpayer sold or exchanged other property for which gain was excluded under section 121. For purposes of this paragraph (b)(1), any sale or exchange before May 7, 1997, is disregarded.

(2) *Example.* The following example illustrates the rules of this paragraph (b). The example assumes that § 1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The example is as follows:

*Example.* Taxpayer A owns a townhouse that he uses as his principal residence for 2 full years, 1998 and 1999. A buys a house in 2000 that he owns and uses as his principal residence. A sells the townhouse in 2002 and excludes gain realized on its sale under section 121. A sells the house in 2003. Although A meets the 2-year ownership and use requirements of section 121, A is not eligible to exclude gain from the sale of the house because A excluded gain within the last 2 years under section 121 from the sale of the townhouse.

(c) *Effective date.* This section is applicable for sales and exchanges on or after December 24, 2002. For rules on electing to apply the provisions of this section retroactively, see § 1.121–4(j).

**§ 1.121–3 Reduced maximum exclusion for taxpayers failing to meet certain requirements.**

(a) *In general.* In lieu of the limitation under section 121(b) and § 1.121–2, a reduced maximum exclusion limitation may be available for a taxpayer who sells or exchanges property used as the taxpayer's principal residence but fails to satisfy the ownership and use requirements described in § 1.121–1(a) and (c) or the 2-year limitation described in § 1.121–2(b).

(b) through (f) [Reserved]. For further guidance, see § 1.121–3T(b) through (f).

(g) *Computation of reduced maximum exclusion.* (1) The reduced maximum exclusion is computed by multiplying the maximum dollar limitation of $250,000 ($500,000 for certain joint filers) by a fraction. The numerator of the fraction is the shortest of the period of time that the taxpayer owned the property during the 5-year period ending on the date of the sale or exchange; the period of time that the taxpayer used the property as the taxpayer's principal residence during the 5-year period ending on the date of the sale or exchange; or the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under section 121 and the date of the current sale or exchange. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator).

(2) *Examples.* The following examples illustrate the rules of this paragraph (g):

*Example 1.* Taxpayer A purchases a house that she uses as her principal residence. Twelve months after the purchase, A sells the house due to a change in place of her employment. A has not excluded gain under section 121 on a prior sale or exchange of property within the last 2 years. A is eligible to exclude up to $125,000 of the gain from the sale of her house (12/24 × $250,000).

*Example 2.* (i) Taxpayer H owns a house that he has used as his principal residence since 1996. On January 15, 1999, H and W marry and W begins to use H's house as her principal residence. On January 15, 2000, H sells the house due to a change in W's place of employment. Neither H nor W has excluded gain under section 121 on a prior sale or exchange of property within the last 2 years.

(ii) Because H and W have not each used the house as their principal residence for at least 2 years during the 5-year period preceding its sale, the maximum dollar limitation amount that may be claimed by H and W will not be $500,000, but the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. (*See* § 1.121–2(a)(3)(ii).)

(iii) H is eligible to exclude up to $250,000 of gain because he meets the requirements of section 121. W is not eligible to exclude the maximum dollar limitation amount. Instead, because the sale of the house is due to a change in place of employment, W is eligible to claim a reduced maximum exclusion of up to $125,000 of the gain (365/730 × $250,000). Therefore, H and W are eligible to exclude up to $375,000 of gain ($250,000 + $125,000) from the sale of the house.

(h) [Reserved]. For further guidance, see § 1.121–3T(h).

(i) through (k) [Reserved].

(l) *Effective date.* This section is applicable for sales and exchanges on or after December 24, 2002. For rules on electing to apply the provisions of this section retroactively, *see* § 1.121–4(j).

**§ 1.121–4 Special rules.**

(a) *Property of deceased spouse*—(1) *In general.* For purposes of satisfying the ownership and use requirements of section 121, a taxpayer is treated as owning and using property as the taxpayer's principal residence during any period that the taxpayer's deceased spouse owned and used the property as a principal residence before death if—

(i) The taxpayer's spouse is deceased on the date of the sale or exchange of the property; and

(ii) The taxpayer has not remarried at the time of the sale or exchange of the property.

(2) *Example.* The provisions of this paragraph (a) are illustrated by the following example. The example assumes that § 1.121–3 (relating to the reduced maximum exclusion) does not apply to the sale of the property. The example is as follows:

*Example.* Taxpayer H has owned and used a house as his principal residence since 1987. H and W marry on July 1, 1999 and from that date they use H's house as their principal residence. H dies on August 15, 2000, and W inherits the property. W sells the property on September 1, 2000, at which time she has not remarried. Although W has owned and used the house for less than 2 years, W will be considered to have satisfied the ownership and use requirements of section 121 because W's period of ownership and use includes the period that H owned and used the property before death.

(b) *Property owned by spouse or former spouse*—(1) *Property transferred to individual from spouse or former spouse.* If a taxpayer obtains property from a spouse or former spouse in a transaction described in section 1041(a), the period that the taxpayer owns the property will include the period that the spouse or former spouse owned the property.

(2) *Property used by spouse or former spouse.* A taxpayer is treated as using property as the taxpayer's principal residence for any period that the taxpayer has an ownership interest in the property and the taxpayer's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)), provided that the spouse or former spouse uses the property as his or her principal residence.

(c) *Tenant-stockholder in cooperative housing corporation.* A taxpayer who holds stock as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in sections 216(b)(1) and (2)) may be eligible to exclude gain under section 121 on the sale or exchange of the stock. In determining whether the taxpayer meets the requirements of section 121, the ownership requirements are applied to the holding of the stock and the use requirements are applied to the house or apartment that the taxpayer is entitled to occupy by reason of the taxpayer's stock ownership.

(d) *Involuntary conversions*—(1) *In general.* For purposes of section 121, the destruction, theft, seizure, requisition, or condemnation of property is treated as a sale of the property.

(2) *Application of section 1033.* In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property used as the taxpayer's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from the taxpayer's gross income under section 121.

(3) *Property acquired after involuntary conversion.* If the basis of the property acquired as a result of an involuntary conversion is determined (in whole or in part) under section 1033(b) (relating to the basis of property acquired through an involuntary conversion), then for purposes of satisfying the requirements of section 121, the taxpayer will be treated as owning and using the acquired property as the taxpayer's principal residence during any period of time that the taxpayer owned and used the converted property as the taxpayer's principal residence.

(4) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* (i) On February 18, 1999, fire destroys Taxpayer A's house which has an adjusted basis of $80,000. A had owned and used this property as her principal residence for 20 years prior to its destruction. A's insurance company pays A $400,000 for the house. A realizes a gain of $320,000 ($400,000—$80,000). On August 27, 1999, A purchases a new house at a cost of $100,000.

(ii) Because the destruction of the house is treated as a sale for purposes of section 121, A will exclude $250,000 of the realized gain from A's gross income. For purposes of section 1033, the amount realized is then treated as being $150,000 ($400,000—$250,000) and the gain realized is $70,000 ($150,000 amount realized—$80,000 basis). A elects under section 1033 to recognize only $50,000 of the gain ($150,000 amount realized—$100,000 cost of new house). The remaining $20,000 of gain is deferred and A's basis in the new house is $80,000 ($100,000 cost—$20,000 gain not recognized).

(iii) A will be treated as owning and using the new house as A's principal residence during the 20-year period that A owned and used the destroyed house.

(e) *Sales or exchanges of partial interests*—(1) *Partial interests other than remainder interests*—(i) *In general.* Except as provided in paragraph (e)(2) of this section (relating to sales or exchanges of remainder interests), a taxpayer may apply the section 121 exclusion to gain from the sale or exchange of an interest in the taxpayer's principal residence that is less than the taxpayer's entire interest if the interest sold or exchanged includes an interest in the dwelling unit. For rules relating to the sale or exchange of vacant land, *see* § 1.121–1(b)(3).

(ii) *Limitations*—(A) *Maximum limitation amount.* For purposes of section 121(b)(1) and (2) (relating to the maximum limitation amount of the section 121 exclusion), sales or exchanges of partial interests in the same principal residence are treated as one sale or exchange. Therefore, only one maximum limitation amount of $250,000 ($500,000 for certain joint returns) applies to the combined sales or exchanges of the partial interests. In applying the maximum limitation amount to sales or exchanges that occur in different taxable years, a taxpayer may exclude gain from the first sale or exchange of a partial interest up to the taxpayer's full maximum limitation amount and may exclude gain from the sale or exchange of any other partial interest in the same principal residence to the extent of any remaining maximum limitation amount, and each spouse is treated as excluding one-half of the gain from a sale or exchange to which section 121(b)(2)(A) and § 1.121–2(a)(3)(i)(relating to the limitation for certain joint returns) apply.

(B) *Sale or exchange of more than one principal residence in 2-year period.* For purposes of applying section 121(b)(3) (restricting the application of section 121 to only 1 sale or exchange every 2 years), each sale or exchange of a partial interest is disregarded with respect to other sales or exchanges of partial interests in the same principal residence, but is taken into account as of the date of the sale or exchange in applying section 121(b)(3) to that sale or exchange and the sale or exchange of any other principal residence.

(2) *Sales or exchanges of remainder interests*—(i) *In general.* A taxpayer may elect to apply the section 121 exclusion to gain from the sale or exchange of a remainder interest in the taxpayer's principal residence.

(ii) *Limitations*—(A) *Sale or exchange of any other interest.* If a taxpayer elects to exclude gain from the sale or exchange of a remainder interest in the taxpayer's principal residence, the section 121 exclusion will not apply to a sale or exchange of any other interest in the residence that is sold or exchanged separately.

(B) *Sales or exchanges to related parties.* This paragraph (e)(2) will not apply to a sale or exchange to any person that bears a relationship to the taxpayer that is described in section 267(b) or 707(b).

(iii) *Election.* The taxpayer makes the election under this paragraph (e)(2) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the remainder interest in the taxpayer's gross income. A taxpayer may make or revoke the election at any time before the expiration of a 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for the filing of the return for the taxable year in which the sale or exchange occurred.

(4) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

*Example.* In 1991 Taxpayer A buys a house that A uses as his principal residence. In 2004 A's friend B moves into A's house and A sells B a 50% interest in the house realizing a gain of $136,000. A may exclude the $136,000 of gain. In 2005 A sells his remaining 50% interest in the home to B realizing a gain of $138,000. A may exclude $114,000 ($250,000—$136,000 gain previously excluded) of the $138,000 gain from the sale of the remaining interest.

(f) *No exclusion for expatriates.* The section 121 exclusion will not apply to any sale or exchange by an individual if the provisions of section 877(a) (relating to the treatment of expatriates) applies to the individual.

(g) *Election to have section not apply.* A taxpayer may elect to have the section 121 exclusion not apply to a sale or exchange of property. The taxpayer makes the election by filing a return for the taxable year of the sale or exchange that includes the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. A taxpayer may make an election under this paragraph (g) to have section 121 not apply (or revoke an election to have section 121 not apply) at any time before the expiration of a 3-year period beginning on the last date prescribed by law (determined without regard to extensions) for the filing of the return for the taxable year in which the sale or exchange occurred.

(h) *Residences acquired in rollovers under section 1034.* If a taxpayer acquires property in a transaction that qualifies under section 1034 (section 1034 property) for the nonrecognition of gain realized on the sale or exchange of another property and later sells or exchanges such property, in determining the period of the taxpayer's ownership and use of the property under section 121 the taxpayer may include the periods that the taxpayer owned and used the section 1034 property as the taxpayer's principal residence (and each prior residence taken into account under section 1223(7) in determining the holding period of the section 1034 property).

(i) [Reserved].

(j) *Election to apply regulations retroactively.* Taxpayers who would otherwise qualify under §§ 1.121–1 through 1.121–4 to exclude gain from a sale or exchange of a principal residence before December 24, 2002 but on or after May 7, 1997, may elect to apply §§ 1.121–1 through 1.121–4 for any years for which the period of limitation under section 6511 has not expired. The taxpayer makes the election under this paragraph (j) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. Taxpayers who have filed a return for the taxable year of the sale or exchange may elect to apply the provisions of these regulations for any years for which the period of limitation under section 6511 has not expired by filing an amended return.

(k) *Audit protection.* The Internal Revenue Service will not challenge a taxpayer's position that a sale or exchange of a principal residence occurring before December 24, 2002 but on or after May 7, 1997, qualifies for the section 121 exclusion if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 121. Compliance with the provisions of the regulations project under section 121 (REG–105235–99 (2000–2 C.B. 447)) generally will be considered a reasonable, good faith effort to comply with the requirements of section 121.

(l) *Effective date.* This section is applicable for sales and exchanges on or after December 24, 2002. For rules on electing to apply the provisions retroactively, see paragraph (j) of this section.

**§ 1.121–5 [Removed]**

**Par. 3.** Section 1.121–5 is removed.

**Par. 4.** Section 1.1398–3 is added to read as follows:

**§ 1.1398–3 Treatment of section 121 exclusion in individuals' title 11 cases.**

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section, section 121 exclusion means the exclusion of gain from the sale or exchange of a debtor's principal residence available under section 121.

(c) *Estate succeeds to exclusion upon commencement of case.* The bankruptcy estate succeeds to and takes into account the section 121 exclusion with respect to the property transferred into the estate.

(d) *Effective date.* This section is applicable for sales or exchanges on or after December 24, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 11, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 02–32281 Filed 12–23–02; 8:45 am]

BILLING CODE 4830–01–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 9031]**

**RIN 1545–BB02**

## Reduced Maximum Exclusion of Gain From Sale or Exchange of Principal Residence

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence in the case of a taxpayer who has not owned and used the property as the taxpayer's principal residence for two of the preceding five years or who has excluded gain from the sale or exchange of a principal residence within the preceding two years. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective December 24, 2002.

*Applicability Date:* For dates of applicability, see § 1.121–3T(l).

**FOR FURTHER INFORMATION CONTACT:** Sara Paige Shepherd, (202) 622–4960 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 121(c) relating to the exclusion of gain from the sale or exchange of the principal residence of a taxpayer who has not owned and used the property as the taxpayer's principal residence for two of the preceding five years or who has excluded gain on the sale or exchange of a principal residence within the preceding two years.

Under section 121(a), a taxpayer may exclude up to $250,000 ($500,000 for certain joint returns) of gain realized on the sale or exchange of the taxpayer's principal residence if the taxpayer owned and used the property as the taxpayer's principal residence for at least two years during the five-year period ending on the date of the sale or exchange. Section 121(b)(3) allows the taxpayer to apply the maximum exclusion to only one sale or exchange during the two-year period ending on the date of the sale or exchange. Section

121(c) provides that a taxpayer who fails to meet any of these conditions by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances, may be entitled to an exclusion in a reduced maximum amount.

On October 10, 2000, a notice of proposed rulemaking (REG–105235–99) under section 121 was published in the **Federal Register** (65 FR 60136). The proposed regulations did not define change in place of employment, health, or unforeseen circumstances for purposes of the reduced maximum exclusion. Comments were specifically requested regarding what circumstances should qualify as unforeseen. A public hearing was held on January 26, 2001.

The IRS and Treasury Department received numerous comments regarding the reduced maximum exclusion and have concluded that many of these comments should be adopted. However, because the rules formulated in response to these comments are extensive, the IRS and Treasury Department have concluded that the rules relating to the reduced maximum exclusion should be issued as proposed and temporary regulations to provide the public with adequate notice and opportunity to comment. Final regulations under section 121 addressing provisions other than the reduced maximum exclusion are set forth elsewhere in this edition of the **Federal Register**.

**Explanation of Provisions**

*1. General Provisions*

Under the temporary regulations, a reduced maximum exclusion limitation is available to a taxpayer who has sold or exchanged property owned and used as the taxpayer's principal residence for less than two of the preceding five years or who has excluded gain on the sale or exchange of a principal residence within the preceding two years. This reduced maximum exclusion applies only if the sale or exchange is by reason of a change in place of employment, health, or unforeseen circumstances. A sale or exchange is by reason of a change in place of employment, health, or unforeseen circumstances only if the taxpayer's primary reason for the sale or exchange is a change in place of employment, health, or unforeseen circumstances. The taxpayer's primary reason for the sale or exchange is determined based on the facts and circumstances. The temporary regulations provide a list of factors that may be relevant in determining the taxpayer's primary reason. These factors are suggestive only. No single fact or particular combination of facts is determinative of the taxpayer's entitlement to the reduced maximum exclusion.

In addition, for each of the three grounds for claiming a reduced maximum exclusion, the temporary regulations provide a general definition and one or more safe harbors. If a safe harbor applies, the taxpayer's primary reason for the sale or exchange is deemed to be a change in place of employment, health, or unforeseen circumstances.

*2. Change in Place of Employment*

The temporary regulations provide that a sale or exchange is by reason of a change in place of employment if the taxpayer's primary reason for the sale or exchange is a change in the location of the employment of a qualified individual. *Employment* is defined as the commencement of employment with a new employer, the continuation of employment with the same employer, or the commencement or continuation of self-employment. A *qualified individual* is defined as the taxpayer, the taxpayer's spouse, a co-owner of the residence, or a person whose principal place of abode is in the same household as the taxpayer.

The temporary regulations adopt a safe harbor, suggested by commentators, that provides that the primary reason for the sale or exchange is deemed to be a change in place of employment if the new place of employment of a qualified individual is at least fifty miles farther from the residence sold or exchanged than was the former place of employment. If the individual was unemployed, the distance between the new place of employment and the residence sold or exchanged must be at least fifty miles. This standard is derived from section 217(c)(1) relating to the moving expense deduction. The safe harbor applies only if the change in place of employment occurs during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence. If a sale or exchange does not satisfy this safe harbor, a taxpayer may still qualify for the reduced maximum exclusion by reason of a change in place of employment if the facts and circumstances indicate that a change in place of employment is the primary reason for the sale or exchange.

*3. Sale or Exchange by Reason of Health*

Commentators proposed that, for purposes of determining whether a sale or exchange is by reason of health, the regulations adopt standards similar to those for the deductibility of medical expenses under section 213(a). Commentators also suggested that the regulations provide that the reduced maximum exclusion by reason of health apply to sales and exchanges due to (1) advanced age-related infirmities, (2) the taxpayer's need to move in order to care for a family member, (3) severe allergies, and (4) emotional problems.

In response to these comments, the temporary regulations provide the general rule that a sale or exchange is by reason of health if the taxpayer's primary reason for the sale or exchange is (1) to obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of a qualified individual, or (2) to obtain or provide medical or personal care for a qualified individual suffering from a disease, illness, or injury. A sale or exchange that is merely beneficial to the general health or well-being of the individual is not a sale or exchange by reason of health.

One commentator suggested that the regulations establish a safe harbor allowing a taxpayer to claim a reduced maximum exclusion if the taxpayer obtains documentation of a specific medical condition from a licensed physician. The temporary regulations provide a safe harbor that the primary reason for the sale or exchange is deemed to be health if a physician (as defined in section 213(d)(4)) recommends a change of residence for reasons of health.

For purposes of the reduced maximum exclusion by reason of health, the term *qualified individual* includes the taxpayer, the taxpayer's spouse, a co-owner of the residence, a person whose principal place of abode is in the same household as the taxpayer, and certain family members of these individuals. The definition of qualified individual in the case of health is broader than the definition that applies to the exclusions by reason of change in place of employment and unforeseen circumstances to encompass taxpayers who sell or exchange their residence in order to care for sick family members.

*4. Sale or Exchange by Reason of Unforeseen Circumstances*

The temporary regulations provide that a sale or exchange is by reason of unforeseen circumstances if the primary reason for the sale or exchange is the occurrence of an event that the taxpayer does not anticipate before purchasing and occupying the residence.

Many commentators provided suggestions regarding circumstances that should qualify as unforeseen. A large number of commentators

suggested that unforeseen circumstances should encompass divorce or the termination of a permanent residential relationship. Others suggested that unforeseen circumstances should include death, birth, marriage, bankruptcy, the loss of employment, incarceration, admission to an institution of higher learning, natural and man-made disasters, involuntary conversions, and a substantial increase in medical or living expenses leading to a significant change in economic circumstances. One commentator suggested that any delay of over three years in selling the residence due to a decline in the real estate market should be deemed an unforeseen circumstance. A few commentators suggested that unforeseen circumstances should include unfavorable changes affecting the desirability of the property, such as environmental problems, zoning-law changes, slovenly neighbors, and serious nuisance or safety concerns.

The temporary regulations adopt many of these suggestions as safe harbors. A taxpayer's primary reason for the sale or exchange is deemed to be unforeseen circumstances if one of the safe harbor events occurs during the taxpayer's ownership and use of the property. The safe harbor events include the involuntary conversion of the residence, a natural or man-made disaster or act of war or terrorism resulting in a casualty to the residence, and, in the case of a qualified individual: (1) Death, (2) the cessation of employment as a result of which the individual is eligible for unemployment compensation, (3) a change in employment or self-employment status that results in the taxpayer's inability to pay housing costs and reasonable basic living expenses for the taxpayer's household, (4) divorce or legal separation under a decree of divorce or separate maintenance, and (5) multiple births resulting from the same pregnancy. The Commissioner may designate other events or situations as unforeseen circumstances in published guidance of general applicability or in a ruling directed to a specific taxpayer. A taxpayer who does not qualify for a safe harbor may demonstrate that the primary reason for the sale or exchange is unforeseen circumstances, under a facts and circumstances test.

For purposes of the reduced maximum exclusion by reason of unforeseen circumstances, a *qualified individual* includes the taxpayer, the taxpayer's spouse, a co-owner of the residence, and a person whose principal place of abode is in the same household as the taxpayer.

The regulations include examples illustrating the application of the safe harbors and the facts and circumstances test.

*5. Election To Apply Regulations Retroactively*

The regulations provide that taxpayers who would otherwise qualify under these temporary regulations to exclude gain from a sale or exchange that occurred before the effective date of the regulations but on or after May 7, 1997, may elect to apply all of the provisions of the temporary regulations to the sale or exchange. A taxpayer may make the election by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. Taxpayers who have filed a return for the taxable year of the sale or exchange may elect to apply all of the provisions of these regulations for any years for which the period of limitations under section 6511 has not expired by filing an amended return.

*6. Audit Protection*

The temporary regulations provide that the IRS will not challenge a taxpayer's position that a sale or exchange before the effective date of these regulations but on or after May 7, 1997, qualifies for the reduced maximum exclusion under section 121(c) if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 121(c) and if the sale or exchange otherwise qualifies under section 121.

*7. Effective Date*

These temporary regulations apply to sales and exchanges on or after December 24, 2003.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is Sara Paige Shepherd, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.121–3T is added to read as follows:

### § 1.121–3T Reduced maximum exclusion for taxpayers failing to meet certain requirements (temporary).

(a) [Reserved] For further guidance, *see* § 1.121–3(a).

(b) *Primary reason for sale or exchange.* In order for a taxpayer to claim a reduced maximum exclusion under section 121(c), the sale or exchange must be by reason of a change in place of employment, health, or unforeseen circumstances. A sale or exchange is by reason of a change in place of employment, health, or unforeseen circumstances only if the primary reason for the sale or exchange is a change in place of employment (within the meaning of paragraph (c) of this section), health (within the meaning of paragraph (d) of this section), or unforeseen circumstances (within the meaning of paragraph (e) of this section). Whether the requirements of this section are satisfied depends upon all the facts and circumstances. If the taxpayer qualifies for a safe harbor described in this section, the taxpayer's primary reason is deemed to be a change in place of employment, health, or unforeseen circumstances. If the taxpayer does not qualify for a safe harbor, factors that may be relevant in determining the taxpayer's primary reason for the sale or exchange include (but are not limited to) the extent to which—

(1) The sale or exchange and the circumstances giving rise to the sale or exchange are proximate in time;

(2) The suitability of the property as the taxpayer's principal residence materially changes;

(3) The taxpayer's financial ability to maintain the property materially changes;

(4) The taxpayer uses the property as the taxpayer's residence during the period of the taxpayer's ownership of the property;

(5) The circumstances giving rise to the sale or exchange are not reasonably foreseeable when the taxpayer begins using the property as the taxpayer's principal residence; and

(6) The circumstances giving rise to the sale or exchange occur during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence.

(c) *Sale or exchange by reason of a change in place of employment*—(1) *In general.* A sale or exchange is by reason of a change in place of employment if, in the case of a qualified individual described in paragraph (f) of this section, the primary reason for the sale or exchange is a change in the location of the individual's employment.

(2) *Distance safe harbor.* The primary reason for the sale or exchange is deemed to be a change in place of employment (within the meaning of paragraph (c)(1) of this section) if—

(i) The change in place of employment occurs during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence; and

(ii) The individual's new place of employment is at least 50 miles farther from the residence sold or exchanged than was the former place of employment, or, if there was no former place of employment, the distance between the individual's new place of employment and the residence sold or exchanged is at least 50 miles.

(3) *Employment.* For purposes of this paragraph (c), *employment* includes the commencement of employment with a new employer, the continuation of employment with the same employer, and the commencement or continuation of self-employment.

(4) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* A is unemployed and owns a townhouse that she has owned and used as her principal residence since 2002. In 2003 A obtains a job that is 54 miles from her townhouse, and she sells the townhouse. Because the distance between A's new place of employment and the townhouse is at least 50 miles, the sale is within the safe harbor of paragraph (c)(2) of this section and A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* B is an officer in the United States Air Force stationed in Florida. B purchases a house in Florida in 2001. In May 2002 B moves out of his house to take a 3-year assignment in Germany. B sells his house in January 2003. Because B's new place of employment in Germany is at least 50 miles farther from the residence sold than is B's former place of employment in Florida, the sale is within the safe harbor of paragraph (c)(2) of this section and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* C is employed by Employer R at R's Philadelphia office. C purchases a house in February 2001 that is 35 miles from R's Philadelphia office. In May 2002 C begins a temporary assignment at R's Wilmington office that is 72 miles from C's house, and moves out of the house. In June 2004 C is assigned to work in R's London office, and as a result, sells her house in August 2004. The sale of the house is not within the safe harbor of paragraph (c)(2) of this section by reason of the change in place of employment from Philadelphia to Wilmington because the Wilmington office is not 50 miles farther from C's house than is the Philadelphia office. Furthermore, the sale is not within the safe harbor by reason of the change in place of employment to London because C is not using the house as her principal residence when she moves to London. However, C is entitled to claim a reduced maximum exclusion under section 121(c)(2) because, under the facts and circumstances, the primary reason for the sale is the change in C's place of employment.

*Example 4.* In July 2002 D buys a condominium that is 5 miles from her place of employment and uses it as her principal residence. In February 2003 D, who works as an emergency medicine physician, obtains a job that is located 51 miles from D's condominium. D may be called in to work unscheduled hours and, when called, must be able to arrive at work quickly. Therefore, D sells her condominium and buys a townhouse that is 4 miles from her new place of employment. Because D's new place of employment is only 46 miles farther from the condominium than is D's former place of employment, the sale is not within the safe harbor of paragraph (c)(2) of this section. However, D is entitled to claim a reduced maximum exclusion under section 121(c)(2) because, under the facts and circumstances, the primary reason for the sale is the change in D's place of employment.

(d) *Sale or exchange by reason of health*—(1) *In general.* A sale or exchange is by reason of health if the primary reason for the sale or exchange is to obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of a qualified individual described in paragraph (f) of this section, or to obtain or provide medical or personal care for a qualified individual suffering from a disease, illness, or injury. A sale or exchange that is merely beneficial to the general health or well-being of the individual is not a sale or exchange by reason of health.

(2) *Physician's recommendation safe harbor.* The primary reason for the sale or exchange is deemed to be health if a physician (as defined in section 213(d)(4)) recommends a change of residence for reasons of health (as defined in paragraph (d)(1) of this section).

(3) *Examples.* The following examples illustrate the rules of this paragraph (d):

*Example 1.* In 2002 A buys a house that she uses as her principal residence. A is injured in an accident and is unable to care for herself. As a result, A sells her house in 2003 and moves in with her daughter so that the daughter can provide the care that A requires as a result of her injury. Because, under the facts and circumstances, the primary reason for the sale of A's house is A's health, A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* H's father has a chronic disease. In 2002 H and W purchase a house that they use as their principal residence. In 2003 H and W sell their house in order to move into the house of H's father so that they can provide the care he requires as a result of his disease. Because, under the facts and circumstances, the primary reason for the sale of their house is the health of H's father, H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* H and W purchase a house in 2002 that they use as their principal residence. Their son suffers from a chronic illness that requires regular medical care. Later that year their doctor recommends that their son begin a new treatment that is available at a medical facility 100 miles away from their residence. In 2003 H and W sell their house to be closer to the medical facility. Because, under the facts and circumstances, the primary reason for the sale is to facilitate the treatment of their son's chronic illness, H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 4.* B, who has chronic asthma, purchases a house in Minnesota in 2002 that he uses as his principal residence. B's doctor tells B that moving to a warm, dry climate would mitigate B's asthma symptoms. In 2003 B sells his house and moves to Arizona to relieve his asthma symptoms. The sale is within the safe harbor of paragraph (d)(2) of this section and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 5.* In 2002 H and W purchase a house in Michigan that they use as their principal residence. H's doctor tells H that he should get more exercise, but H is not suffering from any disease that can be treated or mitigated by exercise. In 2003 H and W sell their house and move to Florida so that H can increase his general level of exercise by playing golf year-round. Because the sale of the house is merely beneficial to H's general health, the sale of the house is not by reason of H's health. H and W are not entitled to claim a reduced maximum exclusion under section 121(c)(2).

(e) *Sale or exchange by reason of unforeseen circumstances*—(1) *In*

*general.* A sale or exchange is by reason of unforeseen circumstances if the primary reason for the sale or exchange is the occurrence of an event that the taxpayer does not anticipate before purchasing and occupying the residence.

(2) *Specific event safe harbors.* The primary reason for the sale or exchange is deemed to be unforeseen circumstances (within the meaning of paragraph (e)(1) of this section) if any of the events specified in paragraphs (e)(2)(i) through (iii) of this section occur during the period of the taxpayer's ownership and use of the residence as the taxpayer's principal residence—

(i) The involuntary conversion of the residence;

(ii) Natural or man-made disasters or acts of war or terrorism resulting in a casualty to the residence (without regard to deductibility under section 165(h));

(iii) In the case of a qualified individual described in paragraph

(f) of this section—

(A) Death;

(B) The cessation of employment as a result of which the individual is eligible for unemployment compensation (as defined in section 85(b));

(C) A change in employment or self-employment status that results in the taxpayer's inability to pay housing costs and reasonable basic living expenses for the taxpayer's household (including amounts for food, clothing, medical expenses, taxes, transportation, court-ordered payments, and expenses reasonably necessary to the production of income, but not for the maintenance of an affluent or luxurious standard of living);

(D) Divorce or legal separation under a decree of divorce or separate maintenance; or

(E) Multiple births resulting from the same pregnancy; or

(iv) An event determined by the Commissioner to be an unforeseen circumstance to the extent provided in published guidance of general applicability or in a ruling directed to a specific taxpayer.

(3) *Examples.* The following examples illustrate the rules of this paragraph (e):

*Example 1.* In 2003 A buys a house in California. After A begins to use the house as her principal residence, an earthquake causes damage to A's house. A sells the house in 2004. The sale is within the safe harbor of paragraph (e)(2)(ii) of this section and A is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 2.* H works as a teacher and W works as a pilot. In 2003 H and W buy a house that they use as their principal residence. Later that year W is furloughed from her job for six months. H and W are unable to pay their mortgage during the period W is furloughed. H and W sell their house in 2004. The sale is within the safe harbor of paragraph (e)(2)(iii)(C) of this section and H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 3.* In 2003 H and W buy a two-bedroom condominium that they use as their principal residence. In 2004 W gives birth to twins and H and W sell their condominium and buy a four-bedroom house. The sale is within the safe harbor of paragraph (e)(2)(iii)(E) of this section, and H and W are entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 4.* B buys a condominium in 2003 and uses it as his principal residence. B's monthly condominium fee is $X. Three months after B moves into the condominium, the condominium association decides to replace the building's roof and heating system. Six months later, B's monthly condominium fee doubles. B sells the condominium in 2004 because B is unable to pay the new condominium fee along with the monthly mortgage payment. The safe harbors of paragraph (e)(2) of this section do not apply. However, under the facts and circumstances, the primary reason for the sale is unforeseen circumstances, and B is entitled to claim a reduced maximum exclusion under section 121(c)(2).

*Example 5.* In 2003 C buys a house that he uses as his principal residence. The property is located on a heavily trafficked road. C sells the property in 2004 because the traffic is more disturbing than he expected. C is not entitled to claim a reduced maximum exclusion under section 121(c)(2) because the safe harbors of paragraph (e)(2) of this section do not apply and, under the facts and circumstances, the traffic is not an unforeseen circumstance.

*Example 6.* In 2003 D and her fiance E buy a house and live in it as their principal residence. In 2004 D and E cancel their wedding plans and E moves out of the house. Because D cannot afford to make the monthly mortgage payments alone, D and E sell the house in 2004. The safe harbors of paragraph (e)(2) of this section do not apply. However, under the facts and circumstances, the primary reason for the sale is unforeseen circumstances, and D and E are each entitled to claim a reduced maximum exclusion under section 121(c)(2).

(f) *Qualified individual.* For purposes of this section, *qualified individual* means—

(1) The taxpayer;

(2) The taxpayer's spouse;

(3) A co-owner of the residence;

(4) A person whose principal place of abode is in the same household as the taxpayer; or

(5) For purposes of paragraph (d) of this section, a person bearing a relationship specified in sections 152(a)(1) through 152(a)(8) (without regard to qualification as a dependent) to a qualified individual described in paragraphs (f)(1) through (4) of this section, or a descendant of the taxpayer's grandparent.

(g) [Reserved]. For further guidance, see § 1.121–3(g).

(h) *Election to apply regulations retroactively.* Taxpayers who would otherwise qualify under this section to exclude gain from a sale or exchange before December 24, 2002 but on or after May 7, 1997, may elect to apply all of the provisions of this section for any years for which the period of limitations under section 6511 has not expired. The taxpayer makes the election under this paragraph (h) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income. Taxpayers who have filed a return for the taxable year of the sale or exchange may elect to apply all the provisions of this section for any years for which the period of limitations under section 6511 has not expired by filing an amended return.

(i) through (j) [Reserved]. See § 1.121–3(i) through (j).

(k) *Audit protection.* The Internal Revenue Service will not challenge a taxpayer's position that a sale or exchange of a principal residence that occurred before December 24, 2002 but on or after May 7, 1997, qualifies for the reduced maximum exclusion under section 121(c) if the taxpayer has made a reasonable, good faith effort to comply with the requirements of section 121(c) and if the sale or exchange otherwise qualifies under section 121.

(l) *Effective date.* For the applicability of this section, see § 1.121–3(l).

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 11, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 02–32280 Filed 12–23–02; 8:45 am]

BILLING CODE 4830–01–P

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1, 301, and 602

**[TD 9032]**

**RIN 1545–AW24**

## Election To Treat Trust as Part of an Estate

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 645 relating to an election for certain revocable trusts to be treated and taxed as part of an estate. The final regulations provide the procedures and requirements for making the election, rules regarding the tax treatment of the trust and the estate while the election is in effect, and rules regarding the termination of the election. This document also contains final regulations clarifying the reporting rules for a trust, or portion of a trust, that is treated as owned by the grantor, or another person under the provisions of subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, for the taxable year ending with the death of the grantor or other person.

**DATES:** *Effective Date:* These regulations are effective December 24, 2002.

*Applicability Date:* For dates of applicability of these regulations, see §§ 1.645–1(j), 1.671–4(i)(3), 1.6072–1(a)(2)(ii), 301.6109–1(a)(6).

**FOR FURTHER INFORMATION CONTACT:** Faith Colson, (202) 622–3060 not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1578. This final rule makes no substantive change in the previously approved collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents might 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.

## Background

On December 18, 2000, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–106542–98; 2001–1 CB 473) in the **Federal Register** (65 FR 79015) under section 645 relating to an election for certain revocable trusts to be treated and taxed as part of an estate. This notice also contained proposed amendments to the regulations under section 671 relating to reporting rules for a trust, or portion of a trust, that is treated as owned by the grantor or another person under the provisions of subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (Code), for the taxable year ending with the death of the grantor or other person. Written comments responding to the notice of proposed rulemaking were received. A public hearing on the notice of proposed rulemaking was scheduled for April 11, 2001, but was canceled when no one requested to speak at the hearing. After consideration of all comments, the proposed regulations, with certain changes in response to the comments, are adopted as final regulations by this Treasury decision.

## Summary of Comments and Explanation of Revisions

### *A. Comments and Changes to § 1.645–1(b): Definitions*

Under section 645, if both the executor (if any) of an estate and the trustee of a qualified revocable trust (QRT) elect the treatment provided in section 645, the trust shall be treated and taxed for income tax purposes as part of the estate (and not as a separate trust) during the election period. The proposed regulations define a QRT as any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). In accordance with the legislative history accompanying section 645, the proposed regulations provide that a trust, in which the power is held solely by a nonadverse party, is not a QRT. See H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 711 (1997). In addition, the proposed regulations provide that a trust, in which the power was exercisable by the decedent only with the approval or consent of another person, is not a QRT.

Some commentators suggested that, if the decedent's power to revoke the trust was exercisable only with the approval or consent of a nonadverse party, the trust should qualify as a QRT. Many persons use revocable trusts as property management tools and, to protect the grantor from improvident decisions or undue influence, their trust agreements may provide that any revocation of the trust by the grantor will be effective only if consented to by a nonadverse party. The commentators noted that the prohibition described in the legislative history addresses trusts in which only a nonadverse party has a power to revoke.

In response to these comments, the final regulations provide that a trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent with the consent or approval of a nonadverse party is a QRT. The final regulations also clarify that while a trust, in which the power to revoke is held only by the decedent's spouse and not by the decedent, is not a QRT, a trust, in which the power to revoke is exercisable by the decedent with the approval or consent of the decedent's spouse, is a QRT.

Clarification has also been requested regarding whether a trust qualifies as a QRT if the grantor's power to revoke the trust lapses prior to the grantor's death as a result of the grantor's incapacity. Some trust documents for revocable trusts provide that the trustee is to disregard the instructions of the grantor to revoke the trust if the grantor is incapacitated. The IRS and the Treasury Department believe that, if an agent or legal representative of the grantor can revoke the trust under state law during the grantor's incapacity, the trust will qualify as a QRT, even if the grantor is incapacitated on the date of the grantor's death.

The proposed regulations also provide that a QRT must be a domestic trust under section 7701(a)(30)(E) and that a section 645 election for a QRT must result in a domestic estate under section 7701(a)(30)(D). Several commentators suggested that the section 645 election should also be available in situations in which either the QRT or the related estate, or both, are foreign. According to the commentators, U.S. citizens living abroad frequently use revocable trusts to avoid jurisdictional disputes concerning the decedent's assets, as well as the cumbersome probate and forced heirship rules of several foreign countries. Many of the trusts will be foreign trusts upon the grantor's death and, if a section 645 election is permitted to be made, will become part of a foreign estate. The commentators questioned the authority for the domestic restriction provided in the proposed regulations given that the statute and the legislative history do not explicitly limit the applicability of a section 645 election to domestic trusts and domestic estates. Upon consideration of these comments, the requirements that a QRT be a domestic trust and that the election result in a domestic estate are removed from the final regulations. The IRS and the Treasury Department note, however, that a trust for which a section 645 election is made is treated as an estate for purposes of Subtitle A of the Code, but not for purposes of Subtitle F. Accordingly, information reporting

under section 6048 will continue to apply with respect to a foreign trust even though a section 645 election has been made to allow the foreign trust to be taxed as part of an estate for purposes of Subtitle A of the Code.

The proposed regulations used the term personal representative to denote the fiduciary (or fiduciaries) of the decedent's estate. One commentator requested that the definition of personal representative in the proposed regulations be expanded to include a personal representative, as well as an executor and an administrator. To be consistent with the language of the statute, the final regulations use the term executor, instead of personal representative, to denote the fiduciary of the decedent's estate. With the exception of including a personal representative in the definition of an executor as requested by the comment, the definition of executor in the final regulations is generally the same as the definition of a personal representative in the proposed regulations. The definition of executor used in these final regulations, however, is not identical to the definition of an executor under section 2203 of the Code: under these final regulations, a person who has actual or constructive possession of property of the decedent is not an executor unless that person is also appointed, or qualified as an executor, administrator, or personal representative of the decedent's estate.

*B. Comments and Changes to § 1.645–1(c): The Election*

The section 645 election may be made whether or not an executor is appointed for the decedent's estate. Under the final regulations, if an executor is appointed for the decedent's estate, the executor and the trustee of the QRT make the section 645 election by filing a form provided by the IRS for the purpose of making the section 645 election (election form). If an executor is not appointed for the decedent's estate, the trustee makes the section 645 election by filing the election form. Form 8855, ''Election to Treat a Qualified Revocable Trust as Part of an Estate,'' will be available for making the section 645 election within six months after the publication of these final regulations.

Guidance has also been requested regarding when the section 645 election must be made if a Form 1041 ''U.S. Income Tax Return for Estates and Trusts,'' is not required to be filed for the first taxable year of the combined electing trust and related estate, if there is an executor, or of the electing trust if there is no executor, because the combined electing trust and related estate, or electing trust, as the case may be, does not have sufficient income to require the filing of a return. A commentator also suggested permitting the section 645 election to be made at any time during the three year period after the due date for the Form 1041 for the estate's first taxable year. The final regulations do not adopt this suggestion and clarify that, for the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the combined electing trust and related estate, if there is an executor, or of the first taxable year of the electing trust, if there is no executor (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, the election form will be timely filed if it is filed by the time prescribed under section 6072 for filing the Form 1041 including the extension granted with respect to the Form 1041.

A commentator noted that, under the proposed regulations, an executor will have direct liability for the tax due on Forms 1041 filed for the combined electing trust and related estate. Accordingly, the executor can be personally liable for tax on the income from assets that are not under the executor's control. Further, the executor may not have sufficient assets in the estate to meet the income tax responsibilities of the combined electing trust and related estate. A commentator also noted that the requirement in the proposed regulations that the trustee agree to cooperate to insure that the Forms 1041 for the combined related estate and electing trust are timely filed and the tax due timely paid places the trustee in an untenable position because the executor controls the filing of the return and the payment of the tax.

The IRS and the Treasury Department note that under section 645, the electing trust is not treated as part of the related estate for purposes of Subtitle F of the Code. Accordingly, although the final regulations permit an electing trust and related estate to file a single, combined Form 1041, the electing trust and related estate continue to be separate taxpayers for purposes of Subtitle F, and the fiduciaries of the electing trust and the fiduciaries of the related estate each continue to have a responsibility for filing returns and paying the tax due for their respective entities even though a section 645 election has been made. Under the final regulations, the executor must file a complete, accurate, and timely Form 1041 for the combined related estate and electing trust for each taxable year during the election period. The trustee of the electing trust must timely provide the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate, and timely Form 1041 for the combined electing trust and related estate for each taxable year during the election period. The trustee and the executor must allocate the tax burden of the combined electing trust and related estate in a manner that reasonably reflects the respective tax obligations of the electing trust and related estate. If the tax burden is not reasonably allocated, gifts may be deemed to have been made. The trustee is responsible for insuring that the electing trust's share of the tax burden is paid to the Secretary, and the executor is responsible for insuring that the related estate's share of the tax burden is timely paid to the Secretary.

*C. Comments and Changes to § 1.645–1(d): TIN and Filing Requirements for a QRT*

The proposed regulations provide that, in general, a grantor trust must obtain a taxpayer identification number (TIN) upon the death of the grantor regardless of whether or not the trust had a TIN prior to the death of the grantor. See proposed regulation § 301.6109–1(a)(3). The proposed regulations provide an exception to this general rule. The proposed regulations provide that, if there is an executor and a section 645 election has been made, a TIN must be obtained for the related estate but a TIN is not required to be obtained for the electing trust or for a QRT for which a section 645 election will be made. Further, under the proposed regulations, the payors (as defined in § 301.6109–1(a)(5) of these final regulations) of the electing trust or a QRT for which the section 645 election will be made are to be furnished with the TIN of the estate on Form W–9, ''Request for Taxpayer Identification Number and Certification.'' The proposed regulations were designed to simplify and lessen the reporting burdens imposed on trustees and executors by the interim guidance in Rev. Proc. 98–13 (1998–1 C.B. 370) by removing the requirement to obtain a TIN for electing trusts and certain QRTs.

Several commentators reported, however, that many trustees automatically obtain a TIN for the QRT immediately after the decedent's death and furnish that TIN to payors. Under the proposed regulations, if a trustee

obtains a TIN for a QRT, the trustee must file a completed Form 1041 for the QRT for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year. If a valid section 645 election is made for the QRT, an amended Form 1041 must be filed for the QRT and the payors of the QRT must be furnished with a revised Form W–9 containing the related estate's TIN. As a result, for trustees that obtain a TIN for a QRT, the procedures in the proposed regulations are more burdensome than the procedures in Rev. Proc. 98–13. In response, the final regulations remove the provision in the proposed regulations that excepted an electing trust and a QRT for which a section 645 election will be made from the general requirement that a grantor trust must obtain a TIN upon the death of the grantor. Under the final regulations, the trustee of an electing trust or a QRT for which a section 645 election will be made obtains a TIN upon the death of the decedent as required by § 301.6109–1(a)(3) of these final regulations and furnishes this TIN to the payors of the trust. Under the final regulations, if a section 645 election will be made for a QRT, the trustee is not required to file a Form 1041 for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year.

The final regulations also simplify the procedures for obtaining a TIN, furnishing that TIN to the payors, and filing a Form 1041 for a QRT if there is no executor. The proposed regulations provide that, if there is no executor, the trustee must obtain a TIN for the electing trust to file as an estate during the section 645 election period. The payors of the electing trust must be furnished with the TIN obtained by the trust to file as an estate. Under the proposed regulations, if a section 645 election will be made for a QRT, the trustee of the QRT may choose to obtain a TIN for the QRT to file as an estate under section 645 and avoid obtaining a TIN for the QRT to file as a trust. If the trustee of the QRT obtains a TIN to file as a trust (and not as an estate), the trustee is required to file a completed Form 1041 as a trust for the short taxable year of the QRT beginning with the decedent's date of death and ending December 31 of that year. If a section 645 election to treat the QRT as an estate is made after the Form 1041 is filed for the QRT treating the QRT as a trust, the trustee of the QRT is required to file an amended Form 1041 as a trust (excluding the items of income, deduction, and credits that are to be reported on a return filed as an estate), obtain another TIN to file as an estate, provide revised Forms W–9 with the new TIN to the payors of the QRT, and file a Form 1041 as an estate. Under the final regulations, if there is no executor, the trustee of an electing trust or a QRT for which a section 645 election will be made obtains a TIN upon the death of the decedent as required by § 301.6109–1(a)(3) of these final regulations and furnishes this TIN to the payors of the trust. The trustee uses this TIN to file Forms 1041 as an estate during the election period. If a section 645 election will be made for a QRT, the trustee of the QRT is not required to file a Form 1041 for the short taxable year beginning with the decedent's date of death and ending December 31 of that year.

Regardless of whether or not there is an executor, the final regulations retain the requirement that a Form 1041 (including the items of income, deduction, and credit of the QRT) must be filed for the short taxable year of the QRT beginning with the decedent's date of death if a section 645 election will not be made for the trust, or if the trustee and the executor are uncertain whether a section 645 election will be made for the QRT by the due date of the Form 1041 for the short taxable year of the QRT beginning after the decedent's death and ending December 31 of that year.

*D. Comments and Changes to § 1.645–1(e): Tax Treatment and General Filing Requirements of the Electing Trust and Related Estate During the Election Period*

The proposed regulations provide that, during the election period, if there is an executor, one Form 1041 is filed annually for the combined electing trust and related estate under the name and TIN of the related estate. Information regarding the electing trust is also reported on the Form 1041 as required by the instructions to the Form 1041.

The proposed regulations provide that the electing trust and related estate are treated as separate shares under section 663(c) for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. The proposed regulations also provide rules for adjusting the DNI of the separate shares with respect to distributions made from one share to another share of the combined electing trust and related estate to which sections 661 and 662 would apply had the distribution been made to a beneficiary other than another share. Under the proposed regulations, the share making the distribution reduces its DNI by the amount of the distribution deduction that it would have been entitled to under section 661 had the distribution been made to a beneficiary other than another share of the combined related estate and electing trust, and, solely for purposes of calculating its DNI, the share receiving the distribution increases its gross income by this amount. One commentator noted that, if the amount distributed from one share to another share includes an item of DNI that is not included in the gross income of the combined electing trust and related estate, this provision in the proposed regulations does not produce an appropriate result because of the operation of section 661(c). Accordingly, the final regulations are revised to provide that the share making the distribution reduces its DNI by the amount of the distribution deduction it would be entitled to under section 661 (determined without regard to section 661(c)), and solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount.

Commentators requested clarification regarding whether an electing trust will be treated as an estate or a trust for purposes of the rules under section 401(a)(9). Final regulations (TD 8987) under sections 401, 403, and 408 were published in the **Federal Register** (67 FR 18988) on April 17, 2002. The preamble to those final regulations provides that an electing trust will not fail to be a trust for purposes of section 401(a)(9) merely because the trust elects to be treated as an estate under section 645, as long as the trust continues to be a trust under state law.

Another commentator asked for clarification regarding whether the exception for estates under section 6654(l)(2) with respect to the payment of estimated income tax applies to an electing trust. The final regulations clarify that each electing trust and related estate, if any, is treated as a separate taxpayer for all purposes of Subtitle F of the Code, including, without limitation, the application of section 6654. The final regulations provide, however, that the provisions of section 6654(l)(2)(A) relating to the 2 year exception to an estate's obligation to make estimated tax payments will apply to each electing trust for which a section 645 election has been made.

*E. Comments and Changes to § 1.645–1(f): Duration of the Election Period*

The proposed regulations provide that the election period terminates on the day before the applicable date. One commentator suggested that section

645(a) should be interpreted as terminating the election period on the last day of the taxable year ending before the applicable date. Another commentator commended the interpretation taken by the proposed regulations because, if the estate is required to file a Form 706, ''United States Estate (and Generation Skipping Transfer) Tax Return,'' and the election terminates on the last day of the taxable year ending before the applicable date, the election period could terminate prior to the date of final determination of liability for the estate tax, rather than six months after that date. The final regulations continue to provide that the election terminates the day before the applicable date.

If a Form 706 is required to be filed, the proposed regulations provide that the applicable date is the day that is 6 months after the date of final determination of liability for the estate tax. In response to comments, the final regulations provide that the applicable date is the day that is the later of 2 years after the date of the decedent's death or 6 months after the date of final determination of liability for estate tax.

The proposed regulations provide that the date of final determination of liability for the estate tax is the day on which the first of a series of events has occurred. One of the events is the issuance of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within six months after the issuance of the letter. Two commentators requested that the issuance of a closing letter be removed from the list of events that can be considered the date of final determination of liability. These commentators contended that the closing letter is not a final determination of liability because the IRS may impose additional estate tax after a closing letter has been issued.

The IRS and the Treasury Department note that the circumstances in which the IRS may impose additional estate tax after a closing letter is issued are very limited. See Rev. Proc. 94–68 (1994–2 C.B. 803). In many cases, the issuance of a closing letter is sufficient to permit the closing of the probate estate and to complete any administration of the electing trust that was necessitated by the decedent's death. The IRS and the Treasury Department believe that eliminating the closing letter from the list of events that are considered a final determination of liability may encourage unduly prolonging the administration of the electing trust and related estate in order to prolong the section 645 election period. While the final regulations retain the issuance of the closing letter as one of the triggers for the date of the final determination of liability, the final regulations have been changed to provide a minimum election period of two years for all electing trusts and related estates, as well as to provide that if the issuance of the closing letter triggers the date of the final determination of liability, the date of the final determination of liability is the date that is 6 months after the date the closing letter is issued, rather than the date the closing letter is issued as provided in the proposed regulations.

Proposed § 1.641(b)–3 provides that, if an estate has joined in making a valid section 645 election, the estate shall not terminate for federal tax purposes prior to the termination of the section 645 election period. Some interpreted proposed § 1.641(b)–3 as requiring the filing of Forms 1041 for the estate until the applicable date even if, prior to that date, the electing trust and the related estate had been completely administered and the assets of the trust and the estate completely distributed. In response, the final regulations provide that the election period terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The final regulations continue to provide that the election does not apply to successor trusts (trusts which are distributees under the trust instrument).

The proposed regulations provide that, if the executor of the related estate is not appointed until after the trustee has made a section 645 election, the section 645 election period will terminate if the later appointed executor refuses to agree to the election. One commentator objected to the termination of the election as a result of the refusal to agree to the election by the later appointed executor. This commentator suggested that the election period should continue after the appointment of the executor and that the person seeking appointment as an executor could either accept or not accept appointment as an executor given the responsibilities of the previously made section 645 election. The IRS and the Treasury Department believe that the later appointed executor must consent to the section 645 election for the election to be valid with respect to the related estate. Accordingly, the final regulations provide that, for the election period to continue, a new election form must be filed by the trustee and the newly appointed executor within 90 days of the executor's appointment. Otherwise the election period terminates the day before the appointment of the executor.

*F. Tax Treatment of the Electing Trust and Related Estate Upon Termination of the Election Period*

At the close of the last day of the election period, the combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is deemed to distribute all the assets and liabilities of the share (or shares) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. Thus, the combined electing trust and related estate, or the electing trust, as appropriate, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust must include the amount of the deemed distribution in gross income to the extent required under section 662.

One commentator questioned whether the net capital gains attributable to the electing trust should be included in the sections 661 and 662 calculations for the deemed distribution of the electing trust to a new trust upon the termination of the election period. The final regulations clarify that the net capital gains attributable to the electing trust are includible in the DNI of the share (or shares) comprising the electing trust for the purpose of applying sections 661 and 662 to the deemed distribution to the new trust.

If there is an executor and the electing trust terminates on or before the termination of the section 645 election period, the trustee must file a final Form 1041 under the name and TIN of the electing trust to notify the IRS that the trust no longer exists. This Form 1041 will not include any of the trust's items of income, deduction, and credit because those items will be included on the Form 1041 filed for the combined electing trust and related estate.

If there is an executor, the trustee may not need to obtain a TIN for the new trust deemed to have been created upon the termination of the election period. The trustee must consult the instructions to the Form 1041 upon the termination of the election period to determine if a new TIN must be obtained. If a new TIN is not required to be obtained, the trustee must file Forms 1041 for the new trust under the TIN obtained by the trustee under § 301.6109–1(a)(3) for the QRT following the death of the decedent. If there is no executor, the trustee must obtain a TIN for the new trust deemed to have been created upon the termination of the election period. If a

new TIN is required under the regulations or the instructions to the Form 1041, the trustee must file Forms W–9 with the payors of the trust to provide them with the TIN to be used following the termination of the election period.

*G. Effective Date of Final Regulations Under Section 645*

The final regulations provide that election procedures in paragraph (c), the rules in paragraph (d) regarding obtaining a TIN for the electing trust and QRT, the rules in paragraph (f) regarding the duration of the election period, and paragraph (g) regarding the later appointed executor are effective for estates and trusts of decedents dying on or after December 24, 2002. The final regulations provide that the rules in paragraph (e), regarding the tax treatment and general filing requirements of the electing trust and the related estate, if any, during the election period, and the rules in paragraph (h) regarding the tax treatment of the electing trust and related estate, if any, upon termination of the election period are effective for taxable years ending on or after December 24, 2002. Estates and trusts of decedents dying before December 24, 2002 may follow the election procedures provided in the proposed regulations or Rev. Proc. 98–13. With respect to obtaining a TIN for a QRT and filing a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year, estates and trusts of decedents dying before December 24, 2002 may follow the procedures in these final regulations, the proposed regulations, or Rev. Proc. 98–13.

*H. Clarification of the Reporting Rules for Grantor Trusts Under § 1.671–4*

The proposed regulations amend § 1.671–4 to clarify that a trust, or portion of a trust, reports under § 1.671–4 for the taxable year that ends with the death of the grantor or other person (decedent) treated as the owner of the trust. If the trust was filing a Form 1041 under § 1.671–4(a) during the life of the decedent, the due date of the Form 1041 for the taxable year ending with the decedent's death is specified in § 1.6072–1(a)(2). Proposed § 1.6072–1(a)(2) provides that the due date for the Form 1041 for the taxable year ending with the death of the decedent is the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year. The final regulations under § 1.6072–1(a)(2) are revised to provide that the due date for the Form 1041 filed for the taxable year ending with the decedent's death is the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of the decedent's last taxable year.

Section 301.6109–1(a)(3) of the proposed regulations provides that a trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the decedent's death. One commentator asked if this provision is intended to apply to an ''administrative trust.'' Section 1.641(b)–3 recognizes that a trust does not automatically terminate upon the happening of the event by which the duration of the trust is measured. A reasonable period of time is permitted after such event for the trustee to perform the duties necessary to complete the administration of the trust. Section 301.6109–1(a)(3) is intended to clarify that a trust must obtain a new TIN after the death of the decedent, if a trust that was treated as owned by the decedent during the decedent's life will continue for a period of time following the death of the decedent to allow a winding up of the affairs of the trust following the death of the decedent.

For administrative convenience, the proposed regulations provide that if a decedent and others are treated as the owners of a trust and following the decedent's death the decedent's portion remains in the trust, the trust continues to report under the TIN used by the trust prior to the death of the decedent. Commentators found this provision confusing and asked for clarification. The final regulations clarify that this provision applies to a trust that has multiple grantors (or other persons treated as the owners) that must report under § 1.671–4(a) after the death of the decedent because, although a portion of the trust continues to be treated as owned by a grantor or another person, the decedent's portion of the trust is no longer treated as owned by the decedent upon his death. The final regulations provide an example of a situation in which this provision applies.

**Effect on Other Documents**

The following publications are obsolete as of December 24, 2002:

Revenue Procedure 98–13 (1998–1 CB 370)

Notice 2001–26 (2001–13 IRB 942)

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply and because this rule does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

## PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.645–1 also issued under 26 U.S.C. 645. * * *

2. Section 1.641(b)–3 is amended by adding a sentence to the end of paragraph (a) to read as follows:

**§ 1.641(b)–3 Termination of estates and trusts.**

(a) * * * Notwithstanding the above, if the estate has joined in making a valid election under section 645 to treat a qualified revocable trust, as defined under section 645(b)(1), as part of the estate, the estate shall not terminate under this paragraph prior to the termination of the section 645 election period. See section 645 and the regulations thereunder for rules regarding the termination of the section 645 election period.

* * * * *

3. In § 1.642(c)–1, the last sentence of paragraph (a)(1) is revised to read as follows:

**§ 1.642(c)–1 Unlimited deduction for amounts paid for a charitable purpose.**

(a) * * * (1) * * * In applying this paragraph without reference to paragraph (b) of this section, a deduction shall be allowed for an amount paid during the taxable year in

respect of gross income received in a previous taxable year, but only if no deduction was allowed for any previous taxable year to the estate or trust, or in the case of a section 645 election, to a related estate, as defined under § 1.645–1(b), for the amount so paid.

* * * * *

4. An undesignated center heading is added immediately after § 1.642(c)–6A to read as follows:

''Election to Treat Trust as Part of an Estate''

5. Section 1.645–1 is added under the new undesignated centerheading ''Election to Treat Trust as Part of an Estate'' to read as follows:

**§ 1.645–1 Election by certain revocable trusts to be treated as part of estate.**

(a) *In general.* If an election is filed for a qualified revocable trust, as defined in paragraph (b)(1) of this section, in accordance with the rules set forth in paragraph (c) of this section, the qualified revocable trust is treated and taxed for purposes of subtitle A of the Internal Revenue Code as part of its related estate, as defined in paragraph (b)(5) of this section (and not as a separate trust) during the election period, as defined in paragraph (b)(6) of this section. Rules regarding the use of taxpayer identification numbers (TINs) and the filing of a Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' for a qualified revocable trust are in paragraph (d) of this section. Rules regarding the tax treatment of an electing trust and related estate and the general filing requirements for the combined entity during the election period are in paragraph (e)(2) of this section. Rules regarding the tax treatment of an electing trust and its filing requirements during the election period if no executor, as defined in paragraph (b)(4) of this section, is appointed for a related estate are in paragraph (e)(3) of this section. Rules for determining the duration of the section 645 election period are in paragraph (f) of this section. Rules regarding the tax effects of the termination of the election are in paragraph (h) of this section. Rules regarding the tax consequences of the appointment of an executor after a trustee has made a section 645 election believing that an executor would not be appointed for a related estate are in paragraph (g) of this section.

(b) *Definitions.* For purposes of this section:

(1) *Qualified revocable trust.* A *qualified revocable trust* (QRT) is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under section 676 by reason of a power held by the decedent (determined without regard to section 672(e)). A trust that was treated as owned by the decedent under section 676 by reason of a power that was exercisable by the decedent only with the approval or consent of a nonadverse party or with the approval or consent of the decedent's spouse is a QRT. A trust that was treated as owned by the decedent under section 676 solely by reason of a power held by a nonadverse party or by reason of a power held by the decedent's spouse is not a QRT.

(2) *Electing trust.* An *electing trust* is a QRT for which a valid section 645 election has been made. Once a section 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

(3) *Decedent.* The *decedent* is the individual who was treated as the owner of the *QRT* under section 676 on the date of that individual's death.

(4) *Executor.* An *executor* is an executor, personal representative, or administrator that has obtained letters of appointment to administer the decedent's estate through formal or informal appointment procedures. Solely for purposes of this paragraph (b)(4), an executor does not include a person that has actual or constructive possession of property of the decedent unless that person is also appointed or qualified as an executor, administrator, or personal representative of the decedent's estate. If more than one jurisdiction has appointed an executor, the executor appointed in the domiciliary or primary proceeding is the executor of the related estate for purposes of this paragraph (b)(4).

(5) *Related estate.* A *related estate* is the estate of the decedent who was treated as the owner of the QRT on the date of the decedent's death.

(6) *Election period.* The *election period* is the period of time during which an electing trust is treated and taxed as part of its related estate. The rules for determining the duration of the election period are in paragraph (f) of this section.

(c) *The election*—(1) *Filing the election if there is an executor*—(i) *Time and manner for filing the election.* If there is an executor of the related estate, the trustees of each QRT joining in the election and the executor of the related estate make an election under section 645 and this section to treat each QRT joining in the election as part of the related estate for purposes of subtitle A of the Internal Revenue Code by filing a form provided by the IRS for making the election (election form) properly completed and signed under penalties of perjury, or in any other manner prescribed after December 24, 2002 by forms provided by the Internal Revenue Service (IRS), or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the related estate (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the related estate, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the Form 1041.

(ii) *Conditions to election.* In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election and the executor of the related estate agree, by signing the election form under penalties of perjury, that:

(A) With respect to a trustee—

(*1*) The trustee agrees to the election;

(*2*) The trustee is responsible for timely providing the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(*3*) The trustee of each QRT joining the election and the executor of the related estate have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust and the related estate; and

(*4*) The trustee is responsible for insuring that the electing trust's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(B) With respect to the executor—

(*1*) The executor agrees to the election;

(*2*) The executor is responsible for filing a complete, accurate, and timely Form 1041 for the combined electing trust(s) and related estate for each taxable year during the election period;

(*3*) The executor and the trustee of each QRT joining in the election have agreed to allocate the tax burden of the combined electing trust(s) and related estate for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust and the related estate;

(*4*) The executor is responsible for insuring that the related estate's share of the tax obligations of the combined electing trust(s) and related estate is timely paid to the Secretary.

(2) *Filing the election if there is no executor*—(i) *Time and manner for filing the election.* If there is no executor for a related estate, an election to treat one or more QRTs of the decedent as an estate for purposes of subtitle A of the Internal Revenue Code is made by the trustees of each QRT joining in the election, by filing a properly completed election form, or in any other manner prescribed after December 24, 2002 by forms provided by the IRS, or by other published guidance for making the election. For the election to be valid, the election form must be filed not later than the time prescribed under section 6072 for filing the Form 1041 for the first taxable year of the trust, taking into account the trustee's election to treat the trust as an estate under section 645 (regardless of whether there is sufficient income to require the filing of that return). If an extension is granted for the filing of the Form 1041 for the first taxable year of the electing trust, the election form will be timely filed if it is filed by the time prescribed for filing the Form 1041 including the extension granted with respect to the filing of the Form 1041.

(ii) *Conditions to election.* In addition to providing the information required by the election form, as a condition to a valid section 645 election, the trustee of each QRT joining in the election agrees, by signing the election form under penalties of perjury, that—

(A) The trustee agrees to the election;

(B) If there is more than one QRT joining in the election, the trustees of each QRT joining in the election have appointed one trustee to be responsible for filing the Form 1041 for the combined electing trusts for each taxable year during the election period (filing trustee) and the filing trustee has agreed to accept that responsibility;

(C) If there is more than one QRT, the trustees of each QRT joining in the election have agreed to allocate the tax liability of the combined electing trusts for each taxable year during the election period in a manner that reasonably reflects the tax obligations of each electing trust;

(D) The trustee agrees to:

(*1*) Timely file a Form 1041 for the electing trust(s) for each taxable year during the election period; or

(*2*) If there is more than one QRT and the trustee is not the filing trustee, timely provide the filing trustee with all of the electing trust's information necessary to permit the filing trustee to file a complete, accurate, and timely Form 1041 for the combined electing trusts for each taxable year during the election period;

(*3*) Insure that the electing trust's share of the tax burden is timely paid to the Secretary;

(E) There is no executor and, to the knowledge and belief of the trustee, one will not be appointed; and

(F) If an executor is appointed after the filing of the election form and the executor agrees to the section 645 election, the trustee will complete and file a revised election form with the executor.

(3) *Election for more than one QRT.* If there is more than one QRT, the election may be made for some or all of the QRTs. If there is no executor, one trustee must be appointed by the trustees of the electing trusts to file Forms 1041 for the combined electing trusts filing as an estate during the election period.

(d) *TIN and filing requirements for a QRT*—(1) *Obtaining a TIN.* Regardless of whether there is an executor for a related estate and regardless of whether a section 645 election will be made for the QRT, a TIN must be obtained for the QRT following the death of the decedent. See § 301.6109–1(a)(3) of this chapter. The trustee must furnish this TIN to the payors of the QRT. See § 301.6109–1(a)(5) of this chapter for the definition of payor.

(2) *Filing a Form 1041 for a QRT*—(i) *Option not to file a Form 1041 for a QRT for which a section 645 election will be made.* If a section 645 election will be made for a QRT, the executor of the related estate, if any, and the trustee of the QRT may treat the QRT as an electing trust from the decedent's date of death until the due date for the section 645 election. Accordingly, the trustee of the QRT is not required to file a Form 1041 for the QRT for the short taxable year beginning with the decedent's date of death and ending December 31 of that year. However, if a QRT is treated as an electing trust under this paragraph from the decedent's date of death until the due date for the section 645 election but a valid section 645 election is not made for the QRT, the QRT will be subject to penalties and interest for failing to timely file a Form 1041 and pay the tax due thereon.

(ii) *Requirement to file a Form 1041 for a QRT if paragraph (d)(2)(i) of this section does not apply*—(A) *Requirement to file Form 1041.* If the trustee of the QRT and the executor of the related estate, if any, do not treat the QRT as an electing trust as provided under paragraph (d)(2)(i) of this section, or if the trustee of the electing trust and the executor, if any, are uncertain whether a section 645 election will be made for a QRT, the trustee of the QRT must file a Form 1041 for the short taxable year beginning with the decedent's death and ending December 31 of that year (unless the QRT is not required to file a Form 1041 under section 6012 for this period).

(B) *Requirement to amend Form 1041 if a section 645 election is made*—(*1*) *If there is an executor.* If there is an executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section), the trustee must amend the Form 1041. The QRT's items of income, deduction, and credit must be excluded from the amended Form 1041 filed under this paragraph and must be included on the Form 1041 filed for the first taxable year of the combined electing trust and related estate under paragraph (e)(2)(ii)(A) of this section.

(*2*) *If there is no executor.* If there is no executor and a valid section 645 election is made for a QRT after a Form 1041 has been filed for the QRT as a trust (see paragraph (d)(2)(ii)(A) of this section) for the short taxable year beginning with the decedent's death and ending December 31 of that year, the trustee must file an amended return for the QRT. The amended return must be filed consistent with paragraph (e)(3) of this section and must be filed by the due date of the Form 1041 for the QRT, taking into account the trustee's election under section 645.

(e) *Tax treatment and general filing requirements of electing trust and related estate during the election period*—(1) *Effect of election.* The section 645 election once made is irrevocable.

(2) *If there is an executor*—(i) *Tax treatment of the combined electing trust and related estate.* If there is an executor, the electing trust is treated, during the election period, as part of the related estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, the electing trust is treated as part of the related estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities in section 469(i)(4).

(ii) *Filing requirements*—(A) *Filing the Form 1041 for the combined electing trust and related estate during the election period.* If there is an executor, the executor files a single income tax return annually (assuming a return is required under section 6012) under the name and TIN of the related estate for the combined electing trust and the

related estate. Information regarding the name and TIN of each electing trust must be provided on the Form 1041 as required by the instructions to that form. The period of limitations provided in section 6501 for assessments with respect to an electing trust and the related estate starts with the filing of the return required under this paragraph. Except as required under the separate share rules of section 663(c), for purposes of filing the Form 1041 under this paragraph and computing the tax, the items of income, deduction, and credit of the electing trust and related estate are combined. One personal exemption in the amount of $600 is permitted under section 642(b), and the tax is computed under section 1(e), taking into account section 1(h), for the combined taxable income.

(B) *Filing a Form 1041 for the electing trust is not required.* Except for any final Form 1041 required to be filed under paragraph (h)(2)(i)(B) of this section, if there is an executor, the trustee of the electing trust does not file a Form 1041 for the electing trust during the election period. Although the trustee is not required to file a Form 1041 for the electing trust, the trustee of the electing trust must timely provide the executor of the related estate with all the trust information necessary to permit the executor to file a complete, accurate and timely Form 1041 for the combined electing trust and related estate. The trustee must also insure that the electing trust's share of the tax obligations of the combined electing trust and related estate is timely paid to the Secretary. In certain situations, the trustee of a QRT may be required to file a Form 1041 for the QRT's short taxable year beginning with the date of the decedent's death and ending December 31 of that year. See paragraph (d)(2) of this section.

(iii) *Application of the separate share rules*—(A) *Distributions to beneficiaries (other than to a share (or shares) of the combined electing trust and related estate).* Under the separate share rules of section 663(c), the electing trust and related estate are treated as separate shares for purposes of computing distributable net income (DNI) and applying the distribution provisions of sections 661 and 662. Further, the electing trust share or the related estate share may each contain two or more shares. Thus, if during the taxable year, a distribution is made by the electing trust or the related estate, the DNI of the share making the distribution must be determined and the distribution provisions of sections 661 and 662 must be applied using the separately determined DNI applicable to the distributing share.

(B) *Adjustments to the DNI of the separate shares for distributions between shares to which sections 661 and 662 would apply.* A distribution from one share to another share to which sections 661 and 662 would apply if made to a beneficiary other than another share of the combined electing trust and related estate affects the computation of the DNI of the share making the distribution and the share receiving the distribution. The share making the distribution reduces its DNI by the amount of the distribution deduction that it would be entitled to under section 661 (determined without regard to section 661(c)), had the distribution been made to another beneficiary, and, solely for purposes of calculating DNI, the share receiving the distribution increases its gross income by the same amount. The distribution has the same character in the hands of the recipient share as in the hands of the distributing share. The following example illustrates the provisions of this paragraph (e)(2)(iii)(B):

*Example.* (i) A's will provides that, after the payment of debts, expenses, and taxes, the residue of A's estate is to be distributed to Trust, an electing trust. The sole beneficiary of Trust is C. The estate share has $15,000 of gross income, $5,000 of deductions, and $10,000 of taxable income and DNI for the taxable year based on the assets held in A's estate. During the taxable year, A's estate distributes $15,000 to Trust. The distribution reduces the DNI of the estate share by $10,000.

(ii) For the same taxable year, the trust share has $25,000 of gross income and $5,000 of deductions. None of the modifications provided for under section 643(a) apply. In calculating the DNI for the trust share, the gross income of the trust share is increased by $10,000, the amount of the reduction in the DNI of the estate share as a result of the distribution to Trust. Thus, solely for purposes of calculating DNI, the trust share has gross income of $35,000, and taxable income of $30,000. Therefore, the trust share has $30,000 of DNI for the taxable year.

(iii) During the same taxable year, Trust distributes $35,000 to C. The distribution deduction reported on the Form 1041 filed for A's estate and Trust is $30,000. As a result of the distribution by Trust to C, C must include $30,000 in gross income for the taxable year. The gross income reported on the Form 1041 filed for A's estate and Trust is $40,000.

(iv) *Application of the governing instrument requirement of section 642(c).* A deduction is allowed in computing the taxable income of the combined electing trust and related estate to the extent permitted under section 642(c) for—

(A) Any amount of the gross income of the related estate that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the related estate for a purpose specified in section 170(c); and

(B) Any amount of gross income of the electing trust that is paid or set aside during the taxable year pursuant to the terms of the governing instrument of the electing trust for a purpose specified in section 170(c).

(3) *If there is no executor*—(i) *Tax treatment of the electing trust.* If there is no executor, the trustee treats the electing trust, during the election period, as an estate for all purposes of subtitle A of the Internal Revenue Code. Thus, for example, an electing trust is treated as an estate for purposes of the set-aside deduction under section 642(c)(2), the subchapter S shareholder requirements of section 1361(b)(1), and the special offset for rental real estate activities under section 469(i)(4). The trustee may also adopt a taxable year other than a calendar year.

(ii) *Filing the Form 1041 for the electing trust.* If there is no executor, the trustee of the electing trust must, during the election period, file a Form 1041, under the TIN obtained by the trustee under § 301.6109–1(a)(3) of this chapter upon the death of the decedent, treating the trust as an estate. If there is more than one electing trust, the Form 1041 must be filed by the filing trustee (see paragraph (c)(2)(ii)(B) of this section) under the name and TIN of the electing trust of the filing trustee. Information regarding the names and TINs of the other electing trusts must be provided on the Form 1041 as required by the instructions to that form. Any return filed in accordance with this paragraph shall be treated as a return filed for the electing trust (or trusts, if there is more than one electing trust) and not as a return filed for any subsequently discovered related estate. Accordingly, the period of limitations provided in section 6501 for assessments with respect to a subsequently discovered related estate does not start until a return is filed with respect to the related estate. See paragraph (g) of this section.

(4) *Application of the section 6654(l)(2) to the electing trust.* Each electing trust and related estate (if any) is treated as a separate taxpayer for all purposes of subtitle F of the Internal Revenue Code, including, without limitation, the application of section 6654. The provisions of section 6654(l)(2)(A) relating to the two year exception to an estate's obligation to make estimated tax payments, however, will apply to each electing trust for which a section 645 election has been made.

(f) *Duration of election period*—(1) *In general.* The election period begins on

the date of the decedent's death and terminates on the earlier of the day on which both the electing trust and related estate, if any, have distributed all of their assets, or the day before the applicable date. The election does not apply to successor trusts (trusts that are distributees under the trust instrument).

(2) *Definition of applicable date*—(i) *Applicable date if no Form 706 ''United States Estate (and Generation Skipping Transfer) Tax Return'' is required to be filed.* If a Form 706 is not required to be filed as a result of the decedent's death, the applicable date is the day which is 2 years after the date of the decedent's death.

(ii) *Applicable date if a Form 706 is required to be filed.* If a Form 706 is required to be filed as a result of the decedent's death, the applicable date is the later of the day that is 2 years after the date of the decedent's death, or the day that is 6 months after the date of final determination of liability for estate tax. Solely for purposes of determining the applicable date under section 645, the date of final determination of liability is the earliest of the following—

(A) The date that is six months after the issuance by the Internal Revenue Service of an estate tax closing letter, unless a claim for refund with respect to the estate tax is filed within twelve months after the issuance of the letter;

(B) The date of a final disposition of a claim for refund, as defined in paragraph (f)(2)(iii) of this section, that resolves the liability for the estate tax, unless suit is instituted within six months after a final disposition of the claim;

(C) The date of execution of a settlement agreement with the Internal Revenue Service that determines the liability for the estate tax;

(D) The date of issuance of a decision, judgment, decree, or other order by a court of competent jurisdiction resolving the liability for the estate tax unless a notice of appeal or a petition for certiorari is filed within 90 days after the issuance of a decision, judgment, decree, or other order of a court; or

(E) The date of expiration of the period of limitations for assessment of the estate tax provided in section 6501.

(iii) *Definition of final disposition of claim for refund.* For purposes of paragraph (f)(2)(ii)(B) of this section, a claim for refund shall be deemed finally disposed of by the Secretary when all items have been either allowed or disallowed. If a waiver of notification with respect to disallowance is filed with respect to a claim for refund prior to disallowance of the claim, the claim for refund will be treated as disallowed on the date the waiver is filed.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

*Example 1. A* died on October 20, 2002. The executor of *A*'s estate and the trustee of Trust, an electing trust, made a section 645 election. A Form 706 is not required to be filed as a result of *A*'s death. The applicable date is October 20, 2004, the day that is two years after *A*'s date of death. The last day of the election period is October 19, 2004. Beginning October 20, 2004, Trust will no longer be treated and taxed as part of *A*'s estate.

*Example 2.* Assume the same facts as *Example 1,* except that a Form 706 is required to be filed as the result of *A*'s death. The Internal Revenue Service issues an estate tax closing letter accepting the Form 706 as filed on March 15, 2005. The estate does not file a claim for refund by March 15, 2006, the day that is twelve months after the date of issuance of the estate tax closing letter. The date of final determination of liability is September 15, 2005, and the applicable date is March 15, 2006. The last day of the election period is March 14, 2006. Beginning March 15, 2006, Trust will no longer be treated and taxed as part of *A*'s estate.

*Example 3.* Assume the same facts as *Example 1,* except that a Form 706 is required to be filed as the result of *A*'s death. The Form 706 is audited, and a notice of deficiency authorized under section 6212 is mailed to the executor of *A*'s estate as a result of the audit. The executor files a petition in Tax Court. The Tax Court issues a decision resolving the liability for estate tax on December 14, 2005, and neither party appeals within 90 days after the issuance of the decision. The date of final determination of liability is December 14, 2005. The applicable date is June 14, 2006, the day that is six months after the date of final determination of liability. The last day of the election period is June 13, 2006. Beginning June 14, 2006, Trust will no longer be treated and taxed as part of *A*'s estate.

(g) *Executor appointed after the section 645 election is made*—(1) *Effect on the election.* If an executor for the related estate is not appointed until after the trustee has made a valid section 645 election, the executor must agree to the trustee's election, and the IRS must be notified of that agreement by the filing of a revised election form (completed as required by the instructions to that form) within 90 days of the appointment of the executor, for the election period to continue past the date of appointment of the executor. If the executor does not agree to the election or a revised election form is not timely filed as required by this paragraph, the election period terminates the day before the appointment of the executor. If the IRS issues other guidance after December 24, 2002 for notifying the IRS of the executor's agreement to the election, the IRS must be notified in the manner provided in that guidance for the election period to continue.

(2) *Continuation of election period*—(i) *Correction of returns filed before executor appointed.* If the election period continues under paragraph (g)(1) of this section, the executor of the related estate and the trustee of each electing trust must file amended Forms 1041 to correct the Forms 1041 filed by the trustee before the executor was appointed. The amended Forms 1041 must be filed under the name and TIN of the electing trust and must reflect the items of income, deduction, and credit of the related estate and the electing trust. The name and TIN of the related estate must be provided on the amended Forms 1041 as required in the instructions to that Form. The amended return for the taxable year ending immediately before the executor was appointed must indicate that this Form 1041 is a final return. If the period of limitations for making assessments has expired with respect to the electing trust for any of the Forms 1041 filed by the trustee, the executor must file Forms 1041 for any items of income, deduction, and credit of the related estate that cannot be properly included on amended forms for the electing trust. The personal exemption under section 642(b) is not permitted to be taken on these Forms 1041 filed by the executor.

(ii) *Returns filed after the appointment of the executor.* All returns filed by the combined electing trust and related estate after the appointment of the executor are to be filed under the name and TIN of the related estate in accordance with paragraph (e)(2) of this section. Regardless of the change in the name and TIN under which the Forms 1041 for the combined electing trust and related estate are filed, the combined electing trust and related estate will be treated as the same entity before and after the executor is appointed.

(3) *Termination of the election period.* If the election period terminates under paragraph (g)(1) of this section, the executor must file Forms 1041 under the name and TIN of the estate for all taxable years of the related estate ending after the death of the decedent. The trustee of the electing trust is not required to amend any returns filed for the electing trust during the election period. Following termination of the election period, the trustee of the electing trust must obtain a new TIN. See § 301.6109–1(a)(4) of this chapter.

(h) *Treatment of an electing trust and related estate following termination of the election*—(1) *The share (or shares) comprising the electing trust is deemed to be distributed upon termination of the election period.* On the close of the last day of the election period, the combined electing trust and related

estate, if there is an executor, or the electing trust, if there is no executor, is deemed to distribute the share (or shares, as determined under section 663(c)) comprising the electing trust to a new trust in a distribution to which sections 661 and 662 apply. All items of income, including net capital gains, that are attributable to the share (or shares) comprising the electing trust are included in the calculation of the distributable net income of the electing trust and treated as distributed by the combined electing trust and related estate, if there is an executor, or by the electing trust, if there is no executor, to the new trust. The combined electing trust and related estate, if there is an executor, or the electing trust, if there is no executor, is entitled to a distribution deduction to the extent permitted under section 661 in the taxable year in which the election period terminates as a result of the deemed distribution. The new trust shall include the amount of the deemed distribution in gross income to the extent required under section 662.

(2) *Filing of the Form 1041 upon the termination of the section 645 election*—(i) *If there is an executor*—(A) *Filing the Form 1041 for the year of termination.* If there is an executor, the Form 1041 filed under the name and TIN of the related estate for the taxable year in which the election terminates includes—

(*1*) The items of income, deduction, and credit of the electing trust attributable to the period beginning with the first day of the taxable year of the combined electing trust and related estate and ending with the last day of the election period;

(*2*) The items of income, deduction, and credit, if any, of the related estate for the entire taxable year; and

(*3*) A deduction for the deemed distribution of the share (or shares) comprising the electing trust to the new trust as provided for under paragraph (h)(1) of this section.

(B) *Requirement to file a final Form 1041 under the name and TIN of the electing trust.* If the electing trust terminates during the election period, the trustee of the electing trust must file a Form 1041 under the name and TIN of the electing trust and indicate that the return is a final return to notify the IRS that the electing trust is no longer in existence. The items of income, deduction, and credit of the trust are not reported on this final Form 1041 but on the appropriate Form 1041 filed for the combined electing trust and related estate.

(ii) *If there is no executor.* If there is no executor, the taxable year of the electing trust closes on the last day of the election period. A Form 1041 is filed in the manner prescribed under paragraph (e)(3)(ii) of this section reporting the items of income, deduction, and credit of the electing trust for the short period ending with the last day of the election period. The Form 1041 filed under this paragraph includes a distribution deduction for the deemed distribution provided for under paragraph (h)(1) of this section. The Form 1041 must indicate that it is a final return.

(3) *Use of TINs following termination of the election*—(i) *If there is an executor.* Upon termination of the section 645 election, a former electing trust may need to obtain a new TIN. See § 301.6109–1(a)(4) of this chapter. If the related estate continues after the termination of the election period, the related estate must continue to use the TIN assigned to the estate during the election period.

(ii) *If there is no executor.* If there is no executor, the former electing trust must obtain a new TIN if the trust will continue after the termination of the election period. See § 301.6109–1(a)(4) of this chapter.

(4) *Taxable year of estate and trust upon termination of the election*—(i) *Estate*—Upon termination of the section 645 election period, the taxable year of the estate is the same taxable year used during the election period.

(ii) *Trust.* Upon termination of the section 645 election, the taxable year of the new trust is the calendar year. See section 644.

(i) *Reserved.*

(j) *Effective date.* Paragraphs (a), (b), (c), (d), (f), and (g) of this section apply to trusts and estates of decedents dying on or after December 24, 2002. Paragraphs (e) and (h) of this section apply to taxable years ending on or after December 24, 2002.

6. Section 1.671–4 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for newly designated paragraph (d)(1).

2. Paragraph (d)(2) is added.

3. Paragraphs (h) and (i) are redesignated as paragraphs (i) and (j), respectively.

4. New paragraph (h) is added.

5. The text of newly designated paragraph (i)(1) is revised.

6. Paragraph (i)(3) is added.

The additions and revisions read as follows:

**§ 1.671–4 Method of reporting.**

* * * * *

(d) *Due date and other requirements with respect to statement required to be furnished by trustee*—(1) *In general.*

* * *

(2) *Statement for the taxable year ending with the death of the grantor or other person treated as the owner of the trust.* If a trust ceases to be treated as owned by the grantor, or other person, by reason of the death of that grantor or other person (decedent), the due date for the statement required to be furnished for the taxable year ending with the death of the decedent shall be the date specified by section 6034A(a) as though the decedent had lived throughout the decedent's last taxable year. See paragraph (h) of this section for special reporting rules for a trust or portion of the trust that ceases to be treated as owned by the grantor or other person by reason of the death of the grantor or other person.

* * * * *

(h) *Reporting rules for a trust, or portion of a trust, that ceases to be treated as owned by a grantor or other person by reason of the death of the grantor or other person*—(1) *Definition of decedent.* For purposes of this paragraph (h), the *decedent* is the grantor or other person treated as the owner of the trust, or portion of the trust, under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code on the date of death of that person.

(2) *In general.* The provisions of this section apply to a trust, or portion of a trust, treated as owned by a decedent for the taxable year that ends with the decedent's death. Following the death of the decedent, the trust or portion of a trust that ceases to be treated as owned by the decedent, by reason of the death of the decedent, may no longer report under this section. A trust, all of which was treated as owned by the decedent, must obtain a new TIN upon the death of the decedent, if the trust will continue after the death of the decedent. See § 301.6109–1(a)(3)(i) of this chapter for rules regarding obtaining a TIN upon the death of the decedent.

(3) *Special rules*—(i) *Trusts reporting pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death.* The due date for the filing of a return pursuant to paragraph (a) of this section for the taxable year ending with the decedent's death shall be the due date provided for under § 1.6072–1(a)(2). The return filed under this paragraph for a trust all of which was treated as owned by the decedent must indicate that it is a final return.

(ii) *Trust reporting pursuant to paragraph (b)(2)(B) of this section for the taxable year of the decedent's death.* A trust that reports pursuant to paragraph (b)(2)(B) of this section for the

taxable year ending with the decedent's death must indicate on each Form 1096 ''Annual Summary and Transmittal of the U.S. Information Returns'' that it files (or appropriately on magnetic media) for the taxable year ending with the death of the decedent that it is the final return of the trust.

(iii) *Trust reporting under paragraph (b)(3) of this section.* If a trust has been reporting under paragraph (b)(3) of this section, the trustee may not report under that paragraph if any portion of the trust has a short taxable year by reason of the death of the decedent and the portion treated as owned by the decedent does not terminate on the death of the decedent.

(i) *Effective date and transition rule*—(1) *Effective date.* The trustee of a trust any portion of which is treated as owned by one or more grantors or other persons must report pursuant to paragraphs (a), (b), (c), (d)(1), (e), (f), and (g) of this section for taxable years beginning on or after January 1, 1996.

* * * * *

(3) *Effective date for paragraphs (d)(2) and (h) of this section.* Paragraphs (d)(2) and (h) of this section apply for taxable years ending on or after December 24, 2002.

7. Section 1.6012–3 is amended by adding paragraph (a)(1)(iv) to read as follows:

**§ 1.6012–3 Returns by fiduciaries.**

(iv) For each trust electing to be taxed as, or as part of, an estate under section 645 for which a trustee acts, and for each related estate joining in a section 645 election for which an executor acts, if the aggregate gross income of the electing trust(s) and related estate, if any, joining in the election for the taxable year is $600 or more. (For the respective filing requirements of the trustee of each electing trust and executor of any related estate, see § 1.645–1).

* * * * *

8. Section 1.6072–1 is amended as follows:

1. The text of paragraph (a) is redesignated as paragraph (a)(1) and a paragraph heading is added for newly designated paragraph (a)(1).

2. Paragraph (a)(2) is added.

The additions are as follows:

**§ 1.6072–1 Time for filing returns of individuals, estates, and trusts.**

(a) *In general*—(1) *Returns of income for individuals, estates and trusts.* * * *

(2) *Return of trust, or portion of a trust, treated as owned by a decedent*—(i) *In general.* In the case of a return of a trust, or portion of a trust, that was treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the date of the decedent's death that is filed in accordance with § 1.671–4(a) for the fractional part of the year ending with the date of the decedent's death, the due date of such return shall be the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of the decedent's taxable year.

(ii) *Effective date.* This paragraph (a)(2) applies to taxable years ending on or after December 24, 2002.

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

9. The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

10. Section 301.6109–1 is amended as follows:

1. Paragraph (a)(2)(iii) is removed.

2. Paragraphs (a)(3) through (a)(6) are added.

The additions are as follows:

**§ 301.6109–1 Identifying numbers.**

(a) * * *

(3) *Obtaining a taxpayer identification number for a trust, or portion of a trust, following the death of the individual treated as the owner*—(i) *In general*—(A) *A trust all of which was treated as owned by a decedent.* In general, a trust all of which is treated as owned by a decedent under subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code as of the date of the decedent's death must obtain a new taxpayer identification number following the death of the decedent if the trust will continue after the death of the decedent.

(B) *Taxpayer identification number of trust with multiple owners.* With respect to a portion of a trust treated as owned under subpart E (section 671 and following), part I, subchapter J, chapter 1 (subpart E) of the Internal Revenue Code by a decedent as of the date of the decedent's death, if, following the death of the decedent, the portion treated as owned by the decedent remains part of the original trust and the other portion (or portions) of the trust continues to be treated as owned under subpart E by a grantor(s) or other person(s), the trust reports under the taxpayer identification number assigned to the trust prior to the decedent's death and the portion of the trust treated as owned by the decedent prior to the decedent's death (assuming the decedent's portion of the trust is not treated as terminating upon the decedent's death) continues to report under the taxpayer identification number used for reporting by the other portion (or portions) of the trust. For example, if a trust, reporting under § 1.671–4(a) of this chapter, is treated as owned by three persons and one of them dies, the trust, including the portion of the trust no longer treated as owned by a grantor or other person, continues to report under the tax identification number assigned to the trust prior to the death of that person. See § 1.671–4(a) of this chapter regarding rules for filing the Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' where only a portion of the trust is treated as owned by one or more persons under subpart E.

(ii) *Furnishing correct taxpayer identification number to payors following the death of the decedent.* If the trust continues after the death of the decedent and is required to obtain a new taxpayer identification number under paragraph (a)(3)(i)(A) of this section, the trustee must furnish payors with a new Form W–9, ''Request for Taxpayer Identification Number and Certification,'' or an acceptable substitute Form W–9, containing the new taxpayer identification number required under paragraph (a)(3)(i)(A) of this section, the name of the trust, and the address of the trustee.

(4) *Taxpayer identification number to be used by a trust upon termination of a section 645 election*—(i) *If there is an executor.* Upon the termination of the section 645 election period, if there is an executor, the trustee of the former electing trust may need to obtain a taxpayer identification number. If § 1.645–1(g) of this chapter regarding the appointment of an executor after a section 645 election is made applies to the electing trust, the electing trust must obtain a new TIN upon termination of the election period. See the instructions to the Form 1041 for whether a new taxpayer identification number is required for other former electing trusts.

(ii) *If there is no executor.* Upon termination of the section 645 election period, if there is no executor, the trustee of the former electing trust must obtain a new taxpayer identification number.

(iii) *Requirement to provide taxpayer identification number to payors.* If the trustee is required to obtain a new taxpayer identification number for a former electing trust pursuant to this paragraph (a)(4), or pursuant to the instructions to the Form 1041, the trustee must furnish all payors of the trust with a completed Form W–9 or acceptable substitute Form W–9 signed under penalties of perjury by the trustee providing each payor with the name of

the trust, the new taxpayer identification number, and the address of the trustee.

(5) *Persons treated as payors.* For purposes of paragraphs (a)(2), (3), and (4) of this section, a *payor* is a person described in §§ 1.671–4(b)(4) of this chapter.

(6) *Effective date.* Paragraphs (a)(3), (4), and (5) of this section apply to trusts of decedents dying on or after December 24, 2002.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

11. The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

12. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.645–1 | 1545–1578 |
| * * * * * | |

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: December 12, 2002.

**Pamela T. Olson,**

*Assistant Secretary of Treasury.*

[FR Doc. 02–32149 Filed 12–23–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

**RIN 1506–AA35**

## Financial Crimes Enforcement Network; Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to extend the time by which certain financial institutions must obtain information from each foreign bank for which they maintain a correspondent account concerning the foreign bank's status as ''shell'' bank, whether the foreign bank provides banking services to foreign shell banks, certain owners of the foreign bank, and the identity of a person in the United States to accept service of legal process.

**DATES:** This final rule is effective December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480, or Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On September 26, 2002, FinCEN published a final rule (67 FR 60562) implementing sections 313(a) and 319(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the Act). Section 313(a) of the Act added subsection (j) to 31 U.S.C. 5318, which prohibits a ''covered financial institution'' from providing ''correspondent accounts'' in the United States to foreign banks that do not have a physical presence in any country (foreign shell banks). Section 313(a) also requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. Section 319(b) of the Act added subsection (k) to 31 U.S.C. 5318, which requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank's owners and to maintain the name and address of an agent in the United States designated to accept service of legal process for the foreign bank for records regarding the correspondent account.

The September 26, 2002, final rule provided that a covered financial institution could satisfy the requirements of section 313(a) and 319(b) by obtaining from a foreign bank a certification that contained the necessary information, or by otherwise obtaining documentation of the required information. With respect to correspondent accounts that existed on October 28, 2002, the final rule required a covered financial institution to close a correspondent account, within a commercially reasonable time, if the covered financial institution did not receive the certification from the foreign bank, or otherwise obtain documentation of the required information, on or before December 26, 2002.

A significant number of covered financial institutions, principally in the securities industry, have noted that the December 26, 2002, deadline to obtain the required information is proving to be inadequate. Many securities firms indicated that providing an effective explanation of their duties under the Act to a wide variety of foreign banks, which may speak different languages and operate in different ways than their U.S. counterparts, has, in some cases, lengthened the process. Moreover, the broad definition of a correspondent account found in the final rule has increased the number of accounts subject to these requirements and, consequently, has increased the burden on U.S. banks and broker-dealers to secure the required information. Finally, because the Act has generally increased the overall level of regulatory requirements for securities firms and depository institutions, they have been managing an increased overall workload as a result of additional regulations, within a finite set of resources. For these reasons, the process of gathering the necessary information to comply with section 313(a) and 319(b) of the Act is taking longer than the time provided in the September 28 final rule.

### II. The Current Rulemaking

This rule extends the time by which a covered financial institution must obtain the information required to satisfy the requirements of sections 313(a) and 319(b) from December 26, 2002, to March 31, 2003. Treasury and FinCEN do not anticipate granting a further extension beyond March 31 and expect that covered financial institutions will comply with the September 26, 2002, final rule with respect to correspondent accounts established for foreign banks that have not provided the required information by that date.

### III. Procedural Requirements

Because this rule extends the time by which a covered financial institution must obtain the information necessary to satisfy the requirements of section 313(a) and 319(b) of the Act before taking actions to terminate a correspondent account, it has been determined that notice and public procedure are unnecessary pursuant to 5 U.S.C. 553 (b)(B) and that a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1).

It has been determined that this rule is not a significant regulatory action for

purposes of 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.

**List of Subjects in 31 CFR Part 103**

Banks and banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.177 is amended by revising paragraph (d)(1) to read as follows:

**§ 103.177 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.**

* * * * *

(d) *Closure of correspondent accounts.* (1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

* * * * *

Dated: December 18, 2002.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 02–32333 Filed 12–23–02; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF THE TREASURY

## Fiscal Service

## 31 CFR Part 352

## Offering of United States Savings Bonds, Series HH

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This Final Rule amends the offering of Series HH United States Savings Bonds to permit the investment yield to be changed by announcement by the Secretary of the Treasury or the Secretary's designee. The change affects bonds that are issued or enter into an extended maturity period on or after January 1, 2003. Permitting the investment yield to be set by announcement provides flexibility in reflecting changes in prevailing interest rates.

**EFFECTIVE DATE:** January 1, 2003.

**ADDRESSES:** You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*

Edward Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *edward.gronseth@bpd.treas.gov.*

**SUPPLEMENTARY INFORMATION:** We are amending the offering regulations for United States Savings Bonds of Series HH. Effective January 1, 2003, the investment yield for Series HH savings bonds that are issued or enter into an extended maturity period on or after January 1, 2003, will be set by announcement by the Secretary or the Secretary's designee. We are also removing the table at the end of the offering regulations, since the information contained in the table will change with each announcement of change in the investment yield.

Currently, the investment yield must be changed by an amendment to the regulations.

The purpose of permitting the investment yield to be set by announcement is to provide greater flexibility for the Secretary in responding to market conditions and prevailing interest rates.

**Procedural Requirements**

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

**List of Subjects in 31 CFR Part 352**

Bonds, Government securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

## PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

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

**Authority:** 31 U.S.C. 3105, 5 U.S.C. 301.

2. Amend § 352.2 as follows:

a. Redesignate current paragraphs (e)(1)(i) through (e)(1)(vii) as paragraphs (e)(1)(ii) through (e)(1)(viii);

b. Add new paragraph (e)(1)(i);

c. Revise redesignated paragraph (e)(1)(ii); and

d. Revise paragraph (e)(2). The addition and revisions read as follows:

**§ 352.2 Description of bonds.**

* * * * *

(e) *Investment yield (interest).*—(1) *During original maturity.* The investment yields for Series HH bonds during their original maturity periods are as specified in paragraphs (e)(1)(i) and (ii) of this section.

(i) *Bonds with issue dates of January 1, 2003, and thereafter.* The investment yield applicable to Series HH bonds issued on or after January 1, 2003, will be furnished in rate announcements by the Secretary or the Secretary's designee. The rate announced will apply to bonds issued during the period covered by the announcement.

(ii) *Bonds with issue dates of March 1, 1993, through December 1, 2002.*

Series HH bonds with issue dates of March 1, 1993, through December 1, 2002, yield 4 percent per annum, paid semiannually, to original maturity.

* * * * *

(2) *During extended maturity.* The investment yields for Series HH bonds during their extended maturity periods are as specified in paragraphs (e)(2)(i), (ii), and (iii) of this section.

(i) *Bonds that enter an extended maturity period on or after January 1, 2003.* The investment yield applicable to Series HH bonds that enter an extended maturity period on or after January 1, 2003, will be furnished in rate announcements by the Secretary or the Secretary's designee. The rate announced will apply to bonds that enter an extended maturity period during the period covered by the announcement.

(ii) *Bonds that entered an extended maturity period from March 1, 1993, through December 1, 2002.* The investment yield applicable to Series HH bonds that entered an extended maturity period from March 1, 1993, through December 1, 2002, is 4 percent per annum, paid semiannually.

(iii) *Bonds that entered an extended maturity period from January 1, 1990, through February 1, 1993.* The investment yield applicable to Series HH bonds that entered into an extended maturity period from January 1, 1990, through February 1, 1993, is 6 percent per annum, paid semiannually.

* * * * *

3. Remove Table 1 at the end of part 352.

Dated: November 19, 2002.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 02–32378 Filed 12–19–02; 1:33 pm]

BILLING CODE 4810–39–P

---

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–02–526]**

**RIN 2115–AA97**

## Safety Zone; Lake Michigan, Chicago, IL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the City of Chicago New Year's Celebration Fireworks in Monroe Harbor, Chicago, Illinois. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Chicago, Illinois.

**DATES:** This rule is effective from 11:55 p.m. (local), December 31, 2002 until 12:20 a.m. (local), January 1, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–526] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST3 Kathryn Varela, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

### Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass the waters of Lake Michigan within the arc of a circle with a 1400-foot radius from the fireworks launch site in Monroe Street Harbor with its center in the approximate position 41°52′41″ N, 087°36′37″ W. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or his designated on-scene representative. The designated on-scene representative may be contacted on VHF/FM Marine Channel 16. All geographic coordinates are North American Datum of 1983 (NAD 83).

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This regulation will not have a significant economic impact for the following reasons. The regulation is only in effect for less then one hour. The designated area is being established to allow for maximum use of the waterway for vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the safety zone. The Coast Guard will inform the public that

the regulation is in effect via a Broadcast Notice to Mariners.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

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

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

**List of Subjects in 33 CFR Part 165**

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–526 is added to read as follows:

**§ 165.T09–526 Safety Zone; Lake Michigan, Chicago, IL.**

(a) *Location.* The safety zone will encompass the waters of Lake Michigan within the arc of a circle with a 1400-foot radius from the fireworks launch site in Monroe Street Harbor with its center in approximate position 41°52′41″ N, 087°36′37″ W (NAD 1983).

(b) *Effective time and date.* This section is effective from 11:55 p.m. (local) December 31, 2002 until 12:20 a.m. (local), on January 1, 2003.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or his designated on-scene representative.

Dated: December 15, 2002.

**R.E. Seebald,**

*Captain, Coast Guard, Captain of the Port Chicago.*

[FR Doc. 02–32408 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–15–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–3213; MM Docket No. 01–215, RM–10228; MM Docket No. 01–252, RM–10275; MM Docket No. 01–212, RM 10222; MM Docket No. 01–210. RM–10225; MM Docket No. 01–214, RM–10227; MM Docket No. 01–304, RM–10309; and MM Docket No. 01–305, RM-10310.]**

## Radio Broadcasting Services; Sparkman, AR; Moberly, MO; Kiowa, OK; Crowell, Menard, and San Isidro, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants six proposals that allot new FM channels to Sparkman, Arkansas; Moberly, Missouri; Kiowa, Oklahoma; Menard and San Isidro, Texas It also dismisses, at the petitioner's request, a petition for rule making requesting the allotment of

Channel 293C3 at Crowell, Texas. Filing windows for Channel 259A at Sparkman, Arkansas; Channel 223A at Moberly, Missouri; Channel 254A at Kiowa, Oklahoma; Channels 242A and 287C3 at Menard, Texas; and Channel 247A at San Isidro, Texas, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order. *See* **SUPPLEMENTARY INFORMATION.**

**DATES:** Effective January 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in MM Docket No. 01–215, MM Docket No. 01–252, MM Docket No. 01–212, MM Docket No. 01–210, MM Docket No. 01–214, MM Docket No. 01–304, and MM Docket No. 01–305 adopted December 4, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail *qualexint@aol.com*.

The Commission, at the request of Big Country Radio, Inc. and Jeraldine Anderson, allots Channel 259A at Sparkman, Arkansas, as the community's first local aural transmission service. *See* 66 FR 47433 (September 12, 2001). Channel 259A can be allotted at Sparkman in compliance with the Commission's minimum distance separation requirements with no site restrictions. The coordinates for Channel 259A at Sparkman are 33–55–00 North Latitude and 92–50–53 West Longitude.

The Commission, at the request of Charles Crawford, allots Channel 223A at Moberly, Missouri, as the community's sixth local aural transmission service. *See* 66 FR 50602 (October 4, 2001). Channel 223A can be allotted to Moberly in compliance with the Commission's minimum distance separation requirements with no site restrictions. The coordinates for Channel 223A at Moberly are 39–25–06 North Latitude and 92–26–17 West Longitude.

The Commission, at the request of Maurice Salsa, allots Channel 254A at Kiowa, Oklahoma, as the community's first local aural transmission service. *See* 66 FR 47433 (September 12, 2001). Channel 254A can be allotted to Kiowa in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) west of Kiowa. The coordinates for Channel 254A at Kiowa are 34–42–23 North Latitude and 95–58–48 West Longitude.

The Commission, at the request of Katherine Pyeatt in MM Docket No. 01–210, dismisses her petition for rule making requesting the allotment of Channel 293C3 at Crowell, Texas.

The Commission, at the request of Katherine Pyeatt, allots Channel 242A at Menard, Texas, as the community's second local aural transmission service. *See* 66 FR 47433 (September 12, 2001). Channel 242A can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.8 kilometers (7.3 miles) northwest of Menard. The coordinates for Channel 242A at Menard are 30–59–47 North Latitude and 99–52–06 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 287C3 at Menard, Texas, as the community's third local aural transmission service. *See* 66 FR 54971 (October 31, 2001). Channel 287C3 can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) southwest of Menard. The coordinates for Channel 287C3 at Menard are 30–52–29 North Latitude and 99–54–00 West Longitude.

The Commission, at the request of Jeraldine Anderson, allots Channel 247A at San Isidro, Texas, as that community's first local aural transmission service. *See* 66 FR 54971 (October 31, 2001). Channel 247A can be allotted to San Isidro in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) northeast of San Isidro. The coordinates for Channel 247A at San Isidro are 26–45–00 North Latitude and 98–26–00 West Longitude.

### List of Subjects in 47 CFR Part 73

Radio, 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 Sparkman, Channel 259A.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 223A at Moberly.

4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Kiowa, Channel 254A.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channels 242A and 287C3 at Menard, and San Isidro, Channel 247A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division Media Bureau.*

[FR Doc. 02–32290 Filed 12–23–02; 8:45 am]

**BILLING CODE 6712–01–P**

---

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 73 and 76

**[MM Docket No. 98–204, FCC 02–303]**

**RIN 4223**

## Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment and reply comment period.

**SUMMARY:** In this document, the Media Bureau (Bureau) extends the comment and reply comments filing deadline in this docket. The intended effect of this action is to allow additional time in which to file comments and reply comments.

**DATES:** Comments are due January 16, 2003, and reply comments are due February 3, 2003.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Estella Salvatierra, Media Bureau. (202) 418–1789.

**SUPPLEMENTARY INFORMATION:**

1. This is a synopsis of the Media Bureau's *Order* granting an extension of time for filing comments and reply comments in *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, DA 02–3525, released December 19, 2002.

2. On November 20, 2002, the Commission released a *Third Notice of Proposed Rule Making*, MM Docket No. 98–204, FCC 02–303, 67 FR 77373 (December 17, 2002) (*Third NPRM*) requesting comments on the appropriate treatment of part-time employees under the Commission's Equal Employment Opportunity rules. Deadlines for comments and reply comments were December 20, 2002, and January 6, 2003, respectively. Notice of the new rulemaking proceeding was not, however, published in the **Federal Register** until December 17, 2002. In order to ensure that all parties have adequate notice of the rulemaking, the Bureau is extending these deadlines until January 16, 2003, for comments and February 3, 2003, for reply comments.

3. *Accordingly, it is Ordered* that the date for filing comments and reply comments in this proceeding *is Extended* to January 16, 2003, and February 3, 2003, respectively.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r), and §§ 0.204(b), 0.283 and 1.46 of the Commission's rules, 47 CFR 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

**Deborah E. Klein,**

*Chief of Staff, Media Bureau.*

[FR Doc. 02–32474 Filed 12–19–02; 4:57 pm]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 199

**[Docket RSPA–97–2995; Notice 10]**

### Pipeline Drug Testing; Random Testing Rate

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of minimum annual percentage rate for random drug testing.

**SUMMARY:** Each year pipeline operators randomly select employees to test for prohibited drugs. The number of selections may not be less than the minimum annual percentage rate we determine, either 50 percent or 25 percent of covered employees, based on the industry's positive rate of random tests. In accordance with applicable standards, we have determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2001 is less than 1.0 percent. (*See* **SUPPLEMENTARY INFORMATION.**) Therefore, in calendar year 2003, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

**DATES:** Effective January 1, 2003, through December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** L.M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:** Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines ''positive rate'' as ''the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *''

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing done in calendar year 2001, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2003, through December 31, 2003.

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 17, 2002.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 02–32269 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 223

**[Docket 020626160–2309–03; I.D. 061902C]**

**RIN 0648–AQ13**

### Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS is issuing an interim final rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′ N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery correlates to the area and season being fished during these oceanographic conditions. Time and area closures will result in a reduction in the take of loggerhead turtles by the fishery and are necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead population.

**DATES:** This interim final rule is effective January 23, 2003. Comments on this interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Standard Time, on

February 7, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

**ADDRESSES:** Send comments on this interim final rule to Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment (EA) and biological opinion (BO) are available on the internet at *http://swr.ucsd.edu/* or may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

**SUPPLEMENTARY INFORMATION:** All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The loggerhead (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations (50 CFR 223.205), taking threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of threatened species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. In order for an incidental take statement to be issued, the incidental take must be not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

To authorize this incidental take of marine mammals listed under the ESA, NMFS completed a formal consultation as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerhead turtles. On October 23, 2000, NMFS issued a BO in which it determined that the then current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead turtles, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of prohibiting CA/OR drift gillnet vessels from fishing in U.S. waters off southern California, south of Point Conception (34°27′ N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, during a forecasted, or occurring, El Nino event. On September 20, 2002, NMFS published a proposed rule (67 FR 59243) to implement this RPA to protect loggerhead turtles.

## Criteria for Determining El Nino Conditions

Using the sea surface temperature anomaly charts available on the NOAA Coastwatch West Coast Regional Node web page at *http://cwatchwc.ucsd.edu/* and observer data on loggerhead turtle entanglements, NMFS has developed criteria for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure identified in the October 2000 BO. Under the criteria, NMFS uses the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to August or January for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. ''Normal sea surface temperatures'' is the average of the monthly mean sea surface temperatures for 1950–97.

All loggerhead turtles observed entangled in the CA/OR drift gillnet fishery during El Nino events were entangled during months in which the sea surface temperatures ranged from approximately 60°F to 72°F (15.6°C to 22.2°C) and sea surface temperatures differed from the average by approximately 0°F to +4°F (0°C to +2.2°C). The sea surface temperature during the month preceding each observed loggerhead entanglement was either greater than normal or equal to the normal sea surface temperature. The sea surface temperature during the third month and second month prior to each entanglement during an El Nino event was always greater than the normal sea surface temperature for that month. NMFS believes this is because warmer sea surface temperatures are necessary for loggerhead turtles to move into the area. There have been no observed entanglements in this fishery in which any one of the preceding 3 months were colder than normal.

Based on this information, the need to allow sufficient lead time to publish a notice in the **Federal Register** announcing El Nino conditions prior to the start date of the closure, and the fact that the sea surface temperature charts for a recently completed given month are not available until the following month, NMFS is using sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. For example, NMFS evaluates sea surface temperatures for October and November to determine whether El Nino conditions in January will trigger a closure to conserve loggerhead turtles. Specifically, if an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2–month time period are greater than normal, NMFS will publish a **Federal Register** notice with the determination that El Nino conditions are forecast off of southern California for the purpose of implementing the time and area closure to protect loggerhead turtles. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice indicating that El Nino conditions are no longer present for purposes of implementing the closure.

## January 2003 El Nino Determination

On December 12, 2002, NOAA Climate Prediction Center issued an updated El Nino report which indicated that sea surface temperature anomalies increased in equatorial waters. However, sea surface temperatures off of southern California are not expected to attain positive sea surface temperature anomalies until early Spring 2003. Using the criteria set forth above, NMFS has determined that El Nino conditions are not present for purposes of implementing the time and area closure for January 2003. This determination is based on the October and November monthly sea surface temperature anomaly charts which show ocean waters off southern California were -2° and -1°F (-1.1°C and -0.6°C) below normal respectively. Based on these

data, the conditions do not meet the criteria that the preceding second and third month sea surface temperatures prior to the month of January are greater than normal. Therefore, the U.S. waters off southern California, south of Point Conception (34°27′ N.) and west to the 120°W., will remain open to drift gillnet fishing between January 1 through January 31, 2003.

**Alternate Time and Area Closure**

In response to a recommendation by the Pacific Offshore Cetacean Take Reduction Team (TRT), NMFS conducted a preliminary review of observer data to determine whether an alternate closure in June, July, and August would offer the same or better protection than the closure during January 1 through 31 and August 15 through 31. NMFS reviewed observer data from the two most recent El Nino events (1992/1993 and 1997/1998). Using this information, NMFS reviewed the number of observed entanglements of loggerhead turtles that occurred during the months of January, June, July, and August, and calculated the average interaction rate for each of these months. By averaging the most recent 3 years of fishing effort (1999–2001), NMFS estimated future monthly effort in the fishery and calculated preliminary estimates of loggerhead turtle entanglements by month. Based on limited observer data, preliminary analysis indicates that a closure in June, July, and August may provide the same or better protection for loggerhead turtles. The loggerhead turtle interaction rate is higher during the summer months than in January, but fishing effort is low during the summer months. Also, observer data during the summer months is limited. NMFS is continuing to evaluate this alternate closure and is soliciting comment on this management regime.

**Comments on the Proposed Rule**

NMFS received five letters on the proposed rule. Three were in support of the time and area closure and two were opposed to the time and area closure. In addition, NMFS received comments from the TRT at its May 2002 meeting.

*Comment 1:* One commenter requested that NMFS require fleet-wide satellite vessel monitoring systems as part of the final rule to enforce area closures.

*Response:* Requiring vessels to install vessel monitoring systems was not part of the proposed action or a term and condition of the incidental take statement or RPA. At this time, based on 20 percent observer coverage, California Department of Fish and Game logbook data, review of fish landing tickets, and the cooperation of the U.S. Coast Guard, NMFS does not believe vessel monitoring systems will be necessary to successfully enforce these closures.

*Comment 2:* One commenter requested that NMFS continue its observer program at 20 percent and to continue its support for ongoing research on the distribution of sea turtles in the Pacific Ocean to determine which habitats and migratory routes these species use.

*Response:* NMFS intends to continue monitoring the CA/OR drift gillnet fishery targeting swordfish and thresher shark at 20 percent observer coverage and continue its support for research on the distribution of sea turtles in the Pacific to determine which habitats and migratory routes they use.

*Comment 3:* One commenter felt that NMFS' use of 3,000 sets as an estimate of annual fishing effort in the October 2000 BO was unrealistically high.

*Response:* At the time the BO was prepared, 3,000 sets was a reasonable estimate to predict future fishing effort based on a 3–year average using 1997, 1998, and 1999 data. NMFS is aware that fishing effort has continued to decline. Based on fishing effort estimates prepared by California Department of Fish and Game, the annual number of sets for 2000 and 2001 was 1,936 and 1,482 respectively. For the next consultation on the fishery, NMFS will use updated estimates to predict future fishing effort.

*Comment 4:* One commenter suggested moving the northern boundary of the closed area to 32°45′ N. and the western boundary to 119°30W.

*Response:* Although there have been no observed loggerhead turtles taken in ocean waters north of 32°45′ N. during El Nino events or west of 119°30′ W., this does not mean that loggerhead turtles are not present in this area. Specifically, during El Nino events, NMFS has limited observer data for this area, with only 77 observed sets in the area east of 120°W. and north of 32°45′ N. and 14 sets between 120°W. and 119°30W. south of 32°45′ N. Therefore, the lack of an observed take in this area may be the result of fewer observations in this area during the summer months of El Nino events. Based on the limited data, NMFS believes the proposed boundaries are not unnecessarily broad.

*Comment 5:* One commenter indicated that the time and area closure does not address the incidental take of loggerhead turtles outside of El Nino events.

*Response:* Although one loggerhead turtle was observed taken outside of an El Nino event, NMFS believes this event was an exception and a random event which is not representative of future anticipated takes. Specifically, the animal was taken during a month in which the sea surface temperature was -2°F (-1.1°C) cooler than normal.

*Comment 6:* One commenter expressed concern that the regulations to implement the time and area closure to protect loggerhead turtles were not implemented by August 2001, as recommended in the BO.

*Response:* As explained in previous **Federal Register** notices (66 FR 44549, August 24, 2001; 67 FR 59245, September 20, 2002), the regulations to implement the loggerhead time and area closure need to be in place if El Nino conditions are predicted or are occurring during the month of January or between August 15 and August 31 off the coast of California where loggerhead interactions with the CA/OR drift gillnet fishery have been documented. However, sea surface temperatures off of southern California are not expected to attain positive sea surface temperature anomalies until early Spring 2003.

*Comment 7:* One commenter recommended that the CA/OR drift gillnet fishery be managed using an ecosystem approach rather than a piecemeal approach, like NMFS' actions to date.

*Response:* Although the CA/OR drift gillnet fishery is managed primarily by the State of California, NMFS has implemented regulations under section 118 of the MMPA to reduce the incidental mortality and serious injury of strategic marine mammal stocks based upon the recommendations from the TRT. In addition, NMFS has implemented regulations under the ESA to address the incidental take of listed marine mammal and sea turtle species. In the future, the fishery might be regulated by NMFS under the Highly Migratory Species Fishery Management Plan that has been adopted by the Pacific Regional Fishery Management Council (but has not yet been submitted to, or approved by, NMFS).

*Comment 8:* One commenter requested that NMFS analyze the potential take of listed species such as the blue whale, Guadalupe fur seal, right whale, and sei whale, which are likely to occur inside the area where the fishery operates, although there have been no observed takes of these species in the CA/OR drift gillnet fishery.

*Response:* In completing the analysis in the BO, NMFS used the best available information. NMFS agrees the absence of documented take does not eliminate the possibility of a future take. However, if future takes are detected, these will be addressed in subsequent biological

opinions based on available data at the time.

*Comment 9:* One commenter requested that NMFS complete a formal rulemaking for the implementation of regulations to address the incidental take of green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles as well as the long-term ecosystem impacts of shark mortality associated with the CA/OR drift gillnet fishery.

*Response:* Since the inception of the observer program, NMFS has observed one green turtle and one olive ridley turtle interaction with the CA/OR drift gillnet fishery. Based on these two observations, NMFS is unable to complete meaningful analysis that would lead to useful regulations. The Highly Migratory Species Fishery Management Plan under development by the Pacific Regional Fishery Management Council would, if approved, allow NMFS to manage the fishery for the incidental take of shark species.

*Comment 10:* One commenter requested that NMFS provide a more meaningful definition of El Nino conditions by focusing on the conditions that need to be present in order for an El Nino to be declared for purposes of implementing the time and area closure.

*Response:* NMFS developed criteria outlined in the supplementary information section of this interim final rule.

*Comment 11:* One commenter indicated that the standard used to determine whether El Nino conditions are present in the waters off southern California should include the presence of prey which may affect the migratory patterns of loggerhead turtles in addition to sea surface temperatures.

*Response:* NMFS does not have sufficient real-time data on prey species abundance off southern California to include this parameter as a criteria for determining whether El Nino conditions are present.

*Comment 12:* One commenter indicated that the rule should include a periodic review of oceanic conditions to determine whether the closure to protect loggerhead turtles should be lifted if El Nino conditions are no longer present.

*Response:* As written, the regulatory text of this rule clearly states that the Assistant Administrator will issue a notice when El Nino conditions are no longer present. The criteria that will be used are explained in this preamble, above. To accomplish this, NMFS will conduct a periodic review of oceanic conditions.

*Comment 13:* One commenter proposed that the January closure be replaced with a closure of June, July and August 1 through 14 and that the northern boundary of the closed area be moved to 32°45′ N and the western boundary be moved to 119°30′ W.

*Response:* NMFS is considering adjusting the management regime according to this proposal although the analysis has not been completed. However, preliminary analysis on this recommendation is discussed elsewhere in the Supplementary Information section of this interim final rule. Moving the northern and western boundaries of the area closure is discussed under comment 5.

*Comment 14:* One commenter indicated that NMFS incorrectly calculated the effectiveness of the time and area closure in the BO because NMFS mistakenly included two loggerhead turtles inside the time and area closure when they were actually taken outside of the time and area closure. As a result, the percent reduction in loggerhead interactions with the time and area closure is reduced from 65 percent to 53 percent.

*Response:* NMFS agrees that there were two loggerhead turtles mistakenly reported inside the time and area closure and the correct percent reduction of the time and area closure is 53 percent.

Pacific Offshore Cetacean Take Reduction Team Recommendations

*Comment 15:* The TRT recommended that NMFS implement a time and area closure during the months of June, July, and August instead of August 15 through August 31, and January 1 through January 31. This recommendation was based on the number of loggerhead turtle interactions that have occurred during these months, the limited fishing effort during this time period, and the apparent higher entanglement rate.

*Response:* NMFS is considering this alternative. The preliminary analysis is discussed elswhere in the Supplementary Information section of this interim final rule.

*Comment 16:* The TRT recommended that NMFS more clearly define what constitutes El Nino conditions that trigger loggerhead restrictions. Specifically, the TRT recommended that NMFS determine if there are specific local conditions or a particular strength of an El Nino that correlate with an increased take of loggerhead turtles in the fishery.

*Response:* The criteria NMFS is using to determine El Nino conditions are explained in this interim final rule (see above).

*Comment 17:* The TRT recommended that research be conducted on the movement patterns of loggerhead sea turtles off southern California during El Nino years and their habitat preferences (including water temperature and prey). This information should also be factored into future agency decisions regarding measures for reducing mortality and entanglement of loggerhead turtles.

*Response:* NMFS equipped five loggerhead turtles off Baja California with satellite transmitter tags that provide location and dive data. In addition, NMFS intends to continue tagging loggerhead turtles off Baja California in subsequent years. These data will be used in future agency decisions.

*Comment 18:* If NMFS does not accept the TRT's recommendation to replace the January closure with a closure from June, July, and August 1 to August 14, the TRT recommends that the northern limit of the loggerhead closure area be shifted from Point Conception to 33°N. If a loggerhead entanglement occurs north of 33°N in the CA/OR drift gillnet fishery in an El Nino year, the closure area would revert to Point Conception for that January and August and for that period of subsequent El Nino years.

*Response:* See response to comment 4.

The regulatory text of this interim final rule is identical to the regulatory text of the proposed rule (67 FR 59243, September 20, 2002).

**Classification**

NMFS prepared an EA (August 13, 2001) and a supplement to the EA for this interim final rule and concluded that these regulations would have no significant impact on the human environment. In addition to the status quo and the time and area closures indentified in this interim final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy which would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were not considered further because NMFS could not be certain that singularly or together they would result in a significant reduction in the level of take and mortality of sea turtles.

The actions implemented by this interim final rule are expected to impact approximately 81 CA/OR drift gillnet vessel owners and operators, representing approximately 500 fishing sets annually. For a description and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for this rule which incorporates the regulatory flexibility analysis. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this proposed rule is expected to be $440,000 for an El Nino year. This revenue loss to the fishery is a worst-case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Loggerhead time and area closures during the month of January are expected to have the greatest impact on the fishery because the oceanographic conditions that favor swordfish during January are generally located along the coast. In this scenario, the reduction in total gross revenues is not expected to exceed $5,400 per vessel per El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period between August 15 through August 31, and January 1 through January 31, using data from 1997 to 2000. On average, during these time periods, approximately $6,300 of louvar, $17,700 of mako shark, $20,300 of opah, $345,300 of swordfish, and $49,100 of thresher shark are landed. NMFS did not receive comments on the detailed economic analysis and alternatives on the EA prepared for this interim final rule.

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

This interim final rule has been determined to be significant for purposes of Executive Order 12866.

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerhead turtles. This interim final rule implements the RPA to protect loggerhead turtles. NMFS has determined that the time and area closure identified in the BO is expected to avoid the likelihood of jeopardizing the continued existence of the loggerhead species.

In keeping with the intent of the Executive Order 12612 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

Dated: December 16, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

### List of Subjects in 50 CFR Part 223

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

For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

## PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraph (d)(6) is revised to read as follows:

### § 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery*—

(i) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34°27′ N. (Point Conception, California) and west to 120°W. from January 1 through January 31 and from August 15 through August 31 during a forecasted, or occurring, El Nino event.

(ii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish a notification that an El Nino event is occurring off of or is forecast for the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone in the **Federal Register** and will announce the notification in summary form by other methods as the Assistant Administrator determines are necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, and by the State of California, in order to determine whether to publish such a notice. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

* * * * *

[FR Doc. 02–32302 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 247
Tuesday, December 24, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–CE–27–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. MU–2B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; Withdrawal.

**SUMMARY:** This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The proposed airworthiness directive (AD) would have superseded AD 88–23–01, which currently requires repetitively inspecting torque tube joints for cracks, and, if cracks are found, replacing the joints on all Mitsubishi MU–2B series airplanes. The proposed AD would have required you to replace the existing joints with new improved-design joints as terminating action for the repetitive inspections. The proposed AD was the result of a recent accident investigation that revealed that the improper reinstallation (following an AD 88–23–01 required repetitive inspection) of two cotter pins in the torque tube resulted in a disconnect in the flap drive train. Comments received on the NPRM suggest that the accident was related to human error and AD action is not necessary. We agree that the cause of the accident has been traced to human error, not to hardware failure. Therefore, we are withdrawing the NPRM.

**ADDRESSES:** You may look at information related to this action at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Direct all questions to:

—For the airplanes manufactured in Japan (Type Certificate A2PC): Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; and

—For the airplanes manufactured in the United States (Type Certificate A10SW): Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Action Has FAA Taken To Date?*

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 Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. The proposal was published in the **Federal Register** as an NPRM on September 13, 2002 (67 FR 57989). The NPRM proposed to supersede AD 88–23–01 with a new AD that would eliminate the repetitive inspections by replacing the existing joints with new improved-design joints.

The FAA's policy is, when feasible, to require the accomplishment of a design modification when it would eliminate the need for repetitive inspections.

*Was The Public Invited To Comment?*

The FAA invited interested persons to participate in the making of this amendment. We received 63 comments on the proposed AD. The comments reflect the public's desire to have FAA withdraw the proposal and recommend that FAA consider additional training for the aircraft mechanics, revised maintenance procedures, improved inspections, and other related actions.

### The FAA's Determination

*What Is FAA's Final Determination On This Issue?*

We evaluated the following since issuing the NPRM:

—There are no service difficulty reports indicating cracks in joints for the current-design parts in the 14 years since the adoption of AD 88–23–01;

—The cost of installing the improved-design part is extremely expensive (now estimated at more than $25,000) and combined with the cost of aircraft downtime and lost income for the installation is an overwhelming burden on owners/operators;

—Owners/operators comment that the repetitive inspection process through AD 88–23–01 is working effectively in addressing the unsafe condition; and

—The installation of the improved-design part is time consuming, difficult, and complex since there are very few facilities with the capability and competency to successfully accomplish this complex installation.

Based on this information, we have determined that AD 88–23–01 is effectively addressing the unsafe condition and we should withdraw the NPRM.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor does it commit us to any future action.

### Regulatory Impact

*Does This AD Involve A Significant Rule Or Regulatory Action?*

Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 2002–CE–27–AD, which was published in the **Federal Register** on September 13, 2002 (67 FR 57989).

Issued in Kansas City, Missouri, on December 17, 2002.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–32337 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002–CE–49–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Socata—Groupe Aerospatiale Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 2002–05–04, which applies to certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes. AD 2002–05–04 requires you to repetitively inspect any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks; repair cracks that do not exceed a certain length; and replace the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has been repaired twice. This proposed AD is the result of the French airworthiness authority's determination that airplanes equipped with an engine mount assembly part number 892–51–0–035–0 also display the unsafe condition. This proposed AD would retain the repetitive inspection and repair requirements of AD 2002–05–04, change the applicability section, remove the terminating action, and require replacement of all part number 892–51–0–035–0 engine mount assemblies. The actions specified by this proposed AD are intended to prevent failure of the engine mount assembly. Such failure could result in loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this rule on or before January 31, 2003.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–49–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–49–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may also view this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify this proposed rule. You may view all comments we receive before and after the closing date of this proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How Can I Be Sure FAA Receives My Comment?*

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–49–AD.'' We will date stamp and mail the postcard back to you.

### Discussion

*Has FAA Taken Any Action to This Point?*

Fatigue cracks found on the engine mount assemblies of certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes caused us to issue AD 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002). This AD requires the following on affected airplane models and serial numbers that are certificated in any category and do not have a part number 892–51–0–035–0 engine mount assembly (or FAA-approved equivalent part number) installed:

—Repetitively inspecting any engine mount assembly that is not part number 892–51–0–035–0 (or FAA-approved equivalent part number) for cracks;

—Repairing cracks that do not exceed a certain length;

—Replacing the engine mount when the cracks exceed a certain length and cracks are found on an engine mount that already has two repairs; and

—Terminating repetitive inspections after installing a part number 892–51–0–035–0 engine mount assembly, (or FAA-approved equivalent part number).

AD 2002–05–04 superseded AD 77–15–06, Amendment 39–2975, which required accomplishing the following:

—Inspecting the engine mount assembly for cracks at repetitive intervals;

—Repairing any cracks found; and

—Modifying the brackets on airplanes with right angle engine mounts.

AD 2002–05–04 incorporated new manufacturer service information to address the unsafe condition, added additional airplane models to the applicability; and changed the initial compliance time for all airplanes.

Accomplishment of these actions is required in accordance with Socata Service Bulletin SB 156–71, dated May 2001.

*What Has Happened Since AD 2002–05–04 To Initiate This Action?*

The Direction Générale de l'Aviation Civile (DGAC), which is the

airworthiness authority for France, recently notified FAA of the need to change AD 2002–05–04. The DGAC reports that affected airplanes equipped with an engine mount assembly part number 892–51–0–035–0 are also affected by fatigue cracking and should be included in the applicability section of AD 2002–05–04. Installing part number 892–51–0–035–0 is no longer considered a terminating action for the repetitive inspections and should be removed from all affected airplanes.

*What Action Did the DGAC Take?*

The DGAC classified Socata Service Bulletin SB 156–71, dated May 2001, as mandatory and issued French AD 2001–400(A), dated September 19, 2001; and French AD 1978–205(A) R1, dated September 19, 2001; in order to ensure the continued airworthiness of these airplanes in France.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, DGAC has kept FAA informed of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of This Proposed AD**

*What Has FAA Decided?*

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on certain Socata Models MS 892A–150, MS 892E–150, MS 893A, MS 893E, MS 894A, MS 894E, Rallye 150T, and Rallye 150ST airplanes of the same type design that are on the U.S. registry;

—The inspection and repair actions specified in AD 2002–05–04 should be accomplished on certain affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What Would This Proposed AD Require?*

This proposed AD would supersede AD 2002–05–04 with a new AD that would:

—Retain the repetitive inspection and repair requirements of AD 2002–05–04;

—Remove the terminating action;

—Change the applicability section; and

—Require replacement of all part number 892–51–0–035–0 engine mount assemblies with an FAA-approved equivalent part number.

**Cost Impact**

*How Many Airplanes Would This Proposed AD Impact?*

We estimate that this proposed AD affects 81 airplanes in the U.S. registry.

*What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish each proposed inspection(s):

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 = $60 | No parts required | $60 | $60 × 81 = $4,860 |

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the proposed inspection(s). We have no way of determining the number of airplanes that may need such repair:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 workhours × $60 = $180 | No parts required | $180 |

We estimate the following costs to accomplish the proposed replacement. We have no way of determining the number of airplanes that may need such replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 20 workhours × $60 = $1,200 | Approximately $3,360 | $1,200 + $3,360 = $4,560 |

*What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2002–05–04?*

The differences between this proposed AD and AD 2002–05–04 are the correction to the applicability section, removal of the terminating action, and the addition of replacing all part number 892–51–0–035–0 engine mount assemblies. We have determined that this proposed AD action does increase the cost impact over that already required by AD 2002–05–04.

**Regulatory Impact**

*Would This Proposed AD Impact Various Entities?*

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

*Would This Proposed 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) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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 removing Airworthiness Directive (AD) 2002–05–04, Amendment 39–12672 (67 FR 10831, March 11, 2002), and by adding a new AD to read as follows:

**Socata—Groupe Aerospatiale:** Docket No. 2002–CE–49–AD; Supersedes AD 2002–05–04, Amendment 39–12672.

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

| Model | Serial Nos. |
|---|---|
| MS 892A–150 ... | All serial numbers. |
| MS 892E–150 ... | All serial numbers. |
| MS 893A ..... | All serial numbers. |
| MS 893E ..... | All serial numbers. |
| MS 894A ..... | 1005 through 2204 equipped with kit OPT8098 9037. |
| MS 894E ..... | 1005 through 2204 equipped with kit OPT8098 9037. |
| Rallye 150T ..... | All serial numbers. |
| Rallye 150ST .... | All serial numbers. |

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount assembly. Such a condition could cause the engine mount assembly to fail, which could result in loss of control of the airplane.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace any part number 892–51–0–035–0 engine mount assembly with an FAA-approved assembly that is not part number 892–51–0–035–0. | Within the next 50 hours time-in-service (TIS) after the effective date of this AD. | In accordance with the applicable maintenance manual. |
| (2) Inspect the engine mount assembly for cracks. | *Initially inspect at whichever of the following occurs later:* after accumulating 50 hours TIS after engine mount assembly installation; within the next 20 hours TIS after the effective date of this AD; or at the next inspection required by AD 2002–05–04. *Repetitively inspect thereafter at intervals not to exceed 50 hours TIS*. | In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001. |
| (3) If any crack is found during any inspection required by paragraph (d)(2) of this AD that is less than 0.24 inches (6 mm) in length, repair the engine mount assembly. If two repairs on the engine mount have already been performed, repair in accordance with paragraph (d)(4) of this AD. | Prior to further flight after the inspection in which the crack is found. | In accordance with the Accomplishment Instructions section of Socata Service Bulletin SB 156–71, dated May 2001. |
| (4) If any crack is found during any inspection required by this AD that is 0.24 inches (6 mm) or longer in length, or if any crack is found and two repairs on the engine mount have already been performed:. (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (g) of this AD; and (ii) Incorporate this repair scheme. | Prior to further flight after the inspection in which the crack is found. | In accordance with the repair scheme obtained from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. |
| (5) Do not install on any airplane engine mount assembly part number 892–51–0–035–0. | As of the effective date of this AD ..... | Not applicable. |

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

(ii) The Manager, Standards Office, 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, Standards Office.

(2) Alternative methods of compliance approved in accordance with AD 2002–05–04, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

**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 Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; 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) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Socata Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4141. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–05–04, Amendment 39–12672.

**Note 2:** The subject of this AD is addressed in French AD 2001–400(A), dated September 19, 2001; and French AD 1978–205(A) R1, dated September 19, 2001.

Issued in Kansas City, Missouri, on December 17, 2002.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–32336 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2002–13946; Airspace Docket No. 02–ASO–29]**

## Proposed Amendment of Class E5 Airspace; Memphis, TN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Class E5 airspace at Memphis, TN. As a result of an evaluation, it has been determined a modification should be made to the Memphis, TN, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) to Memphis International Airport and the NDB RWY 17 and NDB—B SIAP's to West Memphis Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP's.

**DATES:** Comments must be received on or before January 23, 2003.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13946/ Airspace Docket No. 02–ASO–29, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) in on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2002–13946/Airspace Docket No. 02–ASO–29.'' The postcard will be determined/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Memphis, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 03, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for 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 Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

**ASO TN E5 Memphis, TN [Revised]**

Memphis International Airport, TN
Lat. 35°02′33″ N, long. 89°58′36″ N
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ N, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′02″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 west of the 197° from the West Memphis NDB extending from the 6.5-mile radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on December 17, 2002.

**Walter R. Cochran,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 02–32416 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–138882–02]**

**RIN 1545–BB01**

## Reduced Maximum Exclusion of Gain From Sale or Exchange of Principal Residence

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the reduced maximum exclusion available to certain taxpayers who sell or exchange their principal residence but who have not owned and used the property as their principal residence for two years of the preceding five years or who have excluded gain on a previous sale or exchange within the last two years. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 24, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–138882–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–138882–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Sara Paige Shepherd, (202) 622–4960; concerning submissions of comments and/or requests for a hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulation section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 121(c) of the Internal Revenue Code (Code). The temporary regulations provide rules for a reduced maximum exclusion of gain from the sale or exchange of the principal residence of a taxpayer who is not entitled to the full maximum exclusion under section 121(a) because the taxpayer has not owned and used the property as the taxpayer's principal residence for two years of the preceding five years or has excluded gain under section 121 on a previous sale or exchange within the last two years. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the regulations do not impose a collection of information and apply only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U. S. C. chapter 6) is not required. Pursuant to section 7508(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand.

All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Sara Paige Shepherd, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 1.121–3, paragraphs (b) through (f), (h), (k), and (l) are revised to read as follows:

**§ 1.121–3 Reduced maximum exclusion for taxpayers failing to meet certain requirements.**

[The text of proposed paragraphs (b) through (f), (h), (k), and (l) of § 1.121–3 is the same as the text of paragraphs (b) through (f), (h), (k), and (l) of § 1.121–3T published elsewhere in this issue of the **Federal Register**.]

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–32279 Filed 12–23–02; 8:45 am]

BILLING CODE 4830–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 25

**[IB Docket No. 00–248; FCC 02–257]**

## Streamlining and Other Revisions of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission invites comments on revising part 25 of the Commission's rules to increase the number of earth station applications that can be processed routinely or, in the alternative, to streamline the processing of earth station applications. The Commission's intent is to expedite the processing of earth station applications, thereby accelerating the provision of service to the public.

**DATES:** Comments are due on or before March 10, 2003, and reply comments are due on or before April 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth at (202) 418–1539. Internet: *sspaeth@fcc.gov,* International Bureau, Federal Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's further notice of proposed rulemaking in IB Docket No. 00–248, FCC 02–257, adopted September 16, 2002, and released on September 26, 2002. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy duplicating contractor is Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

**Summary of the Further Notice of Proposed Rulemaking**

In this further notice of proposed rulemaking (FNPRM) the Commission recognized several benefits to streamlining its review of smaller-than-routine earth station applications. First, it noted that technological improvements have enabled satellite communications systems to maintain service performance while decreasing the aperture of the earth station antennas used to deliver satellite services to end users. Those technological improvements benefit end users because smaller antennas are less expensive to manufacture, and it is easier to find suitable locations to install smaller antennas. As a result, expediting the processing of applications for smaller-than-routine earth station antennas should expedite the provision of useful satellite services to the public, including the provision of Internet services to rural areas.

The Commission did not anticipate that adoption of its proposals for streamlining its review of smaller-than-routine earth station antennas would have any negative effect on terrestrial wireless operations in frequency bands that are shared with Fixed-Satellite Service (FSS) operations. The Commission noted that none of its proposals would affect the procedures for coordinating terrestrial wireless operations with FSS operations in shared bands. The Commission further observed that adoption of the proposals in the *NPRM, 66 FR 1283, January 8, 2001,* would not affect the contours of any FSS earth station operating in bands shared with the Fixed Service. In other words, none of the proposals in the *NPRM* increase the risk of harmful interference to terrestrial wireless services. The Commission explicitly invited comments from any terrestrial wireless operator who believes its operations might be affected in some way by any of the proposals in the *NPRM.* No terrestrial wireless operator submitted any comments in response to the *NPRM.*

**Conclusion**

Accordingly, in the FNPRM the Commission proposes to reduce the minimum antenna size for routine processing of C-band earth stations to 3.7 meters. The Commission also proposes to begin the antenna gain envelope at 3° off-axis outside the GSO orbital plane for Ku-band earth stations, and to increase the antenna gain pattern limits in the backlobe for Ku-band earth stations, and for Ka-band earth stations operating in frequency bands that are not shared with terrestrial wireless operations. The Commission also invites comment on proposal for addressing earth station pointing error concerns. The Commission also solicit comment on several Satellite Industry Association (SIA) proposals for which the record in this proceeding is not yet fully developed. In its *ex parte* statements, SIA proposes several new and revised rules. Many of those proposals were also raised in the original record in this proceeding, and that record is sufficient to enable us to act on those issues. The Commission had decided not to act on any of SIA's proposals at this time, however, until we can consider all of SIA's proposals together.

*Paperwork Reduction Act*

This *Further NPRM* contains proposed information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Further NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *Further NPRM;* OMB comments are due by April 8,

2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Written comments on the proposed information collection requirement should be filed with the Commission's Secretary, and a copy should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov,* and Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington DC 20503, or via the Internet to *jthornto@mp.eop.gov*.

*Initial Regulatory Flexibility Analysis*

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 603. Members of the public may file written comments on the IRFA within the deadline for comments on the FNPRM. The Commission requested comments on the number and identity of small entities that would be significantly impacted by the proposed rule changes in this further notice of proposed rulemaking.

*Procedures for Filing Comments on the Further Notice of Proposed Rulemaking*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 10, 2003, and reply comments on or before April 8, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (April 6, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Parties who choose to file by paper should also submit their comments on diskette. The diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. Portals II, 445 12th Street, SW., Washington, DC. The Commission's contractor, Vistronix, Inc., will receive hand-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Compton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskettes should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402 Washington, DC 20554.

**List of Subjects in 47 CFR Part 25**

Satellite communications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–32294 Filed 12–23–02; 8:45 am]

BILLING CODE 6712–01–P

---

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–3362; MM Docket No. 01–291; RM–10301]**

## Radio Broadcasting Services; Cherokee, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** Maurice Salsa (''Salsa'') filed a petition for rule making requesting the allotment of FM Channel 237C2 to Cherokee, Oklahoma, as that community's first local aural transmission service. *See* 66 FR 53755, October 24, 2001. Robert Fabian (''Fabian'') filed a counterproposal regarding the communities of Cherokee and Ft. Supply, Oklahoma. Subsequently, Salsa and Fabian each withdrew their interests in this proceeding. A showing of continuing interest is required before a channel will be allotted to a community. Further, Commission policy refrains from making an allotment in the absence of an expression of interest. Therefore,

since we have no continuing interest by either party, we dismiss Salsa's petition regarding Cherokee, Oklahoma, and grant Fabian's request to withdraw his counterproposal.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01–291, adopted December 4, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information 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.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02–32291 Filed 12–23–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–3361; MB Docket No. 02–376, RM–10617]**

### Radio Broadcasting Services; Sells, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of Rural Pima Broadcasting, this document proposes the allotment of Channel 285A at Sells, Arizona, as the community's first local aural transmission service at a site 9.3 kilometers (5.8 miles) south of the community at coordinates 31–49–44 NL and 111–53–28 WL.

**DATES:** Comments must be filed on or before January 30, 2003, and reply comments must be filed on or before February 14, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Scott Cinnamon, Esq., Law Offices of Scott Cinnamon, PC, 1090 Vermont Ave., NW., Suite 800, #144, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–376, adopted December 4, 2002, and released, December 9, 2002. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sells, Channel 285A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division Media Bureau.*

[FR Doc. 02–32292 Filed 12–23–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–3360; MB Docket No. 02–374; RM–10598]**

### Radio Broadcasting Services; Douglas, AZ, Santa Clara, NM and Tombstone, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Cochise Broadcasting LLC, licensee of Station KCDQ, Channel 237A, Douglas, Arizona, requesting the substitution of Channel 237C for Channel 237A, the reallotment of Channel 237C to Tombstone, Arizona, and modification of its authorization accordingly. Additionally, to accommodate the requested allotment of Channel 237C to Tombstone, Cochise Broadcasting LLC requests the substitution of Channel 236C1 for Channel 237C1 at Santa Clara, New Mexico, and modification of the license for Station KNUW(FM) at its current transmitter site. An Order to Show Cause is issued to Mel-Mike Enterprises, Inc., licensee of Station KNUW(FM), as requested.

The petitioner's modification proposal complies with the provisions of section 1.420(i) of the Commission's Rules and therefore, we will not accept competing expressions of interest in the use of Channel 237C at Tombstone, Arizona. Coordinates used for Channel 237C at Tombstone are 31–49–00 NL and 110–05–30 WL. Coordinates used for proposed Channel 236C1 at Santa Clara, New Mexico, are those at the currently licensed site for Station KNUW(FM) at 32–51–47 NL and 108–14–28 WL.

**DATES:** Comments must be filed on or before January 30, 2003, and reply comments on or before February 14, 2003.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of

Proposed Rule Making, MB Docket No. 02–365, adopted December 4, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 Twelfth Street, SW., Room CY–A257, 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, facsimile 202–863–2898, or via e-mail *qualtexint@aol.com.*

The provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 237A at Douglas, and by adding Tombstone, Channel 237C.

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 237C1 at Santa Clara, and adding Channel 236C1.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02–32293 Filed 12–23–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 02–3216; MB Docket No. 02–368, RM–10610; MB Docket No. 02–369, RM–10611; MB Docket No. 02–370, RM–10612]**

## Radio Broadcasting Services; Lockney, TX; Quitaque, TX; and Turkey, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes changes in the FM Table of Allotments in Lockney, TX, Quitaque, TX, and Turkey, TX. The Commission requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 271C3 to Lockney, Texas, as Lockney's first local aural broadcast service. Channel 271C3 can be allotted to Lockney in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 km (3.0 miles) southeast of Lockney at reference coordinates of 34–05–27 North Latitude and 101–24–24 West Longitude. The proposed allotment is mutually-exclusive with the proposal to add Channel 272A at Quitaque, Texas (MB Docket No. 02–369, RM–10611). *See* **SUPPLEMENTARY INFORMATION** *infra.*

**DATES:** Comments must be filed on or before January 30, 2003, and reply comments on or before February 14, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, TX 75219; and Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, TX 75345.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–368, 02–369, and 02–370; adopted December 4, 2002, and released December 9, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission requests comment on a petition filed by Maurice Salsa proposing the allotment of Channel 272A at Quitaque, Texas, as the community's first local aural transmission service. Channel 272A can be allotted to Quitaque in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 km (8.8 miles) northeast of Quitaque. The coordinates for Channel 259C2 at Quitaque would be 34–25–51 North Latitude and 100–55–25 West Longitude. The proposed allotment is mutually-exclusive with both the proposal to add Channel 271C3 at Lockney, Texas (MB Docket No. 02–368, RM–10610) and the proposal to add Channel 269A at Turkey, Texas (MB Docket No. 02–370, RM–10612).

The Commission further requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 269A at Turkey, Texas, as the community's first local aural transmission service. (A rulemaking is pending in another proceeding to consider allocation of Channel 239A as a first FM transmission service.) Channel 269A can be allotted to Turkey in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 km (9.0 miles) southwest of Turkey. The coordinates for Channel 253A at Rule are 34–17–32 North Latitude and 100–59–52 West Longitude. The proposed allotment is mutually-exclusive with the proposal to add Channel 272A at Quitaque, Texas (MB Docket No. 02–369, RM–10611).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Lockney, Channel 271C3, Quitaque, Channel 272A, and Turkey, Channel 269A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02–32289 Filed 12–23–02; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 10

**[Docket No. OST–1996–1437]**

**RIN 2105–AD22**

### Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOT proposes to add three systems of records to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act, and to add exemptions from 5 U.S.C. 552a(e)(1) to the General Exemptions, and to the (k)(2) portions of the Specific Exemptions. Public comment is invited.

**DATES:** Comments are due February 24, 2003.

**ADDRESSES:** Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL–401, Docket No. OST–1996–1437, Department of Transportation, SVC–124, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9 a.m. to 5 p.m. ET Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366–6964.

**SUPPLEMENTARY INFORMATION:** 1. *Additional exempt systems.* It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR Part 10, Appendix). This amendment proposes exemption from portions of the Privacy Act of three proposed Transportation Security Administration (TSA) systems, whose establishment is currently the subject of public comment—

1. The Transportation Security Enforcement Record System (TSER) (DOT/TSA 001) would enable the Transportation Security Administration (TSA) to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security-related duties. This system covers information regarding violations and potential violations of TSA security regulations (TSRs), and may be used, generally, to review, analyze, investigate, and prosecute violations of TSRs.

2. To facilitate TSA's performance of employment investigations for transportation workers, as required by 49 U.S.C. 114 and 44936, a system is proposed to be known as the Transportation Workers Employment Investigations system (TWEI) (DOT/TSA 002).

3. To facilitate TSA's performance of employment investigations for its own workers, a system to be known as the Personnel Background Investigation Files System (PBIFS) (DOT/TSA 004) is proposed.

To aid in the national security and law enforcement aspects of two of the proposed systems, TSERS and TWEI, DOT proposes to treat them as it treats other law enforcement systems, by exempting them from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) (1) to the extent that TWEI contains information properly classified in the interest of national security, in accordance with 5 U.S.C. 552a(k)(1), (2) and to the extent that TSER and TWEI contain investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2)

DOT proposes to exempt the other proposed system, PBIF, from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures, and (d) (Access to records) to the extent that PBIFS contains (1) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, in accordance with 5 USC 552a(k)(5) or (2) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process, in accordance with 5 USC 552a(k)(6).

2. *Addition of (e)(1) exemption.* As can be seen from the existing text accompanying DOT's General Exemptions, our intention initially was to include (e)(1) (Relevancy and Necessity of Information) among those provisions of the Privacy Act from which our generally exempted systems are exempt. As we say in that text, it is often very difficult in the early stages of a law enforcement exemption to know what information is relevant and necessary; as the investigation progresses, that becomes clearer, and extraneous information is then culled from the appropriate file. To cover the early stages of an investigation, however, we need the (e)(1) exemption, and propose here to invoke it for our generally exempted record systems.

Similarly, we propose to invoke the (e)(1) exemption for those of our record systems exempt pursuant to 5 U.S.C. 552a(k)(2), which has a strong analogy to the (j)(2) general exemptions.

**Analysis of Regulatory Impacts**

This proposal is not a ''significant regulatory action'' within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National

Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

**Collection of Information**

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

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, $100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

**List of Subjects in 49 CFR Part 10**

Privacy.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

**Authority:** Pub. L. 93–579; 49 U.S.C. 322.

2. Appendix to Part 10 would be amended as follows:

a. By revising the introductory text of Part I.

b. By amending Part II.A. by revising the introductory text; by adding new paragraphs 19 and 20; by adding a new paragraph 3. to the undesignated paragraph after paragraph 20; by revising paragraph G, introductory text; and by adding new paragraph G.2.

c. By adding Part II.H.

The revisions and additions read as follows:

**Appendix to Part 10—Exemptions**

**Part I. General Exemptions**

Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b) (Conditions of disclosure); (c)(1) and (2) (Accounting of certain disclosures); (e)(1) (Relevancy and Necessity of Information); (e)(4)(A) through (F) (Publication of existence and character of system); (e)(6) (Ensure records are accurate, relevant, timely, and complete before disclosure to person other than an agency and other than pursuant to a Freedom of Information Act request), (7) (Restrict recordkeeping on First Amendment rights), (9) (Rules of conduct), (10) (Safeguards), and (11) (Routine use publication); and (i) (Criminal penalties):

* * * * *

**Part II. Specific Exemptions**

A. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

* * * * *

19. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002, maintained by the Transportation Security Administration.

20. Transportation Security Enforcement Record System (TSER), DOT/TSA 001, maintained by the Transportation Security Administration.

These exemptions are justified for the following reasons:

* * * * *

3. From subsection (e)(1), because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of the laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

* * * * *

G. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1) (Relevancy and Necessity of Information), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

* * * * *

2. Transportation Workers Employment Investigations System (TWEI), DOT/TSA 002, maintained by the Transportation Security Administration.

* * * * *

H. Those portions of the following systems of records consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information or testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process, are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records) of 5 U.S.C. 552a, to the extent that disclosure of such material would reveal the identify of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k)(5) and (6)).

1. Personnel Background Investigation Files System (PBIF), DOT/TSA 004, maintained by the Transportation Security Administration.

The purpose of these exemptions is to prevent disclosure of the identities of sources who provide information to the government concerning the suitability, eligibility, or qualifications of individuals for Federal civilian employment, contracts, access to classified information, or appointment or promotion in the armed services, and who are expressly or, prior to September 27, 1975, impliedly promised confidentiality. The purpose of these exemptions is also to preserve the value of these records as impartial measurement standards for appointment and promotion within the Federal service. (5 U.S.C. 552a(k)(5) and (6).

Issued in Washington, DC, on December 9, 2002.

**Eugene K. Taylor, Jr.,**

*Acting Chief Information Officer.*

[FR Doc. 02–31755 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 001113318–2297–02; I.D. 110200D]**

**RIN 0648–AO75**

## Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend regulations governing the Atlantic bluefin tuna (BFT) fishery as they affect landing of BFT in the Atlantic pelagic longline fishery. The intent of this action is to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS will hold public hearings to receive comments from fishery participants and other interested members of the public regarding these issues. Public hearings on this proposed rule will be announced in a separate **Federal Register** document.

**DATES:** Written comments on the proposed rule must be received by 5 p.m. on February 7, 2003.

**ADDRESSES:** Comments on the proposed rule should be sent to, and copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA, 01930. These documents are also available from the Highly Migratory Species Division website at www.nmfs.noaa.gov/sfa/hmspg.html. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or on the Internet.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Dianne Stephan, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic highly migratory species (HMS) fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Act (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

## Management of Bluefin Tuna

The first ICCAT management recommendations for Atlantic BFT were adopted in 1974, and established a minimum size and limited fishing mortality to then recent levels. With the passage of ATCA in 1975, the United States took action to comply with the ICCAT recommendations and limited U.S. harvest by imposing quotas and size limits. In spite of the ICCAT recommendations and U.S. compliance with these recommendations, western Atlantic BFT stock abundance continued to decline. In 1981, NMFS prohibited the use of longlines for a directed BFT fishery and implemented an incidental catch limit for two geographically distinct areas where different BFT catch limits would apply (46 FR 8012, January 26, 1981). After conducting a series of stock assessments, ICCAT's scientific body, the Standing Committee on Research and Statistics, recommended in 1981 that catches from the western Atlantic stock be severely reduced to as near zero as possible to stem the decline of the stock. Based on this recommendation, allowable landings of western Atlantic bluefin have been restricted since 1982. Also in 1982, an ICCAT consultation among officials representing the governments of Brazil, Canada, Japan, and the United States agreed, inter alia, that there be no directed fishery on the spawning stock of Atlantic bluefin tuna in the Gulf of Mexico. Domestic regulations to carry out the ICCAT recommendations were implemented in 1982 and 1983, which included designating authorized gears and quotas for the established fisheries.

## The U.S. Atlantic Pelagic Longline Fishery

The U.S. Atlantic pelagic longline fishery is a multi-species fishery that operates throughout the western Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. Pelagic longline gear is composed of several parts. The primary fishing line, or mainline of the longline system, can vary from five to 40 miles in length, with approximately 20 to 30 hooks per mile. Each individual hook is connected by a leader to the mainline. Pelagic longline gear and fishing method can be modified to target certain species, most commonly swordfish and yellowfin and bigeye tunas. At least 30 different species have been recorded as caught in this gear throughout the range of the fishery. Many of the non-target species are landed and sold. However, some of those species are discarded as bycatch (dead or alive) for economic or regulatory reasons. Bluefin tuna are one such incidentally caught species that are marketable but may be discarded when required by regulations on landings restrictions.

## Incidental Catch Regulations

Since 1977, NMFS has implemented a series of management measures designed to regulate the incidental catch of BFT in non-directed Atlantic fisheries. In 1981, NMFS prohibited the use of longlines for a directed BFT fishery, implemented incidental catch limits, and established northern and southern management areas where different catch limits applied (46 FR 8012, January 26, 1981). Longline fishermen were restricted to two BFT per vessel per trip in the southern region and two percent by weight of all other fish on board in the northern region. In 1982, ICCAT recommended a ban on directed fishing for BFT in the Gulf of Mexico. Over the following decade, the value of BFT increased dramatically and fishing practices evolved with respect to incidental catch of BFT. In response, NMFS established various strategies to discourage pelagic longline vessels from developing a target fishery for this valuable species while allowing for the retention of incidentally caught BFT.

In 1992, as BFT continued to be released as bycatch in the longline fishery and most of those fish were reported as being discarded dead, NMFS determined that existing catch limits in the southern region (up to two BFT per trip, without any requirement that BFT be landed in conjunction with other species) were not effective at reducing the incentive to target BFT, and target catch requirements were implemented (57 FR 365, January 6, 1992). NMFS required longline vessels to land, offload, and sell at least 2,500 lbs. (1,136 kg) of other species as a condition for landing a maximum of one BFT. NMFS continued to evaluate bycatch in the longline fishery, and, consistent with objectives of preventing a target fishery while allowing for retention of incidental catch, moved the boundary line for the northern and southern areas from 36o N. Latitude to 34o N. Latitude and further altered the southern area target catch requirements in 1994 (59 FR 2814, January 19, 1994).

The current target catch requirements, unchanged since 1994, restrict longline vessels to one fish per vessel per trip in the southern region (south of 34o N. Latitude) with a minimum of 1,500 lbs. (680 kg) of other fish landings from January through April, and 3,500 lbs. (1,588 kg) of other fish landings from May through December. North of 34o N. Latitude, BFT landings by longline vessels are restricted to two percent by weight of all other landed catch. Despite efforts to alter target catch requirements and adjust geographic management

areas, bycatch and discards of BFT by U.S. pelagic longline vessels have continued. Consequently, NMFS has continued to evaluate management alternatives to achieve a balance between allowing the retention of truly incidentally caught BFT while preventing a directed fishery and reducing discards.

**Bycatch Reduction**

In 1999, NMFS published the HMS FMP and implementing regulations (64 FR 29090, May 28, 1999), which included a measure to close an area of ocean off the Mid-Atlantic Bight to longline fishing during the month of June in an attempt to minimize bycatch of BFT and ensure compliance with ICCAT recommendations. The HMS FMP also considered, but did not implement, further modifications to target catch requirements because of the difficulty in determining catch levels and landings allowances that would likely reduce dead discards. The lack of correlation between the level of target catch and bluefin tuna discards indicated that bluefin tuna catches were truly incidental. While an area closure was selected as the most expedient means of reducing dead discards, NMFS also concluded that future analyses of catch rates may provide guidance for a change in the target catch requirements.

Since that time, NMFS has continued to evaluate alternatives to achieve a balance between minimizing bycatch (*i.e.*, allowing retention of BFT) and discouraging directed longline fishing effort on BFT. Members of the pelagic longline industry have commented that the target catch requirements are overly restrictive, resulting in excessive dead discards of incidentally caught BFT. Consequently, the Longline category BFT quota is not being landed, which then results in additional mortality as unused Longline category quota is transferred to other BFT fishing categories.

NMFS analyzed additional data on the landing patterns of longline vessels, and published an Advance Notice of Proposed Rulemaking (ANPR) (65 FR 69492, November 17, 2000). Highly Migratory Species Advisory Panel (AP) members discussed the target catch requirements at their meetings in April 2001 and April 2002, and generally favored modifying the target catch requirements to minimize bycatch of BFT in the pelagic longline fishery. However, AP members cautioned against adjusting target catch requirements in such a way that would provide an incentive to target BFT with pelagic longline gear.

**Evaluation of Existing Regulations**

In the 2001 and 2002 Stock Assessment and Fishery Evaluation (SAFE) Reports, NMFS evaluated the effectiveness of the June closed area in minimizing discards of BFT. The available data, based on logbooks submitted by fishermen, indicate a substantial decline in BFT bycatch throughout the year, indicating the closed area may be effective at reducing dead discards.

The BFT Longline category is allocated 8.1 percent of the total U.S. BFT landings quota. The Longline category quota is split between northern and southern areas, with 78.9 percent allocated to the southern area and 21.1 percent allocated to the northern area.

Estimates of dead discards for 2000 fishing year totaled 30 metric tons (mt). In 1997 and 1998, discards were higher proportionally (dead discards to BFT landed) in the northern area compared to the southern area (mostly Gulf of Mexico), but this relationship changed in 1999 and 2000, where a higher proportion of the dead discards being reported through the pelagic logbook occurred in the southern area.

NMFS evaluated observer data for 1998–2000, which indicate that two or less BFT were caught on 88 percent of all longline trips. In addition, over this same time period, median values for landed catch (not including BFT) by pelagic longline vessels were approximately 3,000 lbs. (1,361 kg) in the southern region in the winter and early spring (January through April) and 3,500 lbs. (1,588 kg) in that area in May through December. Median landings in the northern area throughout the year were 3,800 lbs. (1,724 kg). Target catch and dead discards information was used in developing potential alternatives to the current target catch requirements.

**Alternatives Considered**

In addition to taking no action at this time, NMFS considered various combinations of catch limits for the northern and southern areas including: (1) requiring 3,500 lbs. (1,588 kg) of catch for one BFT to be landed in the northern area but no change to the southern area requirements; (2) requiring 3,500 lbs. (1,588 kg) of catch for one BFT to be landed, and 6,000 lbs. (2,722 kg) of other catch to land two BFT in the northern area, but no change to the southern area requirements; (3) the same as (2) for the northern area, but also allowing two BFT to be landed on a trip with 6,000 lbs. (2,722 kg) of other catch in the southern area; (4) lowering minimum target catch requirements in all areas, at all times, to 2,000 lbs. (907 kg) to retain one BFT and 6,000 lbs. (2,722 kg) to retain two BFT (the preferred alternative); and (5) lowering minimum target catch requirements in all areas, at all times, to 1,500 lbs. (680 kg) to retain one BFT and 6,000 lbs. (2,722 kg) to retain two BFT.

NMFS prefers to alter the target catch requirements for both geographic management areas to reduce dead discards of BFT in all areas. NMFS therefore does not prefer alternatives which take no action or do not affect the southern area limit. In addition, landings per trip do not differ between the southern and northern areas as much as they have in the past, and similar retention limits for the different areas now seem warranted. The alternative that would lower the target catch requirements to 1,500 lbs. (680 kg) in all areas at all times may result in the longline incidental catch quota of BFT being filled quickly, which could lead to subsequent discarding of BFT, and is therefore is not preferred. The preferred alternative would require 2,000 lbs. (907 kg) of other fish landings to retain one BFT, and 6,000 lbs. (2,722 kg) of other fish landings to retain two BFT, in all areas.

The preferred alternative would maintain a boundary line between the northern and southern areas to account for seasonal differences in the fisheries and prevent one area from consuming all the incidental longline quota, but would move the boundary line to an area with little longline fishing activity nearby and adjust the longline quota subdivision to reflect the change in areas. Seasonal differences in bluefin tuna migration patterns between northern feeding migrations and southern spawning migrations affect fishing interaction rates and the condition of the fish in terms of fat content and ability to survive the capture experience. Any division line should account for such seasonal differences in the fisheries and correspond with interaction rates to ensure that catches are incidental and do not result in excess discards. In addition, any division line should not be near an area where fish are usually landed, i.e., it should be clear that fish caught in a particular area will be landed in that area. The North/South boundary line is proposed to be moved to 31&00′ N. Latitude, near Jekyll Island, Georgia, and the North/South quota subdivision within the Longline category would be adjusted to allocate 30 percent to the northern area and 70 percent to the southern area.

**Impacts of the Preferred Alternative**

The preferred alternative would likely result in a reduction in BFT discards in all areas, and would allow longline fishermen fishing in the northern area to retain a BFT on more trips. It would also allow more BFT to be landed by fishermen in the southern area, but only if they retain 6,000 lbs. (2,722 kg) of other fish species on a trip. The preferred alternative is estimated to reduce discards of BFT by longline vessels by 23.5 percent on a coastwide basis. In addition, it is estimated that the preferred alternative would allow longline vessels to retain an additional 38 mt of BFT coastwide, an increase of approximately 60 percent from 2000 levels but still within the quota allocated for incidental catch.

The positive economic impacts of this alternative are likely to be felt by pelagic longline fishermen in all areas. Gross revenues and net revenues to pelagic longline vessels would increase as a result of the increased landings of BFT. While revenues from BFT would increase by an amount similar to the increase in landings, the overall increase in revenues to the longline fishery would be relatively small (about 1.1 percent), as BFT make up only a small percentage of longline catch and landings. However, overall, no net increase in BFT revenues is expected because total BFT landings for all fishing categories will not increase. In past years, the BFT quota not actually landed by pelagic longline vessels has been transferred to and landed by vessels in other fishing categories but total BFT landings are limited by the overall total allowable catch (TAC) system through which the United States is issued annual quotas.

This alternative may have some positive impacts on the western Atlantic BFT stock because total mortality should decrease. The preferred alternative would maintain BFT landings by pelagic longline vessels within the previously established Longline category BFT quota. However, because discards would likely decrease, the United States would use less of its dead discard allowance, which would have positive impacts on the stock as, per the ICCAT recommendation, half the unused portion of the dead discard allowance cannot be carried over to future years and is, in that sense, invested in stock rebuilding. The preferred alternative would also likely reduce the extent of reallocating unused longline BFT quota to other categories, as the longline fishery will likely land more of its quota. Such reallocation is consistent with legislative requirements to allow U.S. fishermen the opportunity to land the U.S. quota, but has led to increased overall mortality, as BFT that could not be landed (and a proportion were discarded dead) by pelagic longline vessels were transferred to and landed by other fishing categories.

Because pelagic longline fishermen routinely catch BFT incidental to other fishing operations, this alternative would not likely result in increased pelagic longline effort and therefore would not affect catches or discards of other managed finfish species or increased interaction with protected species.

**Inseason Adjustments**

Currently, regulations provide the authority for NMFS to adjust the BFT retention limits in the Angling and General categories during the fishing season by publishing a notice in the **Federal Register** and providing three days advanced notice. The preferred alternative would provide NMFS with similar authority for BFT retention limits in the Longline category. Specifically, NMFS could adjust the BFT retention limits for pelagic longline vessels by number over a range from zero to three fish per trip and/or by weight within 25 percent of the target catch requirements (*e.g.*, 2,000 lbs. to 2,500 lbs.).

The purpose of providing NMFS inseason adjustment authority for BFT retention by longline vessels would be to increase the likelihood of meeting the management objectives for the BFT fishery on an inseason basis. This authority would provide NMFS with the additional ability to achieve a balance between allowing the retention of truly incidentally caught BFT while preventing a directed fishery, reducing discards, and keeping all BFT fisheries within their allocated quotas. This balance can be affected by variation in BFT abundance and migration patterns. Thus, inseason adjustment authority would enhance NMFS' ability to reduce discards while ensuring that landings are maintained within the quota.

**Classification**

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this proposed rule and has requested comments from the Chief Counsel for Advocacy of the Small Business Administration. A summary of the IRFA follows:

The annual gross revenues from the Atlantic pelagic longline fishery are approximately $29 million. There are approximately 171 pelagic longline vessels that are permitted to retain Atlantic tunas and swordfish, all of which are considered small entities, and average annual gross revenues per vessel are approximately $168,000. The analyses for the IRFA assume that all pelagic longline vessels have similar levels of catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various alternatives on vessels. NMFS considered five alternatives regarding changing the target catch requirements for bluefin tuna retention by pelagic longline vessels: (1) no action/status quo; (2) adjusting the target catch requirements to allow pelagic longline vessels landing north of 34o N. latitude to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip; (3) adjusting the target catch requirements to allow pelagic longline vessels landing north of 34o N. latitude to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip; (4) adjusting the target catch requirements to allow pelagic longline vessels in all areas to land one bluefin tuna per trip, provided they also land 3,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip, with pelagic longline vessels landing south of 34o N. latitude allowed to land their one bluefin tuna per trip with only 1,500 lbs. of other fish from the same trip from January through April; (5) adjusting the target catch requirements to allow pelagic longline vessels in all areas and times to land one bluefin tuna per trip, provided they also land 2,000 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip (preferred alternative); and (6) adjusting the target catch requirements to allow pelagic longline vessels in all areas and times to land one bluefin tuna per trip, provided they also land 1,500 lbs. of other catch from the same trip, or two bluefin tuna per trip, provided they also land 6,000 lbs. of other catch from the same trip.

NMFS separated out pelagic longline vessels into three groups: vessels homeported in the northern area that landed more than one bluefin tuna on an individual trip during 1998–2000; vessels homeported in the northern area that landed one or less bluefin tuna on individual trips during 1998–2000; and vessels homeported in the southern area. Northern area vessels were separated into two groups because Alternative 2 would have a negative impact on the vessels that landed more than one bluefin tuna on a particular trip, as it would only allow retention of one bluefin tuna per trip in the northern area, whereas the status quo does not limit the number of bluefin tuna so long as the percentage of bluefin tuna did not exceed

two percent of the weight of the other landings. During 1998–2000, six vessels landed more than one bluefin tuna on individual trips, and two vessels landed two bluefin tuna twice (total of eight trips). For these analyses, NMFS assumed that these six vessels would each have a trip in which they would have been able to land two bluefin tuna under the status quo.

The change in annual gross revenues for pelagic longline vessel as a result of the various alternatives to adjust the target catch requirements was estimated by calculating the difference in the number of bluefin tuna that could be retained by the particular group of vessels, multiplying that number of fish by the average weight and price per pound for that area during 2000. In the northern area, the average weight of bluefin tuna landed by longline vessels in 2000 was 456 lbs., and the average per pound was $5.56, for an estimate of $2,535 per fish. In the southern area, the average weight of bluefin tuna landed by longline vessels in 2000 was 537 lbs., and the average price per pound was $5.31, for an estimate of $2,851 per fish.

For Alternative 2, vessels in the northern area would land 72 bluefin tuna, 16 more than were landed in 2000. Using the average weight and price information for the northern area, the revenues from the additional 16 fish were divided among the 102 vessels in the northern area, for an average increase in gross revenues of $398. For the six vessels that could have landed two bluefin tuna on a trip however, these vessels would lose the revenues from the second bluefin tuna, $2,535. Thus, the change in gross revenues for each of these six vessels would be -$2,137 ($398 - $2,535), approximately a -1.2% change. Vessels in the southern area would not experience any change in revenues under this alternative, as the target catch requirements would not change. The impacts on revenues for the other alternatives were estimated in a similar manner. Other than Alternative 2, no alternative would have a negative impact on any vessel in the pelagic longline fishery, but even Alternative 2 would have a positive impact on all but a few vessels. Alternatives 4, 5 (preferred alternative), and 6 would have a positive impact on revenues for vessels in all areas. Thus, only one non-preferred alternative considered would have negative economic impacts; all preferred alternatives would minimize current negative impacts such that consideration of significant alternatives to minimize impacts to small entities is unnecessary.

NMFS considered three alternatives regarding moving the North/South division line and reallocating Longline category bluefin tuna quota including (1) no action/status quo; (2) moving the Longline category North/South division line to 31°00′ N. latitude near Jekyll Island, Georgia, and adjusting the Longline category subquotas to allocate 70 percent to the southern area and 30 percent to the northern area (preferred alternative); and (3) eliminating the Longline category North/South division line and establish one quota for the Longline category for all areas. Alternatives 1 and 2 should not have any direct impact on small entities, although Alternative 2 should address current confusion regarding applicability of regulations and could help prevent negative impacts on small entities due to closures. Alternative 3 could have negative impacts if a fishery closure occurred.

NMFS considered three alternatives regarding providing NMFS with inseason authority to modify bluefin tuna retention limits by pelagic longline vessels including (1) no action/status quo; (2) providing NMFS with authority to adjust the bluefin tuna retention limits for pelagic longline vessels from a range of zero to three fish per trip; and (3) providing NMFS with authority to adjust the bluefin tuna retention limits for pelagic longline vessels by number from a range of zero to three fish per trip and by weight within 25 percent of the target catch requirements (preferred alternative). None of these three alternatives should have any direct impact on small entities because the total bluefin tuna quota is not changed. The preferred alternative, however, which would provide NMFS with inseason authority, could help prevent negative impacts on small entities due to closures.

NMFS prepared a draft EA for this proposed rule, and the AA has preliminarily concluded that there would be no significant impact on the human environment if this proposed rule were implemented. The EA presents analyses of the anticipated impacts of these proposed regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS (*see* **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this proposed rule are expected to have any additional impact on sea turtles as these actions are not likely to increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 17, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.23, paragraph (f) is revised to read as follows:

### § 635.23 Retention limits for BFT.

* * * * *

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. For vessels fishing North or South of 31°00′ N. lat., limits on retention, possession, landing and sale are as follows:

(1) One large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) NMFS may increase or decrease the Longline category retention limit of large medium and giant BFT over a range from zero to a maximum of three per trip, or, for a given BFT retention limit, increase or decrease the target catch requirement by 25 percent from the level specified in paragraph (f)(1) of this section. Such increase or decrease in the BFT retention limit or target catch requirement will be based on a review of dealer reports, observer reports, vessel logbooks, landing trends, availability of the species on the fishing grounds, and any other relevant factors, and will consider the likelihood of increasing dead discards of BFT and/or exceeding the incidental landings quota established for the pelagic longline fishery. Such adjustments may be made separately for vessels fishing North or South of 31°00′ N. lat. NMFS will adjust the retention limits and target catch requirements specified in paragraph (f)(1) of this section by filing with the Office of the Federal Register for

publication notification of the adjustment. Such adjustment will not be effective until at least 30 calendar days after notification is filed with the Office of the Federal Register for publication.

* * * * *

3. In § 635.27, paragraph (a)(3) is revised to read as follows:

**§ 635.27 Quotas.**

(a) * * *

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 70.0 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 31°00′ N. lat.

* * * * *

[FR Doc. 02–32431 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 67, No. 247

Tuesday, December 24, 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

### Agricultural Marketing Service

**[Doc. No. LS–02–17]**

### Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request from the Office of Management and Budget approval for an extension of and revision to a currently approved information collection ''Customer Service Survey (Meat Grading and Certification Services).''

**DATES:** Comments must be received on or before February 24, 2003.

**ADDRESSES:** Send a copy of your comments to Larry R. Meadows, Chief, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA; STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248. Comments will be available for public inspection at the above address during regular business hours. Comments may also be submitted by e-mail to *Larry.Meadows@usda.gov* or by facsimile at 202–690–4119. All comments should reference the docket number (LS–02–17), the date, and the page number of this issue of the **Federal Register**. All responses to this notice will be summarized and included in the request for OMB approval.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Service Survey (Meat Grading and Certification Services).

*OMB Number:* 0581–0193.

*Expiration Date of Approval:* June 30, 2003.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The customer service survey is being conducted to evaluate how well we are meeting our customer's expectations. The information obtained will be used to manage the program in providing cost effective, quality services expected by our customers.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.0830 hours per response.

*Respondents:* Producers and owners of meat establishments.

*Estimated Number of Respondents:* 450 respondents.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 37.35 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Meadows, Chief, Meat Grading and Certification Branch, telephone 202–720–1246, facsimile 202–690–4119, or e-mail at *Larry.Meadows@usda.gov.*

Dated: December 16, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–32307 Filed 12–23–02; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### National Agricultural Library; Notice of Intent To Seek Approval To Collect Information

**AGENCY:** Agricultural Research Service, USDA

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection from the Technical Services Division to obtain suggestions for additions/changes to the NAL Agricultural Thesaurus.

**DATES:** Comments on this notice must be received by February 27, 2003 to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Lori Finch, Thesaurus Specialist, 10301 Baltimore Ave., Room 011; Beltsville, MD 20705. Submit electronic comments to *lfinch@nal.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lori Finch, Thesaurus Specialist, Phone: 301–504–6853; Fax: 301–504–5213.

**SUPPLEMENTARY INFORMATION:**

*Title:* Suggestions for Changes to NAL Agricultural Thesaurus Form.

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* Approval for new data collection.

*Abstract:* The collection of suggestions for changes to the NAL Agricultural Thesaurus will provide Web site users with the opportunity to suggest the addition of new terminology of interest to them. The Thesaurus Staff will review each suggestion via a Proposal Review Board and provide feedback to the user. This form will provide the NAL Thesaurus Staff with valuable suggestions to improve the content and organization of the NAL Agricultural Thesaurus. It is hoped that an online form that is readily available to users who search the thesaurus would encourage users to submit their ideas and needs for terminology.

The Suggestions for Changes to NAL Agricultural Thesaurus Form is a

document composed of 8 inquiry components allowing users to submit suggestions for changes to the thesaurus. Information to be submitted includes, user contact information (name, affiliation, email, phone), the proposed changes to the thesaurus, the field of study or subject area of the term being proposed, justification for the change, and any reference material which the user would like to provide as background information. Name, email and phone components are mandatory.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 10 minutes per response.

*Respondents:* The agricultural community, USDA personnel and their cooperators, and including public and private users or providers of agricultural information.

*Estimated Number of Respondents:* 250 per year.

*Estimated Total Annual Burden on Respondents:* 2500 minutes.

*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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: November 27, 2002.

**Caird E. Rexroad, Jr.,**

*Acting Associate Administrator.*

[FR Doc. 02–32309 Filed 12–23–02; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Report on Electronic Benefits Transfer Systems

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Food and Nutrition Service, Benefit Redemption Division, would like to obtain public comments on specific topics related to initiatives and advances in electronic benefit delivery for the issuance of food stamp benefits. The purpose of obtaining public input on electronic benefits transfer (EBT) systems is to offer State agencies, advocacy groups, food retailers, EBT-system vendors, and other interested parties the opportunity to provide input on EBT issues and initiatives prior to the submission of a report on EBT systems to Congress.

**DATES:** Comments must be received on or before February 24, 2003 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Lizbeth Silbermann, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may also be datafaxed to the attention of Ms. Silbermann at (703) 305–1863, or by e-mail to *lizbeth.silbermann@fns.usda.gov.* All comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 403.

**SUPPLEMENTARY INFORMATION:** The Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, requires the Secretary of Agriculture to submit a report on EBT systems to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate by October 1, 2003. In an effort to supplement the information that will be provided to Congress with the views of all parties involved with EBT, the Food and Nutrition Service (FNS) is seeking public input through this notice on two general areas of EBT: (1) food stamp EBT initiatives being developed or considered by interested parties, and (2) potential advances in electronic benefit delivery in the next 5 to 10 years, particularly with respect to farmers' markets, fraud identification, and fostering of increased competition among EBT-system vendors.

**EBT Initiatives**

FNS is seeking information and comments on initiatives and advancements being developed, considered or taken by State agencies, food retailers, EBT-system vendors, client advocates, and other interested parties to address any outstanding issues with respect to EBT systems. Of particular interest are potential advances in electronic benefit delivery in the next 5 to 10 years with respect to the following areas:

1. Farmers' markets—Because farmers' markets and produce stands do not have ready access to phone lines and electricity, the infrastructure for EBT does not exist. Although all farmers have the option to use manual vouchers, it is not the ideal solution because the process is not conducive to the way business is handled at these markets. FNS has been exploring alternatives to manual vouchers to improve operations for these vendors. One option is a scrip system; food stamp clients would use their EBT cards at a central Point of Sale (POS) location in exchange for scrip and then exchange the scrip with individual vendors at the market for food. The second alternative utilizes wireless equipment to authorize food stamp purchases in a market setting. Several States have operated scrip and/or wireless pilots that have been tested. FNS is interested in receiving comments on the pilots and other possible improvements to the way farmers and farmers' markets participate in EBT.

2. Fraud identification—FNS' Anti-fraud Locator of EBT Retailer Transactions (ALERT) Subsystem. ALERT utilizes a file of retailer EBT transactions provided by the States' contracted EBT processors to identify suspicious transaction activity. It assesses and analyzes over 67 million, individual EBT transactions per month. ALERT makes available, on line, a series of reports and queries, as well as the actual transaction data, to assigned Departmental and Agency staff with retailer and compliance monitoring responsibilities. This data triggers further analysis and investigations, which may result in on-site reports, investigations, prosecutions and administrative sanctions. It also enables investigators to track the stores at which a given recipient redeems benefits. Transactions and locations can be further analyzed in terms of overall shopping patterns in all stores. This information is then used to better target investigations or to act on program violators through administrative sanction procedures. FNS is interested in gathering input on possible advances in the increased use of transaction data from EBT systems to identify and prosecute fraud.

3. Fostering increased competition—Due to concern over pricing increases, FNS commissioned a report, the ''Electronic Benefits Transfer Alternatives Analysis,'' to explore ways to increase competition in the EBT marketplace and keep EBT costs

affordable for all State agencies. The report highlights various procurement and pricing strategies as a way to leverage pricing and obtain economies of scale. FNS is interested in obtaining comments on these and other strategies to further foster increased competition among EBT-system vendors that would ensure cost containment and optimal service.

**FOR FURTHER INFORMATION CONTACT:** Lizbeth Silbermann, Chief, EBT Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 403, Alexandria, Virginia 22302, telephone (703) 305–2517.

Dated: December 13, 2002.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 02–32434 Filed 12–23–02; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** North Central Idaho Resource Advisory Committee, Grangeville, Idaho, USDA, Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, January 22, 2003 in Grangeville, Idaho for a business meeting. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting on January 22 begins at 10 AM, at the Super 8 Motel, 801 W. South 1st Street, Grangeville, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 PM (PST).

**FOR FURTHER INFORMATION CONTACT:** Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: December 16, 2002.

**Ihor Mereszczak,**

*Acting Forest Supervisor.*

[FR Doc. 02–32324 Filed 12–23–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Weather Radio Transmitter Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice.

**SUMMARY:** On April 4, 2001, the Rural Utilities Service (RUS) published a Notice of Funds Availability (NOFA) in the **Federal Register** (66 FR 17857, April 4, 2001) announcing a new grant program, and the availability of grant funds under this program, to finance the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America. Included in the NOFA was a list of proposed NOAA Weather Radio transmitter sites that would be eligible for funding. On October 16, 2001, RUS published an updated listing of the proposed NOAA Weather Radio transmitter sites that would be eligible for funding (66 FR 52571).

The purpose of this notice is to provide an additional updated listing of the proposed NOAA Weather Radio transmitter sites. An applicant for a grant under this program may apply for a site included in this updated listing, in the listing published October 16, 2001, or in the original listing published April 4, 2001. RUS continues to emphasize that it strongly encourages all grant applicants to consult and coordinate with the National Weather Service prior to submitting a completed application.

Further details on the application process and eligibility are available in the NOFA in the April 4, 2001, **Federal Register** (66 FR 17857) or on the RUS Web site at *http://www.usda.gov/rus/telecom/initiatives/weatherradio.htm*.

Applications for grants will be accepted until grants totaling $5 million in appropriations have been made. A list of the approved grant applications is available on the RUS Web site at *http://www.usda.gov/rus/telecom/initiatives/weatherradio.htm*. RUS will update this list as the agency approves additional grants.

**FOR FURTHER INFORMATION CONTACT:** Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

**SUPPLEMENTARY INFORMATION:**

### Updated List

An area's need for a new NOAA Weather Radio transmitter is determined by its inherent risk of hazardous weather and the absence of adequate coverage by an existing transmitter. RUS, in consultation with the National Weather Service, has developed the attached updated list of proposed transmitter sites that will be eligible for funding under the NOFA published in the April 4, 2001, **Federal Register**.

RUS will continue to update its list from time to time and will publish updates in the **Federal Register**.

Dated: December 13, 2002.

**Curtis M. Anderson,**

*Deputy Administrator, Acting as Administrator, Rural Utilities Service.*

NWS SITE LISTINGS

| State and site name | County name | FIPS | Latitude | Longitude |
|---|---|---|---|---|
| Alabama: | | | | |
| Cullman | Cullman | 01043 | 34–10–17 N | 86–50–39 W |
| Hytop | Jackson | 01071 | 34–54–58 N | 86–05–17 W |
| Arab/Guntersville | Marshall | 01095 | 34–24–04.1 N | 86–26–27 W |
| California: | | | | |
| Catalina Island (Marine)/Avalon | Los Angeles | 06037 | 33–20–34 N | 118–19–36 W |
| Conway Summit/Bridgeport | Mono | 06051 | 38–15–21 N | 119–13–49 W |

NWS SITE LISTINGS—Continued

| State and site name | County name | FIPS | Latitude | Longitude |
|---|---|---|---|---|
| Maine: Greenville | Pisctaquis | 23021 | 45–27–34 N | 69–35–28 W |
| Missouri: Prairie Home | Cooper | 29053 | 38–48–47 N | 92–35–25 W |
| Montana: Winnett | Petroleum | 30069 | 47–00–10 N | 108–21–05 W |
| North Dakota: | | | | |
| Wishek | Mcintosh | 38051 | 46–15–25 N | 99–33–24 W |
| Ft. Ransom | Ransom | 38073 | 46–31–15 N | 97–55–33 W |
| Oklahoma: | | | | |
| Grove | Delaware | 40041 | 36–35–37 N | 94–46–08 W |
| Woodward | Woodward | 40153 | 36–26–01 N | 99–23–24 W |
| Pennsylvania: Beach lake | Wayne | 42127 | 41–36–06 N | 75–09–01 W |
| Texas: | | | | |
| Van horn | Culberson | 48109 | 31–03–50 N | 104–27–23 W |
| Carrizo springs | Dimmit | 48127 | 28–31–18 N | 99–51–37 W |
| Dell City | Hudspeth | 48229 | 31–56–19 N | 105–12–03 W |
| Wyoming: Glendo/Windover/Wheatland | Platte | 56031 | 42–30–10 N | 105–01–32 W |

[FR Doc. 02–32308 Filed 12–23–02; 8:45 am]
BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Office of Inspector General

### Proposed Information Collection; Comment Request; Applicant for Funding Assistance

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, 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 February 24, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Barbara Bynum, H.C. Hoover Building, Room 7097, (202)482–5348. In addition, written comments may be sent via e-mail to *bbynum@oig.doc.gov*.

**SUPPLEMENTARY INFORMATION**

### I. Abstract

The Department of Commerce, through their bureaus—Economic Development Administration (EDA), the Minority Business Development Agency (MBDA), the International Trade Administration (ITA), the National Oceanic and Atmospheric Administration (NOAA), National Technical Information Service (NTIS) and the National Telecommunications and Information Agency (NTIA), and other programs, assists reliable, capable individuals and firms in the pursuit of various business development, business enterprise development and other forms of economic development. Form CD–346 is used to assist program and grants administration officials in determining the responsibility, financial integrity and management principles of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs. This requirement is derived from 42 U.S.C.3211(12); as well as the responsibilities cited in the Inspector General Act of 1978, Sec. 4(a)(3).

The CD–346 is also completed, when required, by grant recipients. Through the name check process the Office of Inspector General collects background information on key individuals associated with proposed financial assistance (grants, cooperative agreements, loans and loan guarantees) recipient organizations. The name check identifies those principals affiliated with proposed recipient organizations who have been convicted of, or are presently facing, criminal charges or are under investigation for fraud, theft, perjury or other matters which have significant impact on questions of management honesty or financial integrity. The name check process also includes an inquiry into the financial status of an individual and/or organization.

### II. Method of Collection

Paper format.

### III. Data

*OMB Number:* 0605–0001.

*Form Numbers:* CD–346.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal, State, Local or Tribal government.

*Estimated Number of Respondents:* 2,500.

*Estimated Time Per Response:* 15 minutes.

*Estimated Total Annual Respondent Burden Hours:* 625.

*Estimated Total Annual Respondent Cost Burden:* 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 will 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, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 18, 2002.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 02–32323 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–BS–P

---

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1263]**

## Grant of Authority for Subzone Status; Tesoro Refining and Marketing Company (Oil Refinery); Martinez, CA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, an application from the San Francisco Port Commission, grantee of Foreign-Trade Zone 3, requesting special-purpose subzone status for the oil refinery complex of Tesoro Refining and Marketing Company (formerly Ultramar, Inc.), located in the Martinez, California, area, was filed by the Board on January 1, 2002, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–2002, (67 FR 1438, 1/11/02)); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 3C) at the oil refinery complex of the Tesoro Refining and Marketing Company in the Martinez, California, area, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21, and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix ''C'');

—Products for export;

—And, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

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

**Faryar Shirzad,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 02–32265 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1261]**

## Grant of Authority; Establishment of a Foreign-Trade Zone; Roswell, New Mexico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the City of Roswell, New Mexico (the Grantee), has made application to the Board (FTZ Docket 9–2002, filed 2/5/02), requesting the establishment of a foreign-trade zone in Roswell, New Mexico, at the Roswell Industrial Air Center, which was designated as a Customs user fee port facility on September 25, 2002;

*Whereas*, notice inviting public comment has been given in the Federal Register (67 FR 6679, 2/13/02); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 256, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of December 2002.

Foreign-Trade Zones Board.

**Donald L. Evans,**

*Secretary of Commerce, Chairman and Executive Officer.*

[FR Doc. 02–32264 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Wednesday, January 8, 2003, from 3 p.m. until 5 p.m. EST. The meeting, which will be held telephonically, will be open to the public. Members of the public interested in attending by telephone should call (toll free) 1–899–7785 or (toll) 1–913–312–4169 and, when prompted, enter pass code 1468517.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will continue its deliberations on comments to be delivered to President Bush concerning the draft National Strategy to Secure Cyberspace.

**Agenda**

I. Opening of meeting and roll call: John Tritak, Director, Critical Infrastructure Assurance Office/Designated Federal Officer, NIAC

II. Opening remarks: Richard Clarke, Special Advisor to the President for Cyperspace Security/Executive Director, NIAC; Richard Davidson, Chairman, NIAC; and John Chambers, Vice Chairman, NIAC

III. Presentation of draft Comments document: Mr. Davidson

IV. Discussion and adoption of Comments: NIAC Members

V. Discussion of next steps/timeline for publication and delivery of document: NIAC Members

VI. Adjournment

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

For more information contact Wanda Rose on (202) 482–7481.

Dated: December 19, 2002.

**Eric T. Werner,**

*Council Liaison Officer.*

[FR Doc. 02–32435 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570–848]**

### Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New-Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Holly Hawkins or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0414 and (202) 482–0780, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 20, 2001, the Department of Commerce received a request from Shouzhou Huaxiang Foodstuffs, Co., Ltd. to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On September 28, 2001, the Department received a similar request from North Supreme Seafood (Zhejiang) Co., Ltd. On November 8, 2001, the Department initiated these new shipper antidumping reviews covering the period September 1, 2001, through August 31, 2001. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review*, 66 FR 56536 (November 8, 2001). The preliminary results were published on August 12, 2002. *See Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442 (August 12, 2002). On November 7, the Department extended the final results of these new shipper reviews for 44 days to December 17, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New-Shipper Reviews*, 67 FR 67821 (November 7, 2002).

**Extension of Time Limits for Final Results**

Pursuant to section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the final results of these new shipper reviews cannot be completed by the deadline established in the November 7, 2002 extension. The Department needs more time to analyze the issues raised in the parties' briefs with respect to input valuation, the scrap offset, and the *bona fides* of the sales. Given these issues, the Department finds that these reviews are extraordinarily complicated. Accordingly, the Department is extending the time limit for the completion of the final results until no later than January 2, 2003, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations.

Dated: December 17, 2002.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 02–32267 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570–847]**

### Notice of Continuation of Antidumping Duty Order: Persulfates from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Persulfates from the People's Republic of China.

**SUMMARY:** On September 30, 2002, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on persulfates from the People's Republic of China (''PRC'') would be likely to lead to continuation or recurrence of dumping.[1] On October 29, 2002, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act,

[1] *Final Results of Expedited Sunset Review: Persulfates from the People's Republic of China*, 67 FR 62226 (October 4, 2002)

determined that revocation of the antidumping duty order on persulfates from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on persulfates from the PRC.

**EFFECTIVE DATE:** December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Amir R. Eftekhari or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5331 or (202) 482–3330.

**SUPPLEMENTARY INFORMATION:**

**Scope of Review:**

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, (NH4)2S2O8, K2S2O8, and Na2S2O8. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfates are classified under HTSUS subheading 2833.40.20. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

**Background:**

On June 3, 2002, the Department initiated (67 FR 38332), and the Commission instituted (67 FR 38333), a sunset review of the antidumping duty order on Persulfates from the PRC, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked. *See Final Results of Expedited Sunset Review: Persulfates from the People's Republic of China*, 67 FR 62226 (October 4, 2002).

The Commission determined, pursuant to section 751 (c) of the Act, that revocation of the antidumping duty order on persulfates from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Persulfates from the PRC*, 67 FR 66001 (October 29, 2002) and USITC Publication 3555 (October 2002), Investigation No. 731-TA-749 (Review).

**Determination:**

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on persulfates from the PRC. The Department will instruct Customs to continue to collect antidumping at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than November 30, 2007.

Dated: December 16, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–32429 Filed 12–23–02; 8:45 am]

**BILLING CODE 3510–DS–S**

[2] *Persulfates from China*, 67 FR 66001 (October 29, 2002).

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-533–813]**

### Certain Preserved Mushrooms from India: Initiation and Preliminary Results of Changed-Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Initiation and Preliminary Results of Changed-Circumstances Review.

**SUMMARY:** The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances review of the antidumping order on certain preserved mushrooms from India. Based on this information, we preliminarily determine that KICM (MADRAS) Limited is the successor-in-interest to Hindustan Lever Limited for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136 or 482–1655, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 19, 1999, the Department of Commerce (''Department'') published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311), which included a cash deposit rate for Ponds India Limited (''Ponds''). In the course of the first administrative review, the Department noted that Ponds had become Hindustan Lever Limited (''HLL''). *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 66 FR 42507, 42508 (August 13, 2001). On October 17, 2002, HLL submitted a request that the Department initiate a changed-circumstances review to confirm that its wholly-owned subsidiary, KICM (MADRAS) Limited, is its successor-in-interest and should be entitled to the same cash deposit rate. The Department determined that HLL's request was incomplete and could not serve as a basis to initiate a changed-circumstances review. *See* Letter from Department to HLL Re: Certain Preserved Mushrooms from India: Request for Changed-Circumstances Review (October, 28, 2002). On November 6, 2002, HLL submitted supplemental information and documentation, and renewed its request that the Department conduct a changed-circumstances review to determine whether KICM should receive the same antidumping duty treatment as is accorded to HLL with respect to the subject merchandise.

**Scope of the Order**

The product covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water,

brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order are classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

**Initiation and Preliminary Results of Review**

In its November 6, 2002, submission, HLL advised the Department that, effective July 1, 2002, its wholly-owned subsidiary, KICM had acquired its entire mushroom business. According to the submission, HLL transferred the entire mushroom business to KICM on June 30, 2002. The transfer took place without any discontinuity of operations. HLL suspended mushroom operations at the close of business on June 30, 2002; KICM began mushroom operations at the opening of business on July 1, 2002. In its submission, HLL states and provides supporting documentation that all personnel, operations, and facilities remain essentially unchanged. In accordance with section 751(b) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216, the Department has determined that there is a sufficient basis to initiate a changed-circumstances review to determine whether KICM is the successor-in-interest to HLL.

In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See e.g., Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review*, 67 FR 58 (January 2, 2002) (*Polychloroprene Rubber from Japan*), and *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no single or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See e.g., Polychloroprene Rubber from Japan, Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994), *Canadian Brass, and Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880, 50881 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping and countervailing duty treatment as its predecessor.

We preliminarily determine that KICM is the successor-in-interest to HLL, following HLL's transfer and KICM's acquisition of HLL's mushroom business. HLL submitted documentation attached to its November 6, 2002 submission supporting its claims that KICM's acquisition of its mushroom business resulted in no changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) HLL's Published Annual Report for 2001 specifying KICM as one of its wholly-owned subsidiaries; (2) copies of the resolutions passed by the Board of Directors of HLL and KICM, respectively, that authorized KICM's acquisition of the mushroom business; and (3) a copy of the agreement for the sale and transfer of the mushroom business from HLL to KICM. The documentation described in items (2) and (3) above demonstrates that (i) all employees of HLL, including management, have been transferred to KICM, (ii) the business is being sold as a going concern, and (iii) there were no changes in management structure, supplier relationships, production facilities, or customer base.

When warranted the Department may publish the notice of initiation and preliminary determination concurrently. *See* 19 CFR 221(c)(3)(ii). The Department has determined that such action is warranted because HLL has provided *prima facie* evidence that KICM is its successor-in-interest.

For the forgoing reasons, we preliminarily determine that KICM is the successor-in-interest to HLL and, thus, should receive the same antidumping duty treatment with respect to certain preserved mushrooms from India as the former HLL.

**Public Comment**

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 21 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 7 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 14 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: December 17, 2002.

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–32266 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–DS–S

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-583–816]**

### Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results in the antidumping duty administrative review of certain stainless steel butt-weld pipe fittings from Taiwan.

**SUMMARY:** On July 9, 2002, the Department of Commerce (''Department'') published the

preliminary results and partial rescission in part of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer/exporter of the subject merchandise. The period of review (''POR'') is June 1, 2000 through May 31, 2001.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weight-averaged dumping margin is listed below in the section titled ''Final Results of the Review.''

**EFFECTIVE DATE:** December 24, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–6412 or 202–482–0159, respectively, fax 202–482–0865.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2001).

## Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan*, 58 FR 33250 (June 16, 1993). On June 11, 2001, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 2000 through May 31, 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation*, 66 FR 31203 (June 11, 2001). On June 29, 2001 respondent, Ta Chen requested that the Department conduct an administrative review for the period of June 1, 2000 to May 31, 2001. Additionally, on June 29, 2001, the petitioners requested that the Department conduct an administrative review of Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng'') and Tru-Flow Industrial Co., Ltd. (''Tru-Flow'') for the period June 1, 2000 through May 31, 2001. On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 38252 (July 23, 2001).

On July 25, 2001, the Department issued its antidumping questionnaire to Ta Chen, Liang Feng and Tru-Flow. On July 30, 2001, Liang Feng reported that it had no sales, entries or shipments of subject merchandise to the United States during the POR. Additionally, on July 31, 2001, Tru-Flow reported that it had no sales, entries or shipments of subject merchandise to the United States during the POR. On August 6, 2001, the petitioners opposed Liang Feng's and Tru-Flow's statements from their July 30 and July 31 letters, respectively.

On August 15, 2001, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review (''POR'') in its response to Section A of the Department's questionnaire. On September 7, 2001, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On August 28, 2001, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department's questionnaire, for which Ta Chen submitted its response on September 25, 2001. On January 8, 2002, the Department issued to Ta Chen a supplemental questionnaire to Sections B, C, and D of the Department's questionnaire. On January 29, 2002, Ta Chen submitted its response to this supplemental questionnaire. On April 23, 2002, the Department issued to Ta Chen the second supplemental questionnaire to Sections A-D of the Department's questionnaire. On May 13, 2002, Ta Chen submitted its response to the second supplemental questionnaire for Sections A-D of the Department's questionnaire. On May 17, 2002, the Department asked Ta Chen to submit various pages that were missing from the exhibits in the May 13, 2002 submission. On May 17, 2002, Ta Chen submitted two sets of information, one of which contained the missing exhibit pages the Department requested. Ta Chen also submitted additional information it claimed was inadvertently omitted from its response to the Department's second Sections A-D supplemental questionnaire. From May 20-May 23, 2002, the Department of Commerce conducted the U.S. sales verification of the questionnaire responses of Ta Chen and TCI. On June 12, 2002, the Department requested that Ta Chen resubmit its U.S. sales database to incorporate one of the minor corrections from verification. Ta Chen submitted the revised U.S. sales database on June 14, 2002. On June 13, 2002, the Department asked Ta Chen an additional supplemental question regarding clarification of a specific home market sales observation. On June 20, 2002, Ta Chen submitted its response to the Department's supplemental question.

Additionally, the Department sent questionnaires to two of Ta Chen's subcontractors on January 28, 2002, to which they responded on February 18, 2002. On April 25, 2002, the Department issued a supplemental questionnaire to the same two subcontractors. They filed in their responses on May 23, 2002.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for conducting an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On January 22, 2002, the Department extended the time limits for the preliminary results by 120 days to June 29, 2002 in accordance with the Act. However, because June 29, 2002 fell on a weekend, the Department stated it would release its preliminary results on July 1, 2002. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, 67 FR 2856 (January 22, 2002). The Department's preliminary determination in this review was published on July 9, 2002. *See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review*, (''*Preliminary Results*'') 67 FR 45467 (July 9, 2002). We invited parties to comment on the Preliminary Results. We received written comments on August 8, 2002 from petitioners and on August 9, 2002, from Ta Chen. On August 15, 2002, we received rebuttal comments from petitioners and Ta Chen. On November 7, 2002, (67 FR 67823) the Department extended the time limit for this review 30 days. On November 27, 2002, the Department extended the time limit for this review an additional 11 days so that

final results of this review become due on December 17, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

**Scope of the Review**

The merchandise subject to this administrative review is certain stainless steel butt-weld pipe fittings (''SSBWPF'') whether finished or unfinished, under 14 inches inside diameter. Certain SSBWPF are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows'', ''tees'', ''reducers'', ''stub-ends'', and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

During this administrative review, the Department received a scope ruling request on April 12, 2001 and in accordance with 19 CFR 351.225(k)(2) from Allegheny Bradford Corporation d/b/a Top Line Process Equipment Company (''Top Line''), for a scope ruling on whether stainless steel butt-weld tube fittings it plans to import are covered by the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. On November 15, 2001, the Department issued its preliminary scope ruling. *See Memorandum from Edward C. Yang, Director, Enforcement, Group III, Office 9, to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Preliminary Scope Ruling on the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings: Allegheny Bradford Corporation d/b/a Top Line Process Equipment* (''*Preliminary Scope Ruling*''), dated November 15, 2001, which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099. We gave interested parties an opportunity to comment on our *Preliminary Scope Ruling*. Top Line and Petitioners filed briefs on November 21, 2001. On November 26, 2001, Top Line and Petitioners filed rebuttal briefs. On December 10, 2001, the Department issued its final scope ruling that Top Line's stainless steel butt-weld tube fittings are within the scope of the Order. *See Memorandum from Edward C. Yang, Director, Enforcement, Group III, Office 9, to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Final Scope Ruling on the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings: Allegheny Bradford Corporation d/b/a Top Line Process Equipment*, dated December 10, 2001, which is also on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099.

**Partial Rescission of Review**

In the Preliminary Determination, the Department preliminarily rescinded the review with respect to Liang Feng and Tru-Flow as we found that there were no entries of subject merchandise during the POR. See Preliminary Determination, 65 FR 45467, 45469. As the Department received no comments on this issue and as no additional evidence has arisen, the Department is rescinding the review with respect to Liang Feng and Tru Flow.

**Analysis of Comments Received**

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the *Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 2000 through May 31, 2001* (''*Decision Memorandum*''), dated December 17, 2002, which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B-099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *www.ia.ita.doc.gov*. The paper copy and electronic version of the public version of the *Decision Memorandum* are identical in content.

**Sales Below Cost in the Home Market**

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

**Changes Since the Preliminary Results**

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as Appendix I. Based on our analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the *Decision Memorandum*, accessible in B-099. The changes are as follows:

- The Department has changed the amount used for inter-warehouse transfer.
- The Department has applied, as facts available, the average margin of all the U.S. sales to two sets of sales in question, instead of the average positive margin applied in the preliminary results.
- The Department has recalculated the indirect selling expense ratio since it is our policy to offset interest expenses included in indirect selling expenses by the amount of imputed expenses related to subject merchandise.
- The Department has recalculated Ta Chen's G&A to include bonuses to employees, supervisors, and directors paid from stockholder's equity.

**Final Results of the Review**

We determine that the following percentage weighted-average margin exists for the period June 1, 2000 through May 31, 2001:

CERTAIN WELDED STAINLESS STEEL PIPE

| Producer/Manufacturer/Exporter | Weighted-Average Margin (percent) |
|---|---|
| Ta Chen | 2.38 |

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. With respect to the constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess any resulting *non-de minimis* percentage margins against the entered Customs values for the subject

merchandise on each of that importer's entries during the review period.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain SSBWPF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers shall continue to be 51.01 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 17, 2002.

**Bernard T. Carreau,**

*ActingAssistant Secretary for Import Administration.*

**APPENDIX I**

**Discussion of the Issues:**

*Comment 1*: Intra-Warehouse Freight Costs
*Comment 2*: CEP Profit
*Comment 3*: Use of Adverse Facts Available
*Comment 4*: Home Market Credit Expenses
*Comment 5*: CEP Expenses
*Comment 6*: CEP Offset
*Comment 7*: Costs Associated with U.S. Short-Term Borrowings
*Comment 8*: U.S. Indirect Selling Expenses
*Comment 9*: Home Market Indirect Selling Expenses
*Comment 10*: Home Market Inventory Carrying Costs Related to U.S. Sales
*Comment 11*: General and Administrative Expenses
*Comment 12*: Miscellaneous

[FR Doc. 02–32430 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121802A]**

### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel, Oversight Committee and Habitat Oversight Committee in January, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held between January 7 and January 10, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Warwick, RI and Plymouth, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Meeting Dates and Agendas**

*Tuesday, January 7, 2003, 9:30 a.m.*—Habitat Oversight Committee Meeting.

Location: Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900.

The Committee will review the analysis for the Essential Fish Habitat Sections of the Draft Supplimental Environmental Impact Statement (DSEIS) for Amendment 10. They will also select preferred alternatives for Amendment 10 to be recommended to the full Council.

*Wednesday, January 8, 2003, 9:30 a.m.*—Scallop Advisory Panel Meeting.

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

The Scallop Advisory Panel will review the Draft Amendment 10 alternatives and analysis of impacts, providing advice to the Oversight Committee for measures to include in one or more preferred alternatives.

*January 9, 2003, 9:30 a.m. and January 10, 2003, 8:30 a.m.*—Scallop Oversight Committee Meeting.

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Based on the new and existing analyses in the DSEIS, Plan Development Team (PDT) recommendations, and Panel advice; the Oversight Committee will develop recommendations for one or more preferred alternatives for Draft Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan. The committee will also develop initial/default rotation management recommendations for the 2004–07 scallop fishing years based on the 2002 survey data and updated projections. Other scallop management issues may also be discussed, if needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 18, 2002.

**Richard W. Surdi,**

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

[FR Doc. 02–32303 Filed 12–23–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

**Docket No. 010222048–2313–07**

### The State Uniform Commercial Code Exception of the Electronic Signatures in Global and National Commerce Act

**AGENCY:** National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

**ACTION:** Request For Comments

**SUMMARY:** Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. §§ 7001 *et seq.* (''ESIGN'' or ''the Act''), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. § 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; state commercial law; consumer law covering utility services, residential property foreclosures and defaults, and insurance benefits; product recall notices; and hazardous materials documents. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. § 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the state uniform commercial code exception to the ESIGN Act. *See* 15 U.S.C. § 7003(a)(3). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

**DATES:** Written comments and papers are requested to be submitted on or before February 24, 2003.

**ADDRESSES:** Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., N.W., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy__ucc@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

**FOR FURTHER INFORMATION CONTACT:** For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., N.W., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

**SUPPLEMENTARY INFORMATION:**

### Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: probate and domestic law matters; state commercial law; consumer law covering utility services, residential default and foreclosure notices, and insurance benefits cancellation notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for contracts governed by the Uniform Commercial Code as in effect in any state is found in section 103(a)(3) of the Act:

*Sec. 103. [15 U.S.C. 7003] Specific Exceptions.*

*(a) Excepted Requirements.*— The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

* * * *

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

*(c) Review of Exceptions.*—

*(1) Evaluation required.*— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

### Contracts and Records Governed by State Uniform Commercial Code

The ESIGN exception for contracts governed by state uniform commercial code (UCC) provisions, other than sections 1–107, 1–206, Articles 2 and 2A, precludes the formation or establishment of these contracts by electronic means.[2] Contracts based on the other provisions of the uniform commercial code are excepted or exempt from the application of ESIGN's provisions, and therefore, are not legally valid if executed electronically or

[1]Comments submitted in response to **Federal Register** notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as part of a separate review of the Act. Notices have been published on the court documents, hazardous materials, product recall, famliy law documents, housing default, and insurance cancellation notices exceptions to ESIGN. *See* 67 Fed.Reg. 56277, 56279, 59828, 61599, 63379, 69201, and 75849.

[2]Section 1–107 allows for waiver or renunciation of a claim or right after breach without a writing; section 1–206, the statute of frauds, requires a written contract for sale of property in excess of $5,000 in amount or value of remedy; Articles 2 and 2A govern sales and lease transactions, respectively.

signed with an electronic signature. This general rule does not apply, however, to transferable records under Title II of the ESIGN Act. *See* 15 U.S.C. § 7021(a). For the purposes of Title II, a ''transferable record'' is an electronic record that would be a note under Article 3 of the uniform commercial code if the electronic record were in writing; the issuer of the electronic record expressly has agreed is a transferable record; and relates to a loan secured by real property. *Id.* The provisions of Title II, therefore, allow the use of electronic signatures for transferable records under Article 3 of the uniform commercial code,[3] although not included among the ESIGN exceptions in Title I. *See e.g.,* 15 U.S.C. § 7003(a)(3).

Each state's commercial law controls whether electronic transactions are allowed under that state's uniform commercial code. While some states' rules require parties to execute commercial contracts in written form, several states have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that incorporate or exclude commercial transactions under the uniform commercial code from the application of the state electronic transactions laws. *See* National Conference of Commissioners on Uniform State Laws at http://www.nccusl.org/nccusl/LegislativeByState.pdf. Forty-six states have adopted the version of UETA recommended by NCCUSL or their own version of UETA. Of the states that have passed UETA laws, most of them have expressly excluded contracts governed by select uniform commercial code provisions from the operation of the state electronic transactions laws.[4] The remaining states have passed state UETA laws that do not contain language that expressly excludes all uniform commercial code provisions. These statutes may contain general provisions, however, that make the substantive commercial law controlling and require an examination of the commercial code to determine whether certain electronic commercial transactions are legally valid.

Some state legislatures and state courts have also enacted the Uniform Computer Information Transactions Act (UCITA). Most UCITA laws specify that if there is conflict between their provisions and those of the state uniform commercial code, the latter is controlling. Consequently, if a state's regulations regarding electronic signatures contains an exception for certain transactions governed by the uniform commercial code, then the uniform commercial code will control, regardless of what UCITA allows.

**The ESIGN Section 103 Evaluation**

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of whether the exceptions set out in section 103 of the Act continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation of the state uniform commercial code law exception is intended to evaluate the current status of the law regarding this issue in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of state uniform commercial code provisions for the purpose of recommending changes to those regulations, but to advise Congress of the current state of law and practice regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state rulemaking proceedings concerning contracts governed by state uniform commercial codes.

**Invitation to Comment**

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from all parties that may be affected by the removal of the state uniform commercial code exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and commercial law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from ESIGN on consumers, companies, practitioners, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Discuss state Uniform Electronic Transactions Act (UETA) provisions that either include or exclude any sections of the State Uniform Commercial Code provisions that are also exceptions to section 101 of the ESIGN Act.

2. Describe state uniform commercial code provisions that are excluded from the state electronic transactions laws or the ESIGN Act and that require written documents for commercial contracts and transactions. Indicate whether there other state or federal regulations that require commercial contracts and transactions covered by the state uniform commercial codes to be excluded from the operation of ESIGN or the state UETA laws.

3. Discuss whether and how the inclusion of all state uniform commercial code contracts and transactions under the requirements of ESIGN and the state UETA laws would affect consumers. How would this affect companies?

4. Discuss all state uniform commercial code provisions that may need to be modified to accommodate interstate, online transactions.

5. Are there issues surrounding the execution of commercial documents covered by the exception, such as authentication and privacy, that should be considered?

6. How would the removal of the state uniform commercial code exception from ESIGN affect federal or state commercial law?

7. Describe the types of commercial transactions and contracts that would either benefit from or be harmed by the removal of the state uniform commercial code exception to ESIGN.

8. Would the economic impact be greater on consumers or a particular industry if the exception is eliminated from ESIGN?

Please provide copies of studies, reports, opinions, research or other

[3] Title II also notes that ''[d]elivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.'' 15 U.S.C. § 7021(d). The Code explains why an electronic signature would still be enforceable without delivery (UCC § 4–110), possession (UCC § 3–301), or endorsement (UCC § 3–205) of the instrument.

[4] *See e.g.,* New Mexico H.B. 232, *available at,* http://www.nccusl.org/nccusl/pubdrafts.asp (excludes Articles 3, 4, 4A, 5, 8, and 9 of the Uniform Commercial Code from ESIGN). Approximately 43 states have an exception for specific uniform commercial code provisions. For a list of states that have adopted electronic transactions laws, see the National Conference of Commissioners on Uniform State Laws website, *available at,* http://www.nccusl.org/nccusl/legislativebystate.pdf.

empirical data referenced in the responses.

Dated: December 19, 2002.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 02–32405 Filed 12–23–02; 8:45 am]

BILLING CODE 3510–60–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 18, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting a limit.

**EFFECTIVE DATE:** December 24, 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 this limit, 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 website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.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 limit for Categories 645/646 is being increased to address a data discrepancy in these categories (see 67 FR 72922, published on December 9, 2002).

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 63219, published on December 5, 2001.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 18, 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 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 24, 2002, you are directed to increase the current limit for Categories 645/646 to 1,382,047 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. 02–32288 Filed 12–23–02; 8:45 a.m.

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Removing a Company From List of Companies in Macau From Which Customs Shall Deny Entry to Textiles and Textile Products

December 20, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs directing Customs not to apply the directive regarding denial of entry to shipments from a certain company.

**EFFECTIVE DATE:** December 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

In a notice and letter to the Commissioner of Customs, dated August 27, 2002, and published in the **Federal Register** on September 3, 2002 (67 FR 56282), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Mei Lai, one of the listed companies, should not be subject to that directive. Effective on December 20, 2002, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 20, 2002.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: In the letter to the Commissioner of Customs, dated August 27, 2002 (67 FR 56282), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Mei Lai, one of the listed companies, should not be subject to that directive. Effective on December 20, 2002, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by this company. CITA expects that Customs will conduct additional on-site verifications of this company's production when possible.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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.02–32539 Filed 12–20–02; 2:06 pm]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

December 20, 2002.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for a determination that certain shirting fabrics, for use in blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

**SUMMARY:** On December 18, 2002, the Chairman of CITA received a petition from School Apparel, Inc. alleging that certain shirting fabrics, classified in subheadings 5210.21 and 5210.31 of the Harmonized Tariff Schedule of the United States (HTSUS), used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that blouses of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 8, 2003, to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

### BACKGROUND:

The CBTPA provides for quota-and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota-and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the **Federal Register** that it will follow in considering requests (66 FR 13502).

On December 18, 2002, the Chairman of CITA received a petition from School Apparel, Inc., alleging that certain shirting fabrics, specifically fabrics of subheadings 5210.21 and 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota-and duty-free treatment under the CBTPA for women's and girls' blouses that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that can be supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than January 8, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 02–32540 Filed 12–20–02; 2:06 pm]

BILLING CODE 3510–DR–S

## CONSUMER PRODUCT SAFETY COMMISSION

### Submission for OMB Review; Comment Request—Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the **Federal Register** of October 9, 2002 (67 FR 62958), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the requirements for baby-bouncers, walker-jumpers, and baby-walkers in regulations codified at 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

No comments were received in response to the **Federal Register** notice. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change.

The regulation codified at 16 CFR 1500.18(a)(6) establishes safety requirements for baby-bouncers, walker-jumpers, and baby-walkers to reduce unreasonable risks of injury to children associated with those products. Those risks of injury include amputations, crushing, lacerations, fractures, hematomas, bruises and other injuries to children's fingers, toes, and other parts of their bodies. The regulation codified at 16 CFR 1500.86(a)(4) requires manufacturers and importers of baby-bouncers, walker-jumpers, and baby-

walkers to maintain records for three years containing information about testing, inspections, sales and distribution of these products.

The records of testing and other information required by the regulations allow the Commission to determine if baby-bouncers, walker-jumpers, and baby-walkers comply with the requirements of the regulation codified at 16 CFR 1500.18(a)(6). If the Commission determines that products fail to comply with the regulations, the records required by 16 CFR 1500.86(a)(4) enable the firm and the Commission to: (i) Identify specific models of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event those products are subject to recall.

**Additional Information About the Request for Extension of Approval of a Collection of Information**

*Agency address:* Consumer Product Safety Commission, Washington, DC 20207.

*Title of information collection:* Requirements for Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

*Type of request:* Extension of approval without change.

*General description of respondents:* Manufacturers and importers of baby-bouncers, walker-jumpers, and baby-walkers.

*Estimated number of respondents:* 28.

*Estimated average number of hours per respondent:* 2 per year.

*Estimated number of hours for all respondents:* 56 per year.

*Estimated cost of collection for all respondents:* $1,590.40 per year.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by January 23, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: December 19, 2002.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 02–32437 Filed 12–23–02; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force L5 Civil Signal Interface Control Document (ICD) Revision 2

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Request for public comment of L5 Civil Signal Interface Control Document (ICD) Revision 2.

**SUMMARY:** This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) has released the current ICD–GPS–705 dated 2 December 2002, Navstar GPS Space Segment/User Segment L5 Interfaces, for public review and comment. This ICD describes the interface characteristics of L5, a signal to be incorporated into the GPS system for the benefit of the civilian community. The ICD can be reviewed at the following Web site: *http://gps.losangeles.af.mil*. Click on ''Public Interface Control Working Group (ICWG).'' Hyperlinks to the ICD and review instructions are provided. The reviewer should save the ICD to a local memory location prior to opening and performing the review. All comments and their resolutions will be posted to the web site.

**ADDRESSES:** Submit comments to SMC/CZERC, 2420 Vela Way, Suite 1467, El Segundo, CA 90245–4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: smc.czerc@losangeles.af.mil. Comments may also be sent by fax to 1–310–363–6387.

**DATES:** The suspense date for comment submittal is January 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** CZERC at 1–310–363–6329, GPS JPO System Engineering Division, or write to the address above.

**SUPPLEMENTARY INFORMATION:** The civilian and military communities use the Global Positioning System which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 02–32335 Filed 12–23–02; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF DEFENSE

### Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, NV

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the President has exempted the United States Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information to any unauthorized persons.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Kipling At Lee, Jr., Deputy General Counsel (Military Affairs), Office of the Secretary of the Air Force, Washington DC 20330; telephone (703) 695–5663.

**SUPPLEMENTARY INFORMATION:** 42 U.S.C. 6961 makes each department, agency and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste subject to all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. 42 U.S.C. 6961 also states that the President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so and that any exemption shall be for a period not in excess of one year.

On September 13, 2002, the President exempted the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate, or local provisions respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. Therefore, the text of the Memorandum from the President to the Secretary of the Air Force is set forth below.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

Presidential Determination No. 2002–30
September 13, 2002
Memorandum for Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force
Subject: Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, the subject of litigation in *Kasza* v. *Browner* (D. Nev. CV–S–94–795–PMP) and *Frost* v. *Perry* (D. Nev. CV–S–94–714–PMP), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning the operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) Imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.

George W. Bush

[FR Doc. 02–32334 Filed 12–23–02; 8:45 am]

BILLING CODE 5001–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 24, 2003.

**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 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 18, 2002.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

### Office of Educational Research and Improvement

*Type of Review:* Revision.

*Title:* Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 63,550.

Burden Hours: 183,080.

*Abstract:* IPEDS is a system of surveys designed to collect basic data from approximately 9,600 postsecondary institutions in the United States. The IPEDS provides information on numbers of students enrolled, degrees completed, other awards earned, dollars expended, staff employed at postsecondary institutions, and cost and pricing information. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, specify the need for the ''redesign of relevant data systems to improve the usefullness and timeliness of the data collected by such systems.'' As a consequence, in 2000 IPEDS began to collect data through a web-based data collection system and to concentrate on those institutions that participate in Title IV federal student aid programs; other institutions may participate on a voluntary basis.

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 *vivian_reese@ed.gov*. Requests may also be 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 e-mail 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. 02–32306 Filed 12–23–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory 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 January 23, 2003.

**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 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: December 19, 2002.

**John D. Tressler,**

*Leader, Regulatory Management Group Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* Reinstatement.

*Title:* Credit Enhancement for Charter School Facilities Program.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 30.

Burden Hours: 2,400.

*Abstract:* ED will use the information through this application to award competitive grants. These grants will be made to private, non-profits, governmental entities, and consortia of these organizations. These organizations will use the funds to leverage private capital to help charter schools construct, acquire, and renovate school facilities.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 e-mail 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. 02–32371 Filed 12–23–02; 8:45 am]

BILLING CODE 4000–01–P

---

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory 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 January 23, 2003.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 *Lauren.Wittenberg@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 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: December 19, 2002.

**John D. Tressler,**

*Leader, Regulatory Management Group, Office of the Chief Information Officer.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Lender's Application Process (LAP).

*Frequency:* Quarterly, Annually.

*Affected Public:*

State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 121.

Burden Hours: 20.

*Abstract:* The Lender's Application Process is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well as Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Indentification Numbers (LID's) lenders names, addresses with 9 digit zip codes and other pertinent information.

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 directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be 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 Lew Oleinick at

his e-mail address *Lew.Oleinick@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. 02–32372 Filed 12–23–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Applications for New Awards for Fiscal Year 2003

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2003.

**SUMMARY:** This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under four programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended. The four programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (five priorities); (2) Special Education-Personnel Preparation to Improve Services and Results for Children with Disabilities (four priorities); (3) Special Education-Technology and Media Services for Individuals with Disabilities (one priority) and (4) Special Education—Training and Information for Parents of Children with Disabilities (one priority).

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 employment qualified individuals with disabilities in project activities (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 the number of pages listed in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5″ × 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 without consideration or evaluation 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.

#### Application Procedures

**Note:** 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.

#### Project for Electronic Submission of Applications

In Fiscal Year 2003, 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 four 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, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, and Training and Information for Parents of Children with Disabilities—CFDA 84.328 are included in the pilot project. If you are an applicant for a grant under any of the four 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) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, 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 format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- 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.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days 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. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for any of the four programs in this announcement and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) The Grants and Contracts Services Team listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for each of the four 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.

Due to the upgrading of software, we anticipate that the e-Application system will be unavailable for several days in mid-December. The tentative schedule for this down time is from 7 p.m., December 12, until 6 a.m., December 16, Washington, DC time. Please check *http://e-grants.ed.gov* for any updates on the unavailability of the e-Application system.

**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 EDGAR 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 IHEs only.

**Priorities**

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

*Absolute Priority 1—Student-Initiated Research Projects (84.324B)*

This priority supports short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children with disabilities and early intervention services for infants and toddlers with disabilities, consistent with the purposes of the program, as described in section 672 of IDEA.

Projects must—

(a) Develop research skills in postsecondary students; and

(b) Include a principal investigator who serves as a mentor to the student researcher while the project is carried out by the student.

*Project Period:* Up to 12 months.

*Absolute Priority 2—Field-Initiated Research Projects (84.324C)*

This priority supports a wide range of field-initiated research projects that promote innovation, development, exchange, and the transfer of research into knowledge and practice as described in section 672 of IDEA including the improvement of early intervention, instruction, and learning for infants, toddlers, and children with disabilities.

Projects must—

(a) Adhere to rigorous, scientific methods and standards;

(b) Prepare their procedures, findings, and conclusions in a manner that will improve results for children with disabilities by informing other interested researchers and advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(c) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

*Invitational Priorities*

Within absolute priority 2 for FY 2003, we are particularly interested in applications that meet one or more of the following invitational priorities.

(a) Projects to address the specific problems of over-identification and under-identification of children with disabilities. (See section 672(a)(3) of IDEA).

(b) Projects to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services. (See section 672(a)(4) of IDEA).

(c) Projects studying and promoting improved alignment and compatibility of regular and special education reforms concerned with curriculum and instruction, evaluation and accountability, and administrative procedures in order to improve results for children with disabilities. (*See* section 672(b)(2)(D) of IDEA).

(d) Projects that advance knowledge about the coordination of education with health and social services in order to improve results for children with disabilities and their families. (*See* section 672(b)(2)(G) of IDEA).

(e) Projects that address causal questions which employ randomized experimental designs.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets one or more of these invitational priorities a competitive or absolute preference over other applications.

*Project Period:* The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as research questions that require repeated measurement within a longitudinal design—will projects be funded for

more than 36 months, up to a maximum of 60 months.

*Absolute Priority 3—Model Demonstration Projects for Children With Disabilities (84.324M)*

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for providing early intervention, educational, and related services to infants, toddlers, and children with disabilities and students with disabilities who are pursuing post-school employment, postsecondary education, or independent living goals. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under IDEA.

**Requirements for All Demonstration Projects**

(a) A model demonstration project must—

(1) Develop and implement the model with specific components or strategies that are based on theory, research, or evaluation data documenting improved results;

(2) Determine the effectiveness of the model and its components or strategies by using multiple measures of results; and

(3) Produce detailed procedures and materials that would enable others to replicate the model.

(b) Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of the project (see section 661(f)(2)(A) of IDEA).

Within absolute priority 3, we intend to fund no more than two projects focusing on postsecondary education for students with disabilities.

*Competitive Preference*

Within this absolute priority we will give the following competitive preference points under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

Up to ten (10) points to an application that proposes to employ randomized experimental designs in conducting evaluations.

Therefore, for the purpose of this competitive preference, an applicant can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

*Project Period:* Up to 48 months.

*Absolute Priority 4—Initial Career Awards (84.324N)*

Background

There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve results for children with disabilities and their families through better early intervention services for infants and toddlers, and special education and related services for children with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the early intervention and special education research community to more effectively meet the needs of children with disabilities and their families. This priority addresses the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in section 672 of IDEA.

**Priority**

The purpose of this priority is to award grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing a doctoral program and graduating (*i.e.*, for FY 2003 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1999–2000 academic year).

At least 50 percent of the initial career researcher's time must be devoted to the project.

Projects must—

(a) Pursue a line of research that is developed either from theory or a conceptual framework. The line of research must establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in design and conduct, sustained involvement with one or more nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. The experts do not have to be at the same institution or agency at which the project is located, but the interaction with the project must be sufficient to develop the capacity of the initial career researcher to effectively pursue the research into mid-career activities;

(c) Prepare procedures, findings, and conclusions in a manner that improves results for children with disabilities by informing other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

Invitational Priority

Within absolute priority 4 for FY 2003, we are particularly interested in applications that meet the following invitational priority. Projects that include, in the design and conduct of the research project, a practicing teacher or clinician, in addition to the required involvement of nationally recognized experts.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

*Project Period:* Up to 36 months.

*Absolute Priority 5—Outreach Projects for Children with Disabilities (84.324R)*

This priority supports projects that will improve results by assisting educational and other agencies in replicating proven models, components of models, and other exemplary practices that improve services for infants, toddlers, children with disabilities, and students with disabilities who are pursuing post-school employment, postsecondary education, or independent living goals.

For the purposes of this priority, a ''proven model'' is a comprehensive description of a theory or system that, when applied, has been shown to be effective through scientifically based research. ''Exemplary practices'' are effective strategies and methods used to deliver educational, related, or early intervention services.

The models, components of models, or exemplary practices that are selected for outreach may include those developed for preservice and inservice personnel preparation. However, they do not need to have been developed through projects funded under IDEA, or by the applicant.

Applicants must:

(a) Provide supporting data or other documentation in the application showing how scientifically based research demonstrates the effectiveness of the model, components of a model, or exemplary practices selected for outreach.

(b) Specify in the application if the primary focus of the models, components of models, or exemplary practices intended for outreach are for preservice or inservice personnel preparation.

Projects must—

(a) Select implementation sites in multiple regions within one State or multiple States and describing the criteria for their selection;

(b) Describe the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities associated with the replication efforts, including a description of any modifications to the model or practice made by the sites;

(c) Include public awareness, product development and dissemination, training, and technical assistance activities as part of the implementation of the project;

(d) Evaluate the effectiveness of the replication of the model and its components or strategies by using multiple measures of results.

(e) Coordinate dissemination and replication activities conducted as part of outreach with dissemination projects, technical assistance providers, consumer and advocacy organizations, State and local educational agencies, and the lead agencies for Part C of IDEA, as appropriate; and

(f) Prepare products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of the project (see section 661(f)(2)(A) of IDEA).

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 annually for another annual meeting in Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss project implementation issues.

Within absolute priority 5, we intend to fund no more than two projects focusing on postsecondary education for students with disabilities.

Competitive Preference

Within this absolute priority we will give the following competitive preference points under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

Up to ten (10) points to an application that employs randomized experimental designs in conducting evaluation of outreach activities.

Therefore, for the purpose of this competitive preference, an applicant can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

*Project Period:* Up to 36 months.

**Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities [CFDA Number 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:* Institutions of higher education are eligible applicants for Absolute Priorities 1–4 under this program.

*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 EDGAR 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—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, and Children With Low-Incidence Disabilities (84.325A) Background*

The national demand for special education, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the relatively small number of personnel needed to serve infants, toddlers, and children with low-incidence disabilities in each State, institutions of higher education and individual States have limited incentive to develop and support programs that train such personnel. Moreover, of the programs that do exist, many fail to produce graduates with the skills necessary to meet the needs of the low-incidence disability population. Thus, Federal support is required to increase the supply of personnel who possess the skills and experience necessary to serve children with low-incidence disabilities.

Priority

This priority supports projects that increase the number and quality of personnel to serve children with low-incidence disabilities by providing preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level. For the purpose of this priority, the term ''low-incidence disability'' means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education (IDEA, section 673(b)(3)). Training for personnel to serve children with mild-moderate mental retardation, specific learning disabilities, speech or language disorders, or emotional and behavioral disabilities is addressed under the priority for the preparation of personnel to serve children with high-incidence disabilities (84.325H), and, therefore, is not supported under this priority.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional

degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Early intervention personnel who serve children with low-incidence disabilities, ages birth through age 2 (until the third birthday),and their families. For the purpose of this priority, all children who require early intervention services are considered to have a low-incidence disability. Early intervention personnel include persons who train, or serve as consultants to, service providers and service coordinators;

(b) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology, and paraprofessional personnel who work with children with low-incidence disabilities and their families; or

(c) Related services personnel who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with low-incidence disabilities and their families. Comprehensive programs and specialty components within a broader discipline that are designed to prepare personnel for work with the low-incidence population may be supported. For the purpose of this priority, eligible related service providers do not include physicians.

We particularly encourage projects that address the personnel needs of more than one State, provide multi-disciplinary training, and provide for collaboration among several training institutions and between training institutions and public schools. In addition, we encourage projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings.

Each project funded under this absolute priority must—

(a) Use curricula and pedagogy that are shown to be effective as demonstrated through scientifically based research, in order to prepare personnel equipped to improve outcomes for students with low-incidence disabilities, and foster appropriate access to and achievement in the general education curriculum whenever appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program;

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(d) Prepare personnel to address the specialized needs of children with low-incidence disabilities from diverse cultural and language backgrounds by—

(1) Determining the competencies needed for personnel to work effectively with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools to promote continuous improvement in preparation programs and service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in schools and other diverse settings, including schools and settings in high poverty communities;

(g) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille.

(h) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; and communicate the results of this evaluation process to the Office of Special Education Programs (OSEP) in required annual performance reports and the final performance report;

(i) Describe how the proposed training program is aligned with State learning standards for children; and

(j) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (b) of this section of the priority.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of the Act and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that such State or States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B orC of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more SEAs or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States specifying that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of the Act and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of the Act and § 304.20 of the regulations, use at least 55 percent of the total requested budget for student scholarships.

Under this absolute priority, we plan to award approximately:

- 60 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 10 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
- 15 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
- 15 percent of the available funds for projects that support careers in early intervention.

Competitive Preference

Within this absolute priority, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

Therefore, 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 this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 110 points.

*Project Period:* Up to 60 months.

*Absolute Priority 2—Preparation of Leadership Personnel (84.325D)*

This priority supports projects that conduct the following activities for leadership personnel:

(a) Preparing personnel at the doctoral, and postdoctoral levels to administer, enhance, or to provide special education, related services, or early intervention services for children with disabilities; or

(b) Developing Master's and specialist level programs in special education administration.

Projects funded under this absolute priority must—

(a) Prepare leadership personnel to work with culturally and linguistically diverse populations by—

(1) Determining the competencies needed by leadership personnel to understand and work with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education and related services training programs.

(b) Include coursework reflecting current research and pedagogy on—

(1) Participation and achievement in the general education curriculum and improved outcomes for children with disabilities; or

(2) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families.

(c) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(d) Offer integrated training and practice opportunities that will enhance the collaborative skills of all personnel who share responsibility for providing effective services to children with disabilities.

(e) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities. Communicate the results of this evaluation process to OSEP in required annual performance reports and the final performance report;

(f) Describe, if appropriate, how the proposed training program is aligned with State learning standards for children; and

(g) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (c) of this section of the priority.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive systems of personnel development under Parts B and C of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Meet State and professionally recognized standards for the preparation of leadership personnel in special education, related services, or early intervention fields;

(d) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(2) of IDEA and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(e) As authorized under section 673(i) of IDEA and § 304.20 of the regulations, use at least 65 percent of the total requested budget for student scholarships.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which institutions of higher education successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 110 points.

*Project Period:* Up to 48 months.

*Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E)*

This priority supports awards to IHEs with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities.

This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, specialist, doctoral, or post-doctoral level.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology, and paraprofessional personnel who work with children with disabilities;

(b) Related services personnel who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with disabilities. Comprehensive programs and specialty components within a broader discipline that are designed to prepare personnel for work with children with disabilities, may be supported. For the purpose of this priority, eligible related services providers do not include physicians; or

(c) Early intervention personnel who serve children birth through age 2 (until the third birthday) and their families. Early intervention personnel include persons who train, or serve as consultants to, service providers and service coordinators.

Projects funded under this absolute priority must—

(a) Use curricula and pedagogy that are shown to be effective as demonstrated through scientifically based research in order to prepare

personnel equipped to improve outcomes for students with disabilities and to foster access to and achievement in the general education curriculum where appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(d) Prepare personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds by—

(1) Determining the competencies needed for personnel to work effectively with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools to promote continuous improvement in preparation programs and in service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in schools and other diverse settings including schools and settings in high poverty communities;

(g) Employ effective strategies for recruiting students from culturally and linguistically diverse populations; and

(h) Provide student support systems (including tutors, mentors, and other innovative practices) to enhance student retention and success in the program.

(i) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities. Communicate the results of this evaluation process to OSEP in required annual performance reports and the final performance report;

(j) Describe how the proposed training program is aligned with State learning standards for children; and

(k) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (b) of this section of the priority

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of IDEA and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive systems of personnel development under Parts B and C of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more SEAs or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States specifying that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of IDEA and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of IDEA and § 304.20 of the regulations, use at least 55 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 55 percent of the total requested budget for student scholarships.

Sufficient justification for proposing less than 55 percent of the budget for student support would include activities such as program development, expansion of a program, or the addition of a new emphasis area. Examples include the following:

- A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member, or a consultant to assist in program development.
- A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained.
- A project that is expanding or adding a new emphasis area to the program may initially need additional faculty or other resources such as expert consultants, additional training supplies or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new emphasis area to special education or related services programs must provide information on how these new areas will be maintained once Federal funding ends.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference points under 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points to applicant institutions that have not received a FY 2002 or FY 2003 award under the IDEA personnel preparation program.

In addition, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

Therefore, for purposes of these competitive preferences applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 120 points.

*Project Period:* Up to 48 months.

*Absolute Priority 4—Improving the Preparation of Personnel To Serve Children with High-Incidence Disabilities (84.325H)*

Background

State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the difficulty of improving training programs for personnel to serve children with high-incidence disabilities. Localities nationwide are experiencing chronic shortages of such personnel.

Priority

Consistent with section 673(e) of IDEA, the purpose of this priority is to

develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. For the purpose of this priority, the term high-incidence disability includes mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disabilities. Training of early intervention personnel is addressed under the priority for the preparation of personnel to serve children with low-incidence disabilities (84.325A) and, therefore, is not included as part of this priority.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, assistive technology, and paraprofessional personnel who work with children with high-incidence disabilities.

(b) Related services personnel, who provide developmental, corrective, and other support services (such as psychological, occupational or physical and recreational therapy) to children with high-incidence disabilities. For the purpose of this priority, eligible related service providers do not include physicians. Comprehensive programs and specialty components within a broader discipline that are designed to prepare personnel to work with the high incidence population may be supported.

Projects funded under this priority must—

(a) Use curricula and pedagogy that are shown to be effective, as demonstrated through scientifically based research, in order to prepare personnel equipped to improve outcomes for students with disabilities;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of personnel who share responsibility for providing effective services to children with high-incidence disabilities;

(d) Prepare personnel to work with culturally and linguistically diverse populations by—

(1) Determining the competencies needed for personnel to work effectively with students with high-incidence disabilities from culturally and linguistically diverse backgrounds; and

(2) Infusing those competencies into special education or related services training;

(e) Develop or improve and implement partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs; and

(f) Include field-based training opportunities for students in diverse settings, including high poverty schools;

(g) Provide clear, defensible research-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; Communicate the results of this evaluation process to OSEP in annual performance reports and the final performance report;

(h) Describe how the proposed training program is aligned with State learning standards for children; and

(i) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (b) of the requirements for projects funded under this priority.

An applicant must satisfy the following requirements contained in section 673(f)–(i) of IDEA and 34 CFR part 304:

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that each State needs personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the State's comprehensive systems of personnel development under Part B of IDEA;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally recognized standards for the preparation of special education and related services personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of IDEA and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) As authorized under section 673(i) of IDEA and § 304.20 of the regulations, use at least 65 percent of the total requested budget for student scholarships.

Competitive Preferences

Within this absolute priority we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

Up to ten (10) points based on the extent to which IHEs successfully recruit and prepare individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

Therefore, for the purpose 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 this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

*Project Period:* Up to 48 months.

**Special Education-Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327]**

*Purpose of Program:* To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

This priority focuses on the use of technology.

*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 for this priority are chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

*Eligible Applicants:* State and local educational agencies; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

**Priority**

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

*Absolute Priority 1—Steppingstones of Technology Innovation for Students With Disabilities (84.327A).*

The purpose of this priority is to support projects that—

(a) Develop a technology-based approach for achieving one or more of the following purposes for early intervention, preschool, elementary, middle school, or high school students with disabilities: (1) Improving the results of education or early intervention; (2) improving access to and participation in the general curriculum, or developmentally appropriate activities for preschool children; and (3) improving accountability and participation in educational reform. The technology-based approach must be an innovative combination of a new technology and additional materials and methodologies that enable the technology to improve educational or early intervention results for children with disabilities;

(b) Justify the approach on the basis of scientifically rigorous research or theory that supports the effectiveness of the technology-based approach for achieving one or more of the purposes presented in paragraph (a);

(c) Clearly identify and conduct work in ONE of the following phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with students with disabilities. Activities may include development, adaptation, and refinement of technology, curriculum materials, or instructional methodologies. Activities must include formative evaluation. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness in improving results for children with disabilities.

(2) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with Phase 1, and subject the approach to rigorous field-based research and evaluation to determine effectiveness and feasibility in educational or early intervention settings. Approaches studied in Phase 2 may have been developed with previous funding under this priority or with funding from other sources. Products of Phase 2 include a further refinement and description of the technology-based approach, and sound evidence that, in a defined range of real world contexts, the approach can be effective in achieving one or more of the purposes presented in paragraph (a) of this priority.

(3) *Phase 3—Research on Implementation:* Projects funded under Phase 3 must select a technology-based approach that has been evaluated for effectiveness and feasibility in a manner consistent with Phase 2. Projects must study the implementation of the approach in multiple, complex settings to acquire an improved understanding of the range of contexts in which the approach can be used effectively, and the factors that determine the effectiveness and sustainability of the approach in this range of contexts.

Approaches studied in Phase 3 may have been developed, tested, researched, and evaluated with previous funding under this priority or with funding from other sources. Factors to be studied in Phase 3 include factors related to the technology, materials, and methodologies that constitute the technology-based approach. Also to be studied in Phase 3 are contextual factors associated with students, teacher attitudes and skills, physical setting, curricular and instructional or early intervention approaches, resources, professional development, policy supports, etc.

Phases 2 and 3 can be contrasted as follows: Phase 2 studies the effectiveness the approach can have, while Phase 3 studies the effectiveness the approach is likely to have in sustained use in a range of typical educational settings. The primary product of Phase 3 should be a set of research findings that provide evidence of improved results for children with disabilities and that can be used to guide dissemination and utilization of the technology-based approach;

(d) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the ''General Requirements'' section of this notice, budget for another annual trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination; and

(e) Prepare products from the project in formats that are useful for specific audiences as appropriate, including parents, administrators, teachers, early intervention personnel, related services personnel, researchers, and individuals with disabilities.

Within absolute priority 1, we intend to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to 3.

*Project Period:* We intend to fund at least three projects in each phase. Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months.

**Special Education—Training and Information for Parents of Children With Disabilities [CFDA Number 84.328]**

*Purpose of Program:* The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

*Eligible Applicants:* Eligible applicants are local parent organizations. According to section 682(g) of IDEA, a parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors—

(1) The parent and professional members of which are broadly representative of the population to be served;

(2) The majority of whom are parents of children with disabilities; and

(3) That includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) and has a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

According to section 683(c) of IDEA, local parent organizations are parent organizations that must meet one of the following criteria—

(a) Have a board of directors the majority of whom are from the community to be served; or

(b) Have, as part of their mission, serving the interests of individuals with disabilities from that community; and have a special governing committee to administer the project, a majority of the members of which are individuals from that community.

Examples of administrative responsibilities include controlling the use of the project funds, and hiring and managing project personnel.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

**Priority**

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

*Absolute Priority—Community Parent Resource Centers (84.328C)*

Background

The purpose of this priority is to support local parent organizations to operate community training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children who are English language learners, and parents with disabilities in a community, have the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet established developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

Priority

Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the project, particularly underserved parents and parents of children who may be inappropriately identified;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under section 615 of IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes including State and local assessment, the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Familiarize themselves with the provision of special education and related services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(6) Understand the provisions of IDEA and the No Child Left Behind Act of 2001 (NCLB) for the education of, and the provision of early intervention services designed to improve results for, children with disabilities; and

(7) Participate in school reform activities;

(d) Contract with the SEAs, if the State elects to contract with the community parent resource centers, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use and explain the benefits of mediation, consistent with section 615(e)(2)(B) and (D) of IDEA;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under section 682 of IDEA;

(g) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support; and

(h) Annually report to the Department on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year, including demographic information about those parents served, and additional information regarding the unique needs and levels of service provided;

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively.

Competitive Preferences

Within this absolute priority, we will give competitive preference to applications under 34 CFR 75.105(c)(2)(i) that meet one or more of the following priorities:

(a) We will award 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served.

(b) We will award 5 points to an application that proposes to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will—

(1)(i) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprise Communities; or

(ii) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

(2) As appropriate, contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and become an integral component of the Empowerment Zone or Enterprise Community activities.

A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in the application package.

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 25 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 125 points.

*Project Period:* Up to 36 months.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2003

| CFDA No. and name | Applications available | Application deadline date | Deadline for intergovernmental review | Estimated available funds | Maximum award (per year)* | Estimated range of awards | Project period | Page limit | Estimated number of awards |
|---|---|---|---|---|---|---|---|---|---|
| 84.324B Student-Initiated Research Projects. | 12/24/02 | 03/07/03 | 05/06/03 | $240,000 | $20,000 | $14,122–$20,000 | Up to 12 mos | 25 | 12 |
| 84.324C Field-Initiated Research Projects. | 12/24/02 | 02/21/03 | 04/22/03 | 2,520,000 | 180,000 | $177,318–$180,000 | Up to 60 mos.** | 50 | 14 |
| 84.324M Model Demonstration Projects for Children with Disabilities. | 12/24/02 | 03/14/03 | 05/13/03 | 2,450,000 | 175,000 | $173,947–$175,000 | Up to 48 mos | 50 | 14 |
| 84.324N Initial Career Awards | 12/24/02 | 02/14/03 | 04/15/03 | 300,000 | 75,000 | $72,170–$75,000 | Up to 36 mos | 30 | 4 |
| 84.324R Outreach Projects for Children with Disabilities. | 12/24/02 | 03/28/03 | 05/27/03 | 2,450,000 | 175,000 | $168,690–$175,000 | Up to 36 mos | 50 | 14 |
| 84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities. | 12/24/02 | 02/14/03 | 04/15/03 | 5,000,000 | 250,000 | $150,000–$250,000 | Up to 60 mos | 50 | 20 |
| 84.325D Preparation of Leadership Personnel. | 12/24/02 | 02/07/03 | 04/08/03 | 3,500,000 | 200,000 | $171,969–$200,000 | Up to 48 mos | 50 | 18 |
| 84.325E Preparation of Personnel in Minority Institutions. | 12/24/02 | 03/21/03 | 05/20/03 | 3,000,000 | 200,000 | $186,234–$200,000 | Up to 48 mos | 50 | 15 |
| 84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities. | 12/24/02 | 02/28/03 | 04/29/03 | 5,700,000 | 200,000 | $163,848–$200,000 | Up to 48 mos. | 50 | 28 |
| 84.327A Steppingstones of Technology Innovation for Students with Disabilities. | 12/24/02 | 02/07/03 | 04/08/03 | 2,900,000 | | | | | 14 |
| Phase 1 and 2 | | | | | 200,000 | $196,946–$300,000 | Up to 24 mos | 50 | |
| Phase 3 | | | | | 300,000 | | Up to 36 mos | 50 | |
| 84.328C Community Parent Resource Centers. | 12/24/02 | 02/07/03 | 04/08/03 | 1,000,000 | 100,000 | $99,000–$100,000 | Up to 36 mos | 30 | 10 |

*We will reject any application that proposes a budget exceeding the maximum award (exclusive of any matching funds required in CFDA 84.324M and CFDA 84.324R) for a single budget period of 12 months.

** See *PROJECT PERIOD* section of priority for additional information.

**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. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via 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 by the appropriate CFDA number.

**FOR FURTHER INFORMATION CONTACT:** If you want an 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) 205–8207.

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*

You may view 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: *http://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/nara/index.html.*

**Program Authority:** 20 U.S.C. 1405, 1461, 1471, 1472, 1473, 1481, 1482, and 1483.

Dated: December 17, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–32273 Filed 12–23–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

**[Number DE–PS07–03ID14425]**

### Industrial Materials for the Future

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of availability of solicitation for awards of financial assistance.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of materials or materials processing methods, in accordance with the Program Plan for the Industrial Materials for the Future (IMF). This will be a national effort to research, design, develop, engineer, and test new and improved materials to achieve improvements in energy efficiency, emissions and waste reduction, productivity, product quality, and global competitiveness.

**DATES:** The issuance date of Solicitation Number DE–PS07–03ID14425 was on December 9, 2002. The deadline for receipt of applications is February 27, 2003, at 3:00 p.m. MST.

**ADDRESSES:** The solicitation will be available in its full text on the Internet by going to the DOE's Industry Interactive Procurement System (IIPS) at the following URL address: *http://e-center.doe.gov.* This will provide the medium for disseminating solicitations and amendments to solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then click on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wade Hillebrant, Contracting Officer, at *hillebtw@id.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Information about the Office of Industrial Technologies Industrial Materials for the Future Program can be found at *http://www.oit.doe.gov/imf/.* The IOF industry-specific vision documents and technology roadmaps are available at *http://www.oit.doe.gov/* under individual IOF program areas.

DOE anticipates making 1 to 6 cooperative agreements under this solicitation, subject to the availability of funds, with a maximum estimated DOE funding of $3 million total funds in the first year. A minimum 30% non-federal cost share for advanced research, and 50% non-federal cost share for validation and demonstration is required. For-profit, non-profit, state and local governments, Indian Tribes, and institutions of higher education may submit applications in response to this solicitation. Multi-partner collaborations between industry, university, and National Laboratory participants are encouraged. Single organization awards will not be considered. Industrial partners must be included, either as primary applicants or as cost sharing partners. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on December 9, 2002.

**R. J. Hoyles,**

*Director, Procurement Services Division.*

[FR Doc. 02–32380 Filed 12–23–02; 8:45 am]

**BILLING CODE 6450–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER03–262–000]**

### The New PJM Companies: American Electric Power Service Corporation on behalf of its operating companies Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., The Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, L.L.C.; Notice of Filing

December 18, 2002.

Take notice that on December 11, 2002, in accordance with section 205 of the Federal Power Act (FPA), American Electric Power Service Corporation on behalf of Appalachian Power Service Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), Dayton Power and Light Company, and Virginia Electric and Power Company (collectively referred to as the New PJM Companies) and PJM Interconnection, L.L.C. (PJM), jointly submitted a filing to include the New PJM Companies as transmission owners within PJM, to revise the PJM West Transmission Owners Agreement, Access Transmission Tariff, and to request unconditional approval of PJM as a Regional Transmission Organization.

The New PJM Companies and PJM request that the Commission establish an effective date to coincide with the date upon which transmission service will first be provided over the transmission facilities of AEP and ComEd Date, and that the date be either February 1, 2003 or March 1, 2003.

The New PJM Companies and PJM state that a paper copy of the transmittal letter describing this filing was served on all state public utility commissions having jurisdiction over the New PJM Companies, all PJM members and all transmission customers of the New PJM Companies. In addition, the filing, in its entirety, is being posted on the PJM Web site *(http://www.pjm.com)* for download by any interested party.

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* January 3, 2003.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32480 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–23–001]**

### Columbia Gas Transmission Corporation; Notice of Compliance Filing

December 18, 2002.

Take notice that on December 13, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 267; Substitute Second Revised Sheet No. 357; and Substitute Fifth Revised Sheet No. 581, proposed effective date of November 15, 2002.

Columbia states that on October 15, 2002, it submitted a tariff filing to incorporate into its tariff the Commission's recent pronouncements in Tenaska Marketing Ventures *v.* Northern Border Pipeline Company, 99 FERC 61,182 (2002), and to make its tariff more precise with respect to capacity release rights and obligations and their relationship to a releasing shipper's right of first refusal (ROFR). On November 14, 2002 the Commission issued an order in this proceeding rejecting certain tariff sheets and accepting certain tariff sheets, subject to modification (101 FERC 61,179) (2002)). As directed by the Commission in the November 14 Order, Columbia is submitting revised tariff sheets reflecting tariff changes required by that order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32492 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–83–001]**

### Dominion Transmission, Inc.; Notice of Tariff Filing

December 18, 2002.

Take notice that on December 13, 2002, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet as a correction to its November 21, 2002, filing in which a typographical error occurred and incorrectly listed the GRI Adjustment:

**Substitute Nineteenth Revised Sheet No. 32**

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32493 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–198–000]**

### Eastern Shore Natural Gas Company; Notice of Tariff Filing

December 18, 2002.

Take notice that on December 13, 2002, Eastern Shore Natural Gas Company (ESNG) 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, with a proposed effective date of January 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule FSS. The costs of the above referenced storage service comprises the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

*www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32485 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**Docket No. RP03–199–000]**

## Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Tariff Filing

December 18, 2002.

Take notice that on December 13, 2002, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 113, to be made effective January 1, 2003.

AlaTenn states that the purpose of the filing is to comply with the Commission's Order issued on October 31, 2002 in Docket No. RM98–10–011 wherein the Commission affirmed its prior holding that a segmented transaction consisting of a backhaul and a forwardhaul to the same point, that exceeded contract demand, is permissible and ordered all pipelines, that were required to offer segmentation, to file revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time. AlaTenn states that the instant filing complies with the Commission's Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32486 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**Docket No. RP03–200–000]**

## Enbridge Pipelines (Midla) L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 18, 2002.

Take notice that on December 13, 2002, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003:

**First Revised Sheet Nos. 137, 139, 140, 141 and 155**

Midla states that the purpose of the filing is to comply with the Commission's Order issued on October 31, 2002 in Docket No. RM98–10–011 wherein the Commission ordered all pipelines, that were required to offer segmentation, to file revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time. Additionally, in the same Order, the Commission removed the five (5) year term matching cap for the right of first refusal. Midla states that the instant filing complies with the Commission's Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32487 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–202–000]**

## Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

December 18, 2002.

Take notice that on December 13, 2002, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective January 1, 2003:

First Revised Sheet No. 118.
Fourth Revised Sheet No. 121.
First Revised Sheet No. 132.

KPC states that the purpose of the filing is to comply with the Commission's Order issued on October 31, 2002 in Docket No. RM98–10–011 wherein the Commission ordered all pipelines, that were required to offer segmentation, to file revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time. Additionally, in the same Order, the Commission removed the five (5) year term matching cap for the right of first refusal. KPC states that the instant filing complies with the Commission's Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32489 Filed 12–23–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No, RP03–204–000]**

## Kinder Morgan Interstate Gas Transmission LLC; Notice of Filing

December 18, 2002.

Take notice that on December 13, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its annual reconciliation filing pursuant to section 35 (Crediting of Imbalance Revenue) of its General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT states that a copy of this filing has been served upon all of its 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 on or before December 26, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32491 Filed 12–23–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–16–001**

## Northern Border Pipeline Company; Notice of Compliance Filing

December 18, 2002.

Take notice that on December 13, 2002, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 120, and Original Sheet No. 120A, to become effective January 15, 2003.

Northern Border states that the purpose of this filing is to comply with the Commission's order at Docket No. RP03–16–000, dated November 26, 2002 (101 FERC 61,249), wherein the Commission directed Northern Border to revise Northern Border's FERC Gas Tariff to state clearly the timing of Northern Border's ROFR process when there are no acceptable third party bids and also clarify the procedures taken when the ROFR process is completed and there has been no award of capacity.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* December 26, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32484 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–203–000]**

### Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 18, 2002.

Take notice that on December 16, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, proposed to be effective January 15, 2003:

**Fourth Revised Sheet No. 10**

Sea Robin states that this filing is being made to remove the referenced tariff sheet from Sea Robin's tariff as unnecessary. Sea Robin states that the tariff sheet reflects certain Unit Amounts associated with the transportation of natural gas liquids. The Unit Amounts were factors developed in the settlement of Docket No. RP80–55, Docket No. RP80–118, Docket No. RP81–73 and Docket No. RP82–32 to be used for cost allocation and revenue crediting. Those cost allocation and revenue crediting provisions were to remain in effect until the rates in Docket No. RP82–32 were superceded.

Sea Robin states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 30, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32490 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–426–013]**

### Texas Gas Transmission Corporation; Notice of Compliance Filing

December 18, 2002.

Take notice that on December 10, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 40, to become effective November 1, 2002.

Texas Gas states that the purpose of this filing is to submit a corrected tariff sheet to the Commission in compliance with its Letter Order dated November 25, 2002.

Texas Gas states that copies of the revised tariff sheet are being mailed to the parties on the official service list for this docket number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* December 23, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32482 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–426–014]**

### Texas Gas Transmission Corporation; Notice of Compliance Filing

December 18, 2002.

Take notice that on December 10, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Sixth Revised Sheet No. 40, to be effective November 1, 2002.

Texas Gas states that the purpose of this filing is to submit a corrected tariff sheet to the Commission in compliance with its Letter Order dated November 25, 2002.

Texas Gas states that copies of the revised tariff sheet is being mailed to all parties on the official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at

*FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* December 23, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32483 Filed 12–23–02; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[No. RP03–201–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 18, 2002.

Take notice that on December 12, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, and Original Volume No. 2, the tariff sheets listed Appendix A to the filing, with a proposed effective date of February 1, 2003.

Transco states that the purpose of the instant filing is to terminate Section 7(c) firm transportation service under Rate Schedules X–319 and X–320 and to convert such services to service provided under Rate Schedule FT pursuant to Transco's blanket transportation certificate and part 284 of the Commission's regulations effective February 1, 2003.

Transco states that the rates applicable to the converted service are the generally applicable reservation and commodity charges under Rate Schedule FT (including fuel) as set forth on tariff sheet numbers 40, 40.01 and 40.02 to Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to North Jersey Energy Associates, Northeast Energy Associates and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Intervention Date:* December 24, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32488 Filed 12–23–02; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES03–16–000]**

### Wayne-White Counties Electric Cooperative, Notice of Application

December 18, 2002.

Take notice that on December 10, 2002, Wayne-White Counties Electric Cooperative (Wayne-White) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings under a loan agreement with the National Rural Utilities Cooperative Finance Corporation in an amount not to exceed $14,886,531.02.

Wayne-White also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* January 3, 2003.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–32481 Filed 12–23–02; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RM01–12–000, RM02–1–000 and RM02–12–000]**

### Notice Amending Procedures Described in November 12, 2002 Notice

December 17, 2002.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice Regarding Technical Conference.

**SUMMARY:** The Federal Energy Regulatory Commission issued a Notice Of Possible Discussion Items For January 21, 2993 Queuing Technical Conference on December 17, 2002 that included information on the conference and an attachment of possible topics of discussion and instructions on how to participate in the conference.

**DATES:** Persons interested in speaking should file a request to speak on or before December 30, 2002.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Norma McOmber, 888 First Street, NE., Washington, DC 20426, (202) 502–8022.

**Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Standardization of Generator Interconnection Agreements and Procedures; Standardization of Small Generator Interconnection Agreements and Procedures Advance Notice of Proposed Rulemaking; Notice of Possible Discussion Items for January 21, 2003 Queuing Technical Conference**

1. As announced on December 3, 2002, a technical conference is scheduled for January 21, 2003 in the Commission Meeting Room (Room 2C) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The conference is open to the public and registration is not required; however, those planning to attend are asked to notify the Commission of their intent at *http://www.ferc.gov/registration/012103.htm* Commissioners may attend and participate in the discussions. The conference will run from approximately 9:30 a.m. to 4:00 p.m.

*Background*

2. On April 24, 2002, the Commission issued the Standardization of Generator Interconnection Agreements and Procedures Notice of Proposed Rulemaking (Interconnection NOPR) in Docket No. RM02–1–000 which addressed interconnection agreements and procedures for generators of all sizes. Subsequently, supporters of small generators asked the Commission to consider developing streamlined procedures and requirements that would allow small generators to avoid the unnecessary delay that they claim would occur if they were subjected to the more extensive interconnection studies and other procedures required for large generators. The Commission subsequently severed the subject of interconnection of generators up to and including 20 MW from the Interconnection NOPR and initiated another docket, RM02–12–000 (Small Generator Interconnection Rulemaking). The Commission issued an Advance notice of Proposed Rulemaking (Small Generator ANOPR) in this docket on August 6, 2002.

3. During the course of the Interconnection NOPR Proceeding, the Small Generator Interconnection ANOPR proceedings, as well as the Commission's Standard Market Design NOPR (SMD NOPR) proceeding in Docket No. RM01–12–000, participants have raised a number of significant issues concerning queuing procedures for interconnection requests.

4. The purpose of the technical conference is to explore these issues in greater detail and to provide us with the information we need to adopt consistent policies for wholesale electric markets in each of these related rulemakings. The technical conference is intended to be a working session that focuses on clarifying areas of concern with the referenced proceedings, resolving differences, and devising solutions to the difficult issues that have been identified. To make the conference successful, we encourage participants to come prepared to offer concrete solutions to the issues raised and to support alternative proposals.

*Opportunity for Self-Nomination To Present at Technical Conference*

5. Persons interested in speaking should file a request to speak on or before December 30, 2002 by e-mailing their request to *Norma.McOmber@ferc.gov.* The request to speak must include the name of the speaker; his or her title; the person or entity the speaker represents; area of interest; and the speaker's mailing address, telephone number, facsimile number and e-mail address. Speakers will be selected to allow staff to hear diverse, constructive concrete solutions. Hence, not all self-nominated speakers may be invited to speak. Since time allotted for the conference is limited, interested speakers are encouraged to coordinate their efforts with others who may have similar positions.

6. The Attachments to this Notice sets forth possible topics for discussion. As further details related to this technical conference develop, subsequent notices will be issued.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

**Attachment: Possible Topics for Discussion**

1. Provide information on existing queues.

A. Summarize the rules that govern the queue of a specific transmission provider: How a generator's queue position is determined; how small generators (20 MW) are handled in the queue; what milestones must be met to retain queue position; what events trigger a change in queue position or removal from the queue; how inactive projects are treated; how queue position determines responsibility for costs of studies and upgrades; how queue position determines entitlements to financial transmission rights or other property rights; how a change in the queue position of one generator affects the cost responsibility of others; and how Qualifying Facilities are treated.

B. Would proposed restrictions on the Critical Energy Infrastructure Information Rulemaking proceeding (Docket Nos. RM02–4–000, PL02–1–000) affect parties' ability to site plants or interconnect cleanly?

C. What siting and grid operations information is needed to obtain a position in the queue, where is this information kept, and what are the rules for accessing this information?

D. Describe any differences in the way small and large generators are treated for queuing purposes.

E. Describe any differences in the way ''energy resources'' and ''network (or capacity) resources'' are treated for queuing purposes.

F. Discuss whether generator interconnection requests and transmission service requests are included in the same queue. If not, describe the relationship between the two queues. What is the relationship between the transmission planning process and the administration of the queue(s)?

G. Describe the current status of the interconnection queue, including: location, size, queue position, date of request and expected completion date of each active project; and the number, size, queue position and date of request of any projects that are inactive.

H. Do all TOs and ISOs/RTOs conduct the same interconnection studies, grid impact studies or other analyses for new project interconnection?

2. Describe good and bad experiences with queues.

A. Provide examples of good and bad experiences with queues. Panelists should be as specific as possible regarding the facts of their experiences. Of particular interest are examples of problems associated with the following: undue discrimination on the part of transmission providers; inappropriate or unrealistic milestones; inequitable cost assignments; study procedures or other requirements that lead to unnecessary project delays or increased costs; and lack of flexibility in the queuing rules.

B. Identify any problems that are specific to small generators or to large generators.

C. Describe any problems created by providing the generator with the option to interconnect as either an energy resource or a network (capacity) resource.

D. Describe any problems associated with the need to manage both interconnection requests and transmission service requests within the context of an overall transmission planning and expansion process.

3. How can queue administration be improved?

A. Identify options for improving queue administration, such as: common study/analytical techniques and tools; procedures for ensuring that the projects of independent generators are treated comparably with those of the transmission provider; treatment of inactive projects; procedures for coordinating the upgrades needed for projects in the queue with the transmission planning process; rules for assigning cost responsibility and property rights to generators in the queue; treating interconnection requests on a clustered basis as opposed to strict first-come, first-served; use of milestones to maintain queue position; and a list of actions or events that can trigger a change in queue position.

B. Should small and large non gas-fired generators receive different queuing treatment? If so, how should it be different?

C. Should the Commission standardize specific queue management practices or should it allow regional variations that are governed by a set of core principles?

D. Should queue position be treated as a property right which can be transferred?

[FR Doc. 02–32374 Filed 12–23–02; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7426–7]**

## Agency Information Collection Activities; OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notices.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby at 566–1672, or email at *Auby.susan@epa.gov*, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 1745.04; Criteria for Classification of Solid Waste Disposal Facilities and Practices; in 40 CFR part 257; was approved 11/20/2002; OMB No. 2050–0154; expires 011/30/2005.

EPA ICR No. 0262.10; RCRA Hazardous Waste Permit Application and Modification, Part A; in 40 CFR parts 270.11, 270.13, 270.70, 270.72; was approved 11/20/2002; OMB No. 2050–0034; expires 11/30/2005.

EPA ICR No. 1871.03; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology; in 40 CFR part 63, subpart YY; was approved 12/04/2002; OMB No. 2060–0420; expires 12/31/2005.

EPA ICR No. 1286.06; Used Oil Management Standards Recordkeeping and Reporting Requirements; in 40 CFR parts 279.10, 279.11, 279.42, 279.43, 279.44, 279.52, 279.53, 279.54, 279.55, 279.57, 279.63 and 279.82; was approved 12/04/2002; OMB No. 2050–0124; expires 12/31/2005.

EPA ICR No. 1964.02; Reporting & Recordkeeping Requirements of the National Emission Standard for Hazardous Air Pollutants from Wet-formed Fiberglass Mat Production Industry; in 40 CFR part 63, subpart A, and 40 CFR part 63, subpart HHHH; was approved 12/09/2002; OMB No. 2060–0496; expires 12/31/2005.

EPA No. 1361.09; Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, & Part B Permit Application and Modification Requirements; was approved 12/09/2002; OMB No. 2050–0073; expires 12/31/2005.

*Short Term Extensions*

EPA ICR No. 1062.07; NSPS for Coal Preparation Plants; in 40 CFR part 60, subpart Y OMB No. 2060–0122; on 11/25/2002 OMB extended the expiration date through 02/28/2003.

*Withdrawn*

EPA ICR No. 2057.01; Eliciting Risk Tradeoffs for Valuing Fatal Cancer Risks; on 11/25/2002 EPA withdrew the information collection request from OMB review.

*Comment Filed*

EPA ICR No. 2040.01; Recordkeeping and Reporting Requirements for the Refractory Products Manufacturing NESHAP; in 40 CFR part 63, subpart SSSSS, on 12/09/2002 OMB filed a comment.

Dated: December 17, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32394 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2002–0032; FRL–7427–5]**

## Agency Information Collection Activities: Submission of ICR No. 0220.09 (OMB No. 2040–0168) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Water Act Section 404 State-Assumed Programs (OMB Control No. 2040–0168, EPA ICR No. 0220.09). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Comments must be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lori Williams, Office of Wetlands, Oceans and Watersheds, Wetlands Division (4502T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1376; fax number: 202–566–1349; e-mail address: *williams.lorraine@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 16, 2002, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0032, which is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions:

(1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and

(2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Information Collection Request for Clean Water Act Section 404 State-Assumed Programs (OMB Control No. 2040–0168, EPA ICR Number 0220.09). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*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, avoid, minimize and compensate for 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, avoid, minimize and compensate for 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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* This collection of information is separated into three pieces. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 520 hours to request program assumption, 5 hours to complete a permit application, and 80 hours 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 purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* States/Tribes, permit applicants.

*Estimated Number of Respondents:* 20,006.

*Frequency of Response:* one time to request assumption; one time when requesting a permit; annually for the annual permit.

*Estimated Total Annual Hour Burden:* 101,360.

*Estimated Total Annual Cost:* $37,200 includes $0 annualized capital or O&M costs.

*Changes in the Estimates:* There is a change of an additional 693 hours from the currently approved hours in the OMB Inventory of Approved ICR Burdens; this is a math correction/adjustment.

Dated: December 17, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32388 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0014; FRL–7427–6]**

## Agency Information Collection Activities; Submission of EPA ICR No. 0575.09 (OMB No. 2070–0004) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies [EPA ICR No. 0575.09; OMB Control No. 2070–0004]. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. On May 21, 2002 (67 FR 35806), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection

Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA–Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA has established a public docket for this ICR under Docket ID No. OPPT–2002–0014, which is available for public viewing at the OPPT Docket in the EPA Docket Center, EPA West Building Basement Room B102, 1301 Constitution Ave., NW., Washington, DC. The Center is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions:

(1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov*, or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPPT–2002–0014, and (2) Mail a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

*Title:* Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies (EPA ICR No. 0575.09; OMB Control No. 2070–0004). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the PRA regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* Section 8(d) of the Toxic Substances Control Act (TSCA) and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA.

Responses to the collection of information are mandatory (*see* 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to be about 4 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Manufacturers, processors, importers, or distributers in commerce of chemical substances or mixtures.

*Frequency of Collection:* On occasion.

*Estimated No. of Respondents:* 569.

*Estimated Total Annual Burden on Respondents:* 2,344 hours.

*Estimated Total Annual Costs:* $203,512.

*Changes in Burden Estimates:* There is a decrease of 2,198 hours (from 4,542 hours to 2,344 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This adjustment results from an updated analysis of the historical reporting patterns and the number of chemicals listed on the section 8(d) reporting rule. Specifically, because no new chemicals were added to the rule during the previous ICR reporting period, the number of chemicals added during the 1993 through 1996 period were averaged over eight-years (1993 through 2000) to provide an estimate of expected reporting over the coming three-year period of this ICR renewal. Unit burden estimates have not changed.

Dated: December 17, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32389 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0009; FRL–7426–3]**

## Agency Information Collection Activities; Submission of EPA ICR No. 1899.02 (OMB No. 2060–0422 to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (OMB Control No. 2060–0422, EPA ICR No. 1899.02) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Binder, Compliance Assistance and Sector Programs Division, Office of Compliance, Mail Code 2224A, 202–564–2516 Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2516; fax number: 202–564–0009; e-mail address: *binder.jonathan@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2002–0009, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ce) (OMB Control No. 2060–0422, EPA ICR Number 1899.02). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, EPA may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* Hospital/Medical/ Infectious Waste Incinerators (HMIWI) for which construction was commenced on or before June 20, 1996, and burning hospital waste and/or medical infectious waste are subject to specific reporting and recording keeping requirements. Notification reports are required related to the construction, reconstruction, or modification of an HMIWI. Also required are one-time-only reports related to initial performance test data and continuous measurements of site-specific operating parameters. Annual compliance reports are required related to a variety of site-specific operating parameters, including exceedances of applicable limits. Semi-annual compliance reports are required related to emission rate or operating parameter data that were not obtained when exceedances of applicable limits occurred. Affected entities must retain records for five years the reports and records that are required under 40 CFR part 60, subpart Ce, General Provisions.

Co-fired combustors and incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste are required to submit notification reports of an exemption claim, and an estimate of the relative amounts of waste and fuels to be combusted. Co-fired combustors and incinerators are also required to maintain records on a calendar quarter basis of the weight of hospital waste combusted, the weight of medical/infectious waste combusted, and the weight of all other fuels combusted at the co-fired combustor. Incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste are also required to maintain records of the periods of time when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is burned.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 163 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize

technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners and Operators of Hospital/Medical/Infectious Waste Incinerators.

*Estimated Number of Respondents:* 189.

*Frequency of Response:* On occasion, semi-annually, and annually.

*Estimated Total Annual Hour Burden:* 105,228.

*Estimated Total Annual O&M Cost:* $295,407, includes O&M costs.

*Changes in the Estimates:* There is a decrease of 28,176 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of affected respondents as indicted by a recent source inventory analysis.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32390 Filed 12–23–02; 8:45 am]

**BILLING CODE 6560–50–P**

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0010; FRL–7426–4]**

## Agency Information Collection Activities; Submission of EPA ICR No. 0111.10 (OMB No. 2060–0101) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Asbestos, 40 CFR part 61, subpart M (OMB Control No. 2060–0101, EPA ICR No. 0111.10), expiration date February 28, 2003. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Everett Bishop, Compliance Assurance and Media Programs Division, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7032, fax number: (202) 564–0050; e-mail address: *bishop.everett@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0010, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NESHAP for Asbestos, 40 CFR part 61, subpart M, (OMB Control No. 2060–0101, EPA ICR Number 0111.10). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The EPA is charged under section 112 of the Clean Air Act, as amended, to establish standards of performance for each category or subcategory of major sources and area sources of hazardous air pollutants. These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction: In addition, section 114(a) States that:

> * * * The Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) sample such emissions, (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, (F) submit compliance certifications, and (G) provide such other information as he may reasonably require.

In the Administrator's judgment, asbestos emissions from the demolition and renovation of asbestos-containing structures; the disposal of asbestos waste; waste conversion; asbestos milling, manufacturing, and fabricating; the use of asbestos on roadways; the use

of asbestos insulation and spray materials; cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP was promulgated for this source category at 40 CFR part 61, subpart M.

The control of emissions of asbestos from the regulated sources requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of asbestos from the regulated sources are the result of operation of those sources (milling, manufacturing, fabricating, waste disposal, and demolition and renovation). These standards rely on the capture and reduction of asbestos emissions by air cleaning equipment and specified work practices. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, the work practices are being followed and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. Thereafter, submission of semi-annual reports of any visible emissions serves as the record of compliance. Waste conversion facilities must report initial testing conditions that become normal operating conditions for the plant. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Notification for each demolition or renovation activity allows the Agency or delegated authority to plan for inspections of the source in order to determine compliance with the work practices. Since each demolition or renovation is transitory in nature, notification must be made for each activity above the threshold limits specified in the regulation. The information generated by the monitoring, recordkeeping and reporting requirements described in this ICR is used by the Agency to ensure that facilities affected by the NESHAP continue to operate the control equipment and achieve compliance with the regulation. Adequate monitoring, recordkeeping, and reporting is necessary to ensure compliance with these standards, as required by the Clean Air Act. The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Mills, Manufacturers, Fabricators, Landfills, Renovation/Demolition Owners and/or Operators.

*Estimated Number of Respondents:* 9,848.

*Frequency of Response:* On occasion, weekly, quarterly and semi-annual.

*Estimated Total Annual Hour Burden:* 342,249 hours.

*Estimated Total Annual Cost:* $16,613,609.

*Changes in the Estimates:* There is a decrease of 19,910 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the reduction in the number of asbestos waste disposal sites subject to the asbestos NESHAP.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32391 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0019; FRL–7426–5]**

## Agency Information Collection Activities; Submission of EPA ICR Number 1055.07 (OMB No. 2060–0021) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Title:* NSPS for Kraft Pulp Mills—subpart BB, OMB Control Number 2060–0021 and EPA ICR Number 1055.07, expiration date February 28, 2003. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Mariá Malavé, Compliance Assessment and Media Program Division (Mail Code 2223A), Office of Compliance, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC. 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov.* Refer to EPA ICR Number 1055.07.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0019, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is

(202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

*Title:* NSPS for Kraft Pulp Mills—subpart BB (OMB Control Number 2060–0021 and EPA ICR Number 1055.07). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The NSPS for Kraft Pulp Mills, published at 40 CFR part 60, subpart BB, was proposed on September 24, 1976, and promulgated on February 23, 1978. Revisions to the standards were promulgated on May 20, 1986. This rule addresses total reduced sulfur (TRS) and particulate matter emissions from new, modified and reconstructed Kraft Pulp Mills.

In addition to the monitoring, recordkeeping and reporting requirements listed in the General Provisions (40 CFR part 60, subpart A), Kraft Pulp Mills are required to continuously monitor and record at least once per shift specific parameters at the applicable affected facilities: The opacity of the gases discharged into the atmosphere from any recovery furnace; the concentration of TRS emissions on a dry basis and the percent of oxygen by volume on a dry basis in the gases discharged to the atmosphere; for an incinerator, the combustion temperature at the point of incineration of effluent gases being emitted by the affected facilities; and for any lime kiln or smelt discharge tank using a scrubber emission control device, the pressure loss of the gas stream through the control equipment and the scrubbing liquid pressure to the control equipment. Sources are also required to record on a daily basis 12-hour average TRS concentrations and oxygen concentrations (for the recovery furnace and lime kiln) for two consecutive periods of each operation. Sources must report semiannually measurements of excess emissions as defined by the standard for the applicable affected facility.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Kraft Pulp Mills/brown stock washer systems, recovery furnaces, smelt dissolving tanks, lime kilns, black liquor oxidation systems and condensate stripper systems.

*Estimated Number of Respondents:* 92.

*Frequency of Response:* Initial, semiannual and on occasion.

*Estimated Total Annual Hour Burden:* 12,107.

*Estimated Total Annual Non-labor Cost:* $3,143,600, includes $300,000 annualized capital costs and $2,844,000 annualized O&M costs.

There is an increase of 2,148 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase and a more accurate estimate of the number of kraft pulp mills in the United States. The estimates on the number of existing and new sources were based on the active ICR, **Federal Register** publications on other sector-related rules, consultation with OAQPS and industry, and queries conducted on two EPA databases including the Sector Facility Index Project and the Aerometric Information Retrieval System Facility Subsystem.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32392 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0005; FRL–7426–6]**

## Agency Information Collection Activities; Submission for OMB for Review and Approval; Comment Request; NSPS for Hot Mix Asphalt Facilities, ICR Number 1127.07, OMB Number 2060–0083

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I),

(OMB Control Number 2060–0083, EPA ICR Number 1127.07). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; E-mail address: *fried.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0005, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

*Title:* NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I) (OMB Control Number 2060–0083, EPA ICR Number 1127.07). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The New Source Performance Standards (NSPS) for Hot Mix Asphalt Facilities were proposed on June 11, 1973, and promulgated on July 25, 1977. These regulations apply to the following facilities in 40 CFR part 60, subpart I: Dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems. The Administrator has judged that Particulate Matter (PM) emissions from hot mix asphalt facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the purpose of this NSPS is to control the emissions of particulate matter (PM) from hot mix asphalt facilities. The standards limit particulate emissions to 90 milligrams per dry standard cubic meter (mg/DCM) and a 20% opacity. This information is being collected to assure compliance with 40 CFR part 60, subpart I. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. Owners/operators of hot mix asphalt facilities must notify EPA of construction, modification, or reconstruction of a new or existing facility and submit a notification and the results of an initial performance test. In addition, a facility subject to this NSPS must record any startups, shutdowns or malfunctions. The purpose of the notifications is to inform the Agency or delegated authority when a source becomes subject to this standard. Performance tests are conducted to ensure that the new plants operate within the boundaries outlined in the standard. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Under this standard the data collected by the affected industry is retained at the facility for a minimum of two years and made available for inspection by the Administrator.

The only type of industry costs associated with the information collection activity in the standards are labor costs.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Hot Mix Asphalt Facilities.

*Estimated Number of Respondents:* 2,835.

*Frequency of Response:* Initial and on occasion.

*Estimated Total Annual Hour Burden:* 10,303 hours.

*Estimated Total Annual Labor Cost:* $588,507.

*Changes in the Estimates:* There is an increase of 3,413 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of existing facilities that will undergo modifications such that they will be required to submit notifications and conduct the appropriate performance tests required by the standard.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32393 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7426–8]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Voluntary Customer Satisfaction Surveys

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Customer Satisfaction Surveys, OMB Control Number 2090–0019, expiring March 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost, where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 23, 2003.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1711.04 and OMB Control No 2090–0019 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby at EPA by phone at 202–566–1672, by e-mail at *auby.susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No 1711.04. For technical questions about the ICR contact: Patricia Bonner by phone at 202–566–2204 or by e-mail at *bonner.patricia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** *Title:* Voluntary Customer Satisfaction Surveys, OMB Control No. 2090–0019, EPA ICR Number 1711.04 expiring March 31, 2003. This is a request for extension of a currently approved collection.

*Abstract:* EPA uses voluntary surveys to learn how satisfied EPA customers are with our services, and how we can improve services, products and processes. EPA surveys individuals who use services or could have. During the next three years, EPA plans up to 185 surveys, and will use results to target/measure service delivery improvements. By seeking renewal of the generic clearance for customer surveys, EPA will have the flexibility to gather the views of our customers to better determine the extent to which our services, products and processes satisfy their needs or need to be improved. The generic clearance will speed the review and approval of customer surveys that solicit opinions from EPA customers on a voluntary basis, and do not involve ''fact-finding'' for the purposes of regulatory development or enforcement.

An Agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this information collection was published July 26, 2002 (FR 67 48893); no comments were received.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 5 minutes to 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Individuals or households.

*Estimated Number of Respondents:* 58,827.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 2,966.

*Estimated Total Annualized Capital, O&M Cost Burden:* 0.

Send comments on the Agency's need for this information, the accuracy of burden estimates, and any suggested methods for minimizing respondent burden, including use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1711.04 and OMB Control No. 2090–0019 in any correspondence.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32395 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7426–9]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control Number 2050–0092, expiring January 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost; where

appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 23, 2003.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1395.05 and OMB Control No. 2050–0092, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1395.05. For technical questions about the ICR, contact Sicy Jacob at EPA by phone at (202) 564–8019, by e-mail at *jacob.sicy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Title: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control Number 2050–0092, EPA ICR Number 1395.05, expiring January 31, 2003. This is a request for extension of a currently approved collection.

*Abstract:* EPCRA established broad emergency planning and facility reporting requirements. Section 302 (40 CFR 355.30) requires facilities where an extremely hazardous substances (EHS) is present in an amount at or in excess of the threshold planning quantity (TPQ) to notify the State Emergency Response Commission (SERC) by May 17, 1987. This activity has been completed; the section 302 costs and burden hours for this ICR, therefore, reflect only the estimate of cost and burden incurred by newly regulated facilities during years 2000 to 2002. Section 303 (40 CFR 355.300 requires local emergency planning committees (LEPCs) to prepare local emergency plans. Facilities subject to section 302 are required to provide information for the development and implementation of these local emergency plans. Section 304 (40 CFR 355.40) requires facilities to report to SERCs and LEPCs releases of EHSs and hazardous substances in excess of reportable quantities established by EPA. In addition, these facilities must provide written follow-up information on the release, its impacts, and any actions taken in response to the release. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 12, 2002 (67 FR 52481); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average for emergency planning under 40 CFR 355.30 is 16.15 hours for new and newly regulated facilities and 1.50 hours for existing facilities. For a limited number of existing facilities, there may be a burden to inform the LEPC of any changes at a facility that may affect emergency planning (1.50 hours). The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Facilities where extremely hazardous substances are present, LEPCs and SERCs.

*Estimated Number of Respondents:* 82,260.

*Frequency of Response:* Section 302 respondents will comply with requirements once unless new information becomes available. Section 303 respondents will comply with requirements as requested by LEPCs; LEPCs may have to update their local emergency response plans as new facilities or other information such as new chemicals present at or above a TPQ. Section 304 respondents will comply when there is a release of an EHS above the RQ.

*Estimated Total Annual Hour Burden:* 212,460 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $15,160.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1395.05 and OMB Control No. 2050–0092 in any correspondence.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32396 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0008; FRL–7427–1]**

## Agency Information Collection Activities; Submission of EPA ICR No. 0649.08 (OMB No. 2060–0106) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Metal Furniture Coating—subpart EE, OMB Control No. 2060–0106, EPA ICR No. 0649.08, expiration date 1/31/2003) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Leonard Lazarus, Compliance and Monitoring Programs Division, Office of Enforcement and Compliance Assurance, 2223–A, (202) 564–6369, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0500; e-mail address: *lazarus.leonard@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0008, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Title:* NSPS for Metal Furniture Coating—subpart EE (OMB Control No. 2060–0106, EPA ICR No. 0649.08). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The New Source Performance Standards for Metal Furniture Coating—subpart EE were proposed on November 28, 1980 and promulgated on October 29, 1982. These standards apply to each metal furniture surface coating operation in which organic coatings are applied (greater than 3,842 liters of coating per year), commencing construction, modification or reconstruction after November 28, 1980. Approximately three hundred ninety-seven (397) sources are currently subject to the regulation, and it is estimated that an additional thirty (30) sources per year will become subject to the regulation in the next three years while an equal number will go off-line during this time period. This information is being collected to assure compliance with 40 CFR part 60, subpart EE.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $836,540 per year over the next three years. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners/Operators of metal furniture coating facilities.

*Estimated Number of Respondents:* 397.

*Frequency of Response:* semiannual for all, every other year for excess emission report.

*Estimated Total Annual Hour Burden:* 73,181 hours.

*Estimated Total Annual Cost:* $5,016,640, includes $4,180,100 labor costs and $836,540 non-labor costs.

*Changes in the Estimates:* There is a decrease of 27,889 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a correction in the number of facilities based on a review of records incorporated into EPA's Integrated Data

for Enforcement Analysis (IDEA) database.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32397 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0006; FRL–7427–2]**

## Agency Information Collection Activities: Submission of EPA ICR No. 1130.07 (OMB No. 2060–0082) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Grain Elevators—subpart DD, OMB Control No. 2060–0082, EPA ICR No. 1130.07, expiration date January 31, 2003. The ICR, which is abstracted below describes the nature of the information collection and its expected burden and cost.

**DATES:** Additional Comments must be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Harmon, Compliance Assistance and Sector Programs Division, Office of Compliance, 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7049; fax number: (202) 564–7083; e-mail address: *harmon.kenneth @ epa.gov.* Refer to EPA ICR Number 1130.07.

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0006, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (EDIC) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number of the EDIC is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Title:* NSPS Grain Elevators—subpart DD (OMB Control No. 2060–0082; EPA ICR No. 1130.07). This is a request to renew a collection that is scheduled to expire on January 31, 2003. Under the Paperwork Reduction Act, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 60.300, *et seq.*, subpart DD, New Source Performance Standards for Grain Elevators. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance.

In the Administrator's judgment, particulate matter emissions from grain elevators cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category, as required under section 111 of the Clean Air Act.

Controlling emissions of particulate matter from grain elevators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Particulate emissions from grain elevators are the result of grain drying and grain handling operations, including loading and unloading. These standards rely on the proper operation of particulate control devices such as baghouses and equipment such as shed doors and spouts designed to reduce particulate emission during grain unloading and loading.

Owners or operators of the affected facilities subject to NSPS subpart DD must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility that may increase the rate of emission of the regulated pollutant; notification of the date of the initial performance test; and the results of the initial performance test, including information necessary to determine the conditions of the performance test and performance test measurements and results, including particulate matter concentration and opacity.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, as well as the nature and cause of the malfunction (if known) and corrective measures taken. These notifications, reports and records are required, in general, of all sources subject to NSPS. Without such information, enforcement personnel

would be unable to determine if the standards are being met.

The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

Approximately 127 sources are currently subject to the standard. EPA estimates that three additional sources will become subject to the standard in each of the next three years.

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.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations at any grain terminal elevator or any grain storage elevator subject to NSPS subpart DD.

*Estimated Number of Respondents:* 132.

*Frequency of Response:* 155 annually.

*Estimated Total Annual Hour Burden:* 259.

*Estimated Total Annual Cost:* $14,811.

*Changes in the Estimates:* There is an increase of 9 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This slight increase in burden results from the slight growth in the number of regulated grain elevators.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32398 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OECA–2002–0007; FRL–7427–3]**

## Agency Information Collection Activities; Submission of EPA ICR No. 1167.07 (OMB No. 2060–0063) to OMB for Review and Approval; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Lime Manufacturing, (OMB Control No. 2060–0063, EPA ICR No. 1167.07). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before January 23, 2003.

**ADDRESSES:** Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, mail code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–7016, fax number: (202) 564–0050; e-mail address: *fried.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No.OECA–2002–0007, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (DOCKET) at *http://www.epa.gov/edocket.* Use DOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using DOCKET (our preferred method), by e-mail to *oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in DOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in DOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in DOCKET. For further information about the electronic docket, *see* EPA's **Federal**

**Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Title:* NSPS for Lime Manufacturing (40 CFR part 60, subpart HH) (OMB Control No. 2060–0063, EPA ICR Number 1167.07). This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The New Source Performance Standards (NSPS) for Lime Manufacturing Plants were proposed on May 3, 1977 and promulgated on April 26, 1984. These standards apply to each rotary lime kiln used in lime manufacturing, which commenced construction, modification or reconstruction after May 3, 1977. The standards do not apply to facilities used in the manufacture of lime at kraft pulp mills. The purpose of this NSPS is to control the emissions of particulate matter (PM) from lime manufacturing plants, specifically from the operation of the rotary lime kilns. The standards limit particulate emissions to 0.30 kilogram per megagram (0.60 lb/ton) of stone feed, and limit opacity to 15% when exiting from a dry emission control device. This information is being collected to assure compliance with 40 CFR part 60, subpart HH.

There are three types of reporting requirements for owners or operators of facilities under this NSPS: (1) Notifications (*e.g.*, notice for new construction or reconstruction, anticipated and actual startup dates, initial performance test, and demonstration of the CMS); (2) a report on the results of the performance test; and (3) semiannual reports of instances of occurrence and duration of any startup, shutdown, or malfunctions. The purpose of the notifications are to inform the Agency or delegated authority when a source becomes subject to this standard. Performance tests are conducted to ensure that the new plants operate within the boundaries outlined in the standard. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Under this standard the data collected by the affected industry is retained at the facility for a minimum of two years and made available for inspection by the Administrator.

The Administrator has judged that PM emissions from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of lime manufacturing plants must notify EPA of construction, modification, startups, shutdowns, malfunctions and performance test dates, as well as provide reports on the initial performance test and annual excess emissions. The industry costs associated with the information collection activity in the standards are capital costs and O&M costs associated with continuous emissions monitoring and labor costs associated with recordkeeping and reporting. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

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, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 42 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Lime Manufacturing Plants.

*Estimated Number of Respondents:* 53.

*Frequency of Response:* On occasion, initial, and semiannual.

*Estimated Total Annual Hour Burden:* 4,434 hours.

*Estimated Total Annual Cost:* $91,500.

*Changes in the Estimates:* There is an increase of 244 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of existing facilities subject to this standard resulting from the availability of more accurate data.

Dated: December 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–32399 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0283; FRL–7277–5]**

## Bronopol; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2002–0283, must be received on or before January 23, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

- Industry (NAICS 111), e.g., Crop production.
- Industry (NAICS 112), e.g., Animal production.
- Industry (NAICS 311), e.g., Food manufacturing.

• Industry (NAICS 32532), e.g., Pesticide manufacturing.

• Industry (NAICS 32561), e.g., Antimicrobial pesticide.

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0283. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0283. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0283. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is

placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0283.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0283. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI To the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 2002.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

## Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**PP 2E6475**

EPA has received a pesticide petition (PP 2E6475) from BASF Corporation: 3000 Continental Drive - North, Mount Olive, NJ 07828–1234; proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2-bromo-2-nitro-1,3-propanediol (Bronopol) (CAS Reg. No. 52–51–7) in or on all raw agricultural commodities when used as an in-can preservative in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* Residue chemistry data are not generally required by EPA regarding tolerance exemption petitions. Consequently no plant metabolism data have been generated.

2. *Analytical method.* Since this petition is for an exemption from the requirement of a tolerance, an enforcement analytical method for 2-bromo-2-nitro-1, 3-propanediol is not needed.

3. *Magnitude of residues.* Based on the proposed amount of 2-bromo-2-nitro-1,3-propanediol to be used in the final products (0.04% or less by weight of the total formulation) and the recommended frequency and rates of application to growing crops, raw agricultural commodities after harvest, and animals, the residues are expected to be essentially undetectable and not toxicologically significant.

*B. Toxicological Profile*

1. *Acute toxicity.* Bronopol was given as single oral doses of 200, 280, 390, 550, or 770 mg/kg, as a solution in distilled water, to groups of ten male and ten female rats. The rats were observed for a seven-day period. Overt signs of toxicity were seen immediately after dosing with 280 mg/kg or more, and within 1 hour in males given 200 mg/kg. The signs included sedation, wheezing, gasping, nasal exudate, cyanosis, increased salivation and ataxia. Animals given 550 or 770 mg/kg

also had slow or labored respiration, and two females became prostrate. Most deaths occurred within 19 hours after dosing, but some occurred up to 72 hours. There were no gross abnormalities at autopsy of the decedents or in animals killed at the end of the study. The $LD_{50}$ in male rats was 307 mg/kg and in female rats was 342 mg/kg.

In a further oral study groups of ten male rats were given single doses of Bronopol at 36, 54, 80, 120, 270, 400, or 600 mg/kg, as a suspension in 0.4% aqueous Cellosize solution. The rats were observed for up to ten days after treatment. Overt signs of toxicity were seen within 30 minutes after dosing with 80 mg/kg or more, and included wheezing, gasping or labored respiration and nasal exudate. Animals in the higher dose groups were inactive and adopted a low or hunched body position. Deaths occurred in these groups up to five days after treatment; macroscopic findings in the decedents included evidence of gastrointestinal irritation at 120 mg/kg or more, enlarged and dark red adrenals in some animals given 400 or 600 mg/kg, small spleens in a few rats given 80 or 120 mg/kg, and pale areas on the livers at 600 mg/kg. At terminal autopsy, one animal given 400 mg/kg also had a small spleen. Statistical analysis of the mortality data indicated that the $LD_{50}$ was 254 mg/kg.

In an acute inhalation study a group of six rats and two groups of eight rats were exposed for 6-hour periods to Bronopol dust at nominal concentrations of 5, 0.5, or 0.05 mg per liter air respectively. The animals were then kept under observation for up to 14 days. Exposure of rats to 5 mg dust per liter air caused severe eye irritation, dyspnea and loss of bodyweight. Exposure to 0.5 mg dust per liter air caused only slight eye irritation and mild dyspnea, while no definite signs of irritation were observed in animals exposed to 0.05 mg dust per air.

In a second inhalation study four groups of 10 rats (5 males and 5 females) were exposed to Bronopol at 0 (filtered air negative control), 0.038, 0.089 or 0.588 mg/ by inhalation (nose-only) over a period of 4 hours. Exposure was followed by an observation period of 14 days. In the high dose group one animal died overnight after exposure, and 2 more animals were killed during the following day because of severe eye inflammation. Signs of marked irritancy were recorded in high dose animals but disappeared by the third observation day. Minor treatment-related signs (piloerection and hunched posture) were observed on the day of treatment in some intermediate dose rats. There was no effect in the low dose group. There were no treatment-related effects on body weight or treatment-related pathological findings except for local dermatitis and ulceration in 2 high dose animals possibly attributable to dermal exposure to the test article.

Several studies as summarized below determined 2-bromo-2-nitro-1,3-propanediol to be irritant to the eye. Bronopol in polyethylene glycol 300–0.1 ml volumes of 0.5 or 2% Bronopol in polyethylene glycol 300 were instilled into one eye of each of six rabbits, three rabbits per concentration. The other eye in each case was treated with solvent only. The 2% solution was instilled only once, whereas the 0.5% solution was instilled on four successive days. The 2% solution of Bronopol in polyethylene glycol 300, instilled once, caused moderate inflammation and slight conjunctival edema which subsided after 5 hours. The 0.5% solution, instilled on four successive days, had effects similar to those produced by the solvent alone.

Bronopol in saline - Two drops of a solution containing 0.5% w/v Bronopol in normal saline were applied to one eye of three New Zealand White rabbits once daily on four successive days. The other eye (control) of each rabbit was treated with normal saline. The eyes were examined for irritation at 15 and 30 minutes, and at 1, 2, 3, 4, and 24 hours after treatment each day. One rabbit developed moderate inflammation and very slight edema of the conjunctiva between two and four hours after the first application, but this subsided within 24 hours. No other reactions were observed.

Bronopol in polyethylene glycol 400 - One drop of Bronopol at 0 (vehicle control), 0.5, 2, or 5% in polyethylene glycol 400 was added to one eye of 12 rabbits, 3 animals per test concentration. The other eye of each rabbit was left untreated. After 24 hours the eyes were irrigated with 300 ml of lukewarm water. Ocular reactions were assessed according to the FDA method at 1, 24, 48, and 72 hours, and then 7, 14, and 21 days after treatment.Immediately after treatment, with all the solutions, most rabbits exhibited head shaking and blinking and/or rubbing the treated eye. After 1 hour all the animals developed conjunctival reactions which had largely subsided by 24 hours, except in the most severely affected cases. One rabbit treated with 5% Bronopol had conjunctival reactions that persisted for 72 hours. The lower concentrations produced less severe and less persistent conjunctival reactions, and none of the concentrations elicited reactions in the cornea or iris. It was concluded that Bronopol in polyethylene glycol 400 was irritant at 5% but not at 2 or 0.5%, when instilled once only into the eye of the New Zealand White rabbit.

Bronopol is also irritant to the skin. In a cumulative irritancy study dilutions of Bronopol at 0 (vehicle control), 0.1, 0.5, 1, 2.5, and 5% in petrolatum was applied daily for 21 days to the same site on the back of 8 men. The treatment sites were occluded. Readings were made daily on a scale of 0 to 4. The skin irritancy threshold concentration of Bronopol was approximately 0.5 to 1.0%. To determine if the subjects had been sensitized, they were further elicited after a 10-day rest period. Two subjects reacted at 0.5 and 1% Bronopol. One reacted at 0.1%. These men received a product use test consisting of applications (without patching) to the cubital fossa twice daily for 7 days. These were negative.

In a single, 4 hour, semi-occluded dermal application of undiluted Bronopol to the skin of six rabbits produced severe dermal reactions, including eschar formation, necrosis and severe edema. Other adverse dermal reactions noted were slight hemorrhage of the dermal capillaries, blanching or brown discoloration of the skin, desquamation and scar tissue. The absence of fur growth was also occasionally noted on day fourteen with further effects indicative of corrosion. A primary irritation index of 6.2 was produced and evidence of corrosive effects were noted fourteen days after treatment. Undiluted Bronopol was found to be a severe irritant/corrosive to rabbit skin.

An acute rabbit dermal toxicity study gave a dermal $LD_{50}$ of > 2,000 mg/kg body weight. The study was based on the EEC, OECD and EPA/OPPTS guidelines. A single oral dose of 2,000 mg/kg body weight of the test material preparation in 0.5% Tylose was applied in a group of ten rats (five males and five females) to the clipped epidermis (dorsal and dorsolateral parts of the trunk) and covered by a semi occlusive dressing for 24 hours. No mortality occurred. Signs of toxicity noted in the 2,000 mg/kg groups comprised poor general state, dyspnea and apathy. Findings were observed until including study day 1. The following skin effects were observed at the application site: white discoloration, erythema, edema, eczematoid skin change, scaling, and crust formation. Findings were observed until termination of the study. The animals did not gain weight during the first post exposure observation week but restarted to gain weight thereafter. No abnormalities were noted in the animals necropsied at the end of the study,

except in the skin of the application site, where incrustation and full thickness necrosis (9/10 animals) was observed. Under the conditions of this study, the acute dermal median lethal dose ($LD_{50}$) of the test substance was found to be greater than 2000 mg/kg body weight for male and female animals.

2-bromo-2-nitro-1,3-propanediol is classed as a weak skin sensitizer as indicated in four Magnusson and Kligman guinea pig skin sensitization studies as summarized below.

Study 1 - The test method was the Magnusson and Kligman guinea pig maximization test, but using 10 test animals, 4 treated controls and 4 untreated controls. Induction in the test animals was by intradermal injections of 0.03% w/v Bronopol in saline and Complete Freunds Adjuvant in the shoulder region. The induction process was supplemented 7 days later by 1.5% w/v Bronopol in distilled water applied under occlusion to the injection sites. Fourteen days later the animals were challenged on the shaved flank by occluded patch with 0.4% w/v Bronopol in distilled water. Twenty-four hours after the challenge the patch was removed and the reaction site examined 24 and 48 hours after removal. A further 3 challenges were made at either 1 or 2 week intervals. The treated controls were 4 guinea pigs treated the same as the test animals except that the test substance was omitted from the intradermal injection and the covered patch induction procedures. At each challenge 4 previously untreated animals were challenged as per the test animals. This group formed the untreated control. In the Magnusson and Kligman Maximization test, sensitization is normally assessed after one challenge. At this stage in this test there was no sensitization. One animal was sensitized after 2 challenges and a further animal after 3 challenges. In this test 2/10 animals sensitized after one challenge is classified as a mild sensitizer (Grade II), but since 3 challenges were necessary before 2/10 animals were sensitized, the sensitization potential must be regarded as less than mild, hence Bronopol was found to be a weak sensitizer by this method.

Study 2 - Induction was carried out as in Study 1 except that 9 guinea pigs were used; induction was 0.02% Bronopol in saline and induction supplementation was 6–7 days later with 5% Bronopol in saline. Fourteen days later the animals were challenged (24 hour occluded patch) with 1% Bronopol in saline. One week later the animals were subjected to a cross-reaction challenge with 2% formalin. Further challenges were made with Bronopol and formalin after 2 and 3 weeks. Any challenge reactions were recorded after 24 and 48 hours. 2/9 animals showed sensitization reactions to Bronopol at challenge 1. Animals were not challenged with Bronopol at challenge 2. No sensitization reactions were seen at challenge 3 and 1/9 animals showed an equivocal reaction at challenge 4. 1/9 animals showed an equivocal reaction to formalin at challenge 2, but there was no evidence of cross-reaction at challenges 3 and 4. It was concluded that Bronopol was a weak sensitizer under the conditions of this test. There was no significant evidence of cross-reaction to challenge with formalin.

Study 3 - Induction was carried out as in Study 1 except that 9 guinea pigs were used; induction was 0.02% Bronopol in saline and induction supplementation was 6–7 days later with 2.5% Bronopol in saline. Fourteen days later the animals were challenged (24 hour occluded patch) with 0.25% Bronopol in saline; a second challenge was made after a further 7 days. Any challenge reactions were recorded after 24 and 48 hours. There was no evidence of sensitization in the 9 animals tested at either challenge, and it was concluded that Bronopol was not a sensitizer under the conditions of this test.

Study 4 - Induction was carried out as in Study 1 except that induction was 0.02% Myacide BT (a minimum of 98% Bronopol) in saline and induction supplementation was 6–7 days later with 2.5% Myacide BT in saline. Fourteen days later the animals were challenged (24 hour occluded patch) with 0.25% Myacide BT in saline; a second challenge was made after a further 7 days. Any challenge reactions were recorded after 24 and 48 hours. There was no evidence of sensitization in the 10 animals tested at either challenge, and it was concluded that Myacide BT was not a sensitizer under the conditions of this test. The overall conclusion was that Bronopol has a very low, and variable, sensitization potential in the stringent Magnusson and Kligman guinea pig maximization test and is at most a weak sensitizer in this species. There was no evidence that the animals had become sensitized to formalin.

2. *Genotoxicty*. Mutagenicity studies including *in vitro/in vivo* in mouse erythrocytes (micronucleus assay), chromosomal aberration test in human lymphocytes, Salmonella typhimurium plate (Ames) tests with and without activation were negative. Bronopol did not induce mutations in the *in vitro* bacterial mutagenicity assay (TX 86004) or the V79 cell mutation assay (TX 86043), neither was there evidence of activity in assays for host-mediated bacterial mutagenicity or dominant lethality conducted in mice TX 74034). Furthermore, there was no increase in the incidence of micronuclei in polychromatic erythrocytes of bone marrow from male and female mice, 24, 48, or 72 hours after administration of single oral doses up to a maximum tolerated level of 160 mg/kg (TX 86001). However, weak *in vitro* clastogenic activity was detected in cultured human lymphocytes exposed for 24 hours, in the absence of S–9, to Bronopol at 30 µg/ml (TX 86049). Bronopol is normally self-stabilizing at about pH 4 in aqueous media, but decomposes at elevated temperature and more alkaline pH to release formaldehyde as a breakdown product. Under the conditions of the human lymphocyte chromosome assay, only about 10% of an initial 30 µg/ml concentration of Bronopol in the culture medium (pH 6.9) could be detected by analysis after 2 hours incubation at 370 C (DT 86029), and a formaldehyde concentration of 4.2 µg/ml was found at this time (DT 86030); the calculated value for formaldehyde released from complete breakdown of the 30 µg/ml concentration of Bronopol is 4.5 µg/ml. Formaldehyde shows clastogenic properties *in vitro* that include the induction of chromosome aberrations in human lymphocytes. Furthermore, in a lymphocyte assay conducted in-house (TX 86050), formaldehyde, in the absence of S–9 activation, elicited chromosome damage that was qualitatively and quantitatively similar to that seen in the assay of Bronopol. These findings, supported by the analytical data, indicate that the *in vitro* clastogenicity seen with Bronopol is due to its breakdown to formaldehyde. Although formaldehyde is a clastogen *in vitro,* its reactivity precludes distribution *in vivo,* so it is inactive in bone marrow and germ cells. The relative instability of Bronopol, like that of other non-carcinogenic formaldehyde-releasing agents, does not allow it to transport formaldehyde to these sites. In contrast, the carcinogen, hexamethylphosphoramide (HMPA), is more stable and requires metabolic activation to release formaldehyde; as a result, HMPA is clastogenic in bone marrow and has adverse effects in germ cells. In conclusion, the testing of Bronopol over a wide range of genetic endpoints has revealed only a single adverse finding, namely weak *in vitro* clastogenicity, and this result is clearly

attributable to the release of formaldehyde from Bronopol under the conditions of the lymphocyte assay. The consensus of negative findings in short-term *in vitro* tests, together with the negative finding in an *in vivo* test for chromosome damage and the absence of oncogenicity in the life span studies in rats and mice (see below), indicates that Bronopol does not present a genotoxic hazard.

In a 2-year rat (drinking water) chronic toxicity and tumorgenicity, Bronopol dissolved in tap water was dosed to 28 day old rats in 4 groups (45 male and 45 female in the main groups and 15 male and 15 female in the satellite groups) via the drinking water for 104 weeks at 0 (untreated control), 10, 40, and 160 mg/kg/day. The main groups were reserved for evaluation of tumorigenic potential and were not used for blood and urine samples during the study; the satellite groups were used for blood and urine samples during the study and were not included in the tumorigenicity assessment. The results at the various dose levels may be summarized as follows:

160 mg/kg/day

• Reduced grooming activity during the final year of treatment.

• Significantly increased mortality.

• Reduced weight gain from week 3 onwards among males and from week 7 onwards among females.

• Lower food intake among males from week 13 onwards.

• Marked reduction in water intake throughout the dosing period and an associated reduction in urine volume noted at weeks 25, 52, and 103.

• Increase incidence of progressive glomerulonephrosis in males and females.

• At week 52, urine repeatedly positive for hemoglobin in 4/10 males and 1/10 females, at week 77 in 4/10 males and 3/10 females, and at week 103 in 10/10 males and 1/10 females.

• Stomach lesions in 20 males and 15 females and the gastric lymph nodes showed dilation of the sinusoids in 4 males and 5 females.

• Squamous metaplasia, inflammation or atrophic acini in the salivary glands of 12 males and 11 females.

40 mg/kg/day

• Reduced weight gain from weeks 27 to 78 among males.

• Lower food intake from weeks 53 to 78 among males.

• Moderate reduction in water intake throughout the dosing period.

• At week 77, urine repeatedly positive for hemoglobin in 6/10 males and at week 103 in 3/10 males.

• Stomach lesion in 1 male.

• Squamous metaplasia, inflammation or atrophic acini in the salivary glands of 12 males and 2 females.

10 mg/kg/day

• Small but definite reduction in water intake throughout the dosing period.

• At week 77, urine repeatedly positive for hemoglobin in 2/10 males and at week 103 in 2/9 males.

• Stomach lesions in 1 male and 1 female.

• Squamous metaplasia and/or inflammation or atrophic acini in the salivary glands of 5 males and 1 female.

Control

• At week 52, urine repeatedly positive for hemoglobin in 1/10 males and 0/10 females, at week 77 in 2/10 males and 0/10 females, and at week 103 in 3/10 males and 1/10 females.

• Stomach lesions in 1 male and 2 females.

• Squamous metaplasia and/or inflammation or atrophic acini in the salivary glands of 3 males and 2 females.

The evidence of toxic effects related to the administration of Bronopol was a reduction in food intake, impaired food utilization efficiency associated with reduced bodyweight gain, and increased mortality. Changes in the stomach and gastric lymph nodes were attributed to the irritant effect of Bronopol. Unpalatability reduced the water intake and was associated with a reduced output of urine, an increased incidence of hemoglobinuria and an exacerbation of the spontaneous incidence of progressive glomerulonephrosis. Treatment with Bronopol exacerbated a spontaneous change in the salivary glands. These effects were dose related and apart from a small effect on water intake that was related to palatability, there was no evidence of toxicity at 10 mg/kg/day. There was no evidence to suggest that the administration of Bronopol affected the tumor incidence. In summary, the study gave a systemic no observed adverse effect level (NOAEL) of 10 mg/kg/day, a lowest effect level (LEL) of 40 mg/kg/day and found 2-bromo-2-nitro-1,3-propanediol (Bronopol) to be not carcinogenic.

3. *Reproductive and developmental toxicity*. In a two-generation reproduction study in rats Bronopol was administered to rats in the drinking water at concentrations of 25, 70, or 200 mg/kg/day. Thirteen males and 26 females were treated for a minimum of 80 days prior to mating. They were mated on two separate occasions to produce the F1a and F1b litters. Weanlings from the F1b litters were randomly selected (13 males and 26 females) to become parents of the next generation. The F1 parents were treated for a minimum of 87 days prior to mating, and were mated on two separate occasions to produce the F2a and F2b litters. In the F0 generation, one female from each of the control and low-dose groups, and one male and five females from the high-dose group died or were sacrificed in extremis during the study; in the F1 generation, one female from each of the low-, mid- and high-dose groups died before the end of the study. There were no treatment-related aspects, so these deaths were considered to have been incidental to Bronopol. Food consumption for the high-dose group was consistently lower than controls for the F0 males, for F0 females during the initial two weeks of treatment and the lactation periods for both mates, and for F1 females during the lactation period of the F2a mate. Water consumption was reduced in all treated groups, in a dose-related manner, throughout most of the study; this contributed to the lower achieved dosages of Bronopol that animals received, namely 22.55, 55.2, or 147 mg/kg. The female fertility index for the high-dose group was slightly lower than control at the F1 mate only. Mean body weights of the offspring of the F0 and F1 high-dose parents (F1a and F1b, and F2a and F2b, respectively) were lower than the control throughout the lactation periods. Mean body weights of the F1b pups from the low- and mid-dose groups were slightly lower than control on day 21 of the lactation period. There were no other test article-related macroscopic or microscopic changes. There was a dose-related increase in the kidney weights of treated F0 females, though the difference between the low dose group and controls was minimal. In the high-dose group animals there was a decrease in the absolute weights of the livers, and possibly also the hearts, of F1 males, and in the absolute liver weights of F2b males and females; these females also had lower absolute kidney weights. In conclusion, ingestion of Bronopol elicited signs of toxicity at all dosages, though the only reproductive or litter parameter affected at the 25 and 70 mg/kg/day dosages was body weight of F1b pups at weaning, where a minimal decrease was seen.

An early rat dermal developmental toxicity study gave a maternal NOAEL > 40 mg/kg/day (HDT) considering 2-bromo-2-nitro-1,3-propanediol as a severe dermal irritant in rats. Further development toxicity studies have been carried out for both the rat and the rabbit. In the rat study three groups of 24 timed-mated female rats were dosed once daily, orally by gavage, with

solutions of Bronopol at dose levels of 10, 28, or 80 mg/kg/day from days 6 to 15 of pregnancy, inclusive. A similar group of females were dosed with the vehicle (purified water acidified to pH 4) by the same route and over the same period, and served as controls. Maternal clinical signs, bodyweights and food consumption were recorded. On day 20 of pregnancy, the females were killed and a necropsy was performed. Numbers of corpora lutea and live and dead implantations were recorded. Live fetuses were weighed, sexed and examined for external and visceral abnormalities. Two thirds of the fetuses were also examined for skeletal abnormalities. There was evidence of maternal toxicity following oral gavage administration of Bronopol at 80 mg/kg/day, characterized by retarded bodyweight gain over days 6 to 7 of pregnancy. There was no evidence of maternal toxicity at either 10 or 28 mg/kg/day. There was no evidence of developmental toxicity at any of the dose levels investigated. There may be an association of treatment at 80 mg/kg/day with advanced ossification of sacral arches and at 28 and 80 mg/kg/day with advanced ossification of the forelimb phalanges. However, neither of these findings in these groups was unusually advanced when compared to historical background data.

In a second study using rabbit groups of 18, 19, or 20 timed-mated female animals were dosed daily between 7 and 19 days of pregnancy, inclusive, by the oral route with aqueous solutions of Bronopol at dose levels of 0 (control), 5, 20, 40, and 80 mg/kg/day. Day 0 of pregnancy was the day of mating. 80 mg/kg/day was selected as a level which should elicit maternal effects. However, in the event that the effects may have been too severe, 40 mg/kg/day was selected as the next highest level known to be tolerated by the pregnant rabbit. The lower dose level of 5 mg/kg/day and the intermediate dose level of 20 mg/kg/day were expected to be 'no effect' levels. Maternal clinical condition, bodyweight, and food consumption were recorded. The females were killed on day 28 of pregnancy and a necropsy was performed. They were weighed, sexed and examined for external, visceral, and skeletal abnormalities. At 80 mg/kg/day, Bronopol elicited severe maternal toxicity at the onset of dosing. The animals recovered after dosing ceased, but the outcome of pregnancy was affected. There was embryotoxicity characterized by growth retardation and a slightly higher than expected incidence of fetal abnormalities. This embryotoxicity was considered likely to be related to the maternal toxicity. At 40 mg/kg/day, which was considered to be the highest level likely to be tolerated by the pregnant rabbit without eliciting severe maternal toxicity, there was no evidence of adverse effects of treatment on the pregnant rabbit or developing embryos. This dose level was therefore considered to be the 'no effect' level of Bronopol with regard to developmental toxicity.

4. *Subchronic toxicity.* A 13-week rat gavage study showed a NOAEL of 20 mg/kg/day and a lowest observed adverse effect level (LOAEL) of 80 mg/kg/day. Bronopol as a solution in distilled water was dosed to CD rats (4 groups of 20 males and 20 females) by oral gavage once per day, seven days per week for 13 weeks at 0 (untreated control), 20, 80, and 160 mg/kg/day. Reaction to treatment was as follows:

160 mg/kg/day - Severe respiratory distress and abdominal distension; reduced bodyweight gain and food consumption; death of 22 males and 14 females (includes 4 male and 3 female rats which replaced rats dying after one dose); all surviving rats were killed on day 9; autopsy showed gaseous and fluid distension of the gastro-intestinal tract in the majority of decedents; ulceration, epithelial hyperplasia and hyperkeratosis or congested vessels in the stomachs of 2 males and 4 females.

80 mg/kg/day - Severe respiratory distress and abdominal distension, the latter sign confined to 6 males and 6 females which subsequently died. At week 6, only 4 males and 2 females showed slight respiratory difficulty. Seven males and 9 females died with autopsy showing gaseous and fluid distension of the gastro-intestinal tract; reduced bodyweight gain and food consumption for the first week of treatment only; renal changes in 2 males.

20 mg/kg/day - In one male, respiratory distress, which subsequently regressed; renal changes in 2 males.

A 13-week dog gavage study showed a NOAEL of 8 mg/kg/day and LOAEL of 20 mg/kg/day. Bronopol dissolved in water was dosed to Beagle dogs (4 groups of 3 males and 3 females) by oral gavage once per day, seven days per week for 3 months (13 weeks) at 0 (untreated control), 4, 8, and 20 mg/kg/day. One pair of dogs was dosed at levels of 20– 40 mg/kg/day, over a period of 2 weeks in order to determine the vomiting threshold of Bronopol. This was found to be at a dosage of approximately 20 mg/kg/day. During the study vomiting occurred within 30 minutes of dosing and no other clinical signs were observed. Macroscopic post mortem examination revealed no abnormalities. In the main study there were no deaths. Vomiting, mainly at 20 mg/kg/day, within 0.5 hour of dosing was observed with occasional passage of liquid feces and red-stained mucus in isolated animals, both dosed and control. There were no adverse effects on food or water consumption, or on bodyweight. There were no abnormalities of the eye; no macroscopic post mortem abnormalities; or morphological changes or variations from normal in histological tissue examination which could be related to dosage of the test compound. After dosing for 6 weeks, one animal receiving 8 mg/kg/day had a serum alkaline phosphatase value approximating to the upper limit of normality of 35 King Armstrong units; after 12 weeks, however, the value was well within normal limits. After dosing for 12 weeks the group mean total white cell count, although within normal limits, was significantly lower in dogs receiving 8 and 20 mg/kg/day than in the controls. One animal receiving 4 mg/kg/day had a serum glutamic-pyruvic transaminase value after 12 weeks which exceeded the upper limit of normality of 50 mU/ml. Apart from the liver of one dog receiving 20 mg/kg/day which was heavier than would normally be expected, all organ weights were within normal limits. However, when expressed as a percentage of bodyweight the mean liver and spleen weights for dogs receiving 20 mg/kg/day were significantly heavier than the control values.

5. *Chronic toxicity.* A 2-year toxicity/carcinogenicity Bronopol study (administration via drinking water) in rats showed a NOAEL of ≥ 7 mg/kg/day and a LEL of < 32 mg/kg/day. For more detail see the carcinogenicity summary in Unit B.2.

In a study on potential local and tumorigenic effects from repeated dermal application to mice Bronopol dissolved in 90% acetone/water was applied to the shaved dorsum of 3 groups of mice (52 male and 52 female per group) at 0 (vehicle control), 0.2%, and 0.5%. Application was at the rate of 0.3 ml per mouse on three days (Monday, Wednesday, and Friday) in each week for 80 weeks. The results are summarized as follows:

• Among some mice treated with 0.5% Bronopol, there was minimal hair loss at the periphery of the shaved area during the first three weeks of treatment.

• A marginally inferior survival rate was recorded among male mice, although the prime cause of death

among decedents showed no relation to treatment.

• Between weeks 26 and 52, an inferior bodyweight gain was recorded among male mice treated with 0.5% Bronopol, although bodyweight gain over the 80 week treatment period was comparable with that of the controls. Bodyweight gain among other treated mice was not disturbed by treatment.

• Food intake and efficiency of food utilization showed no disturbance by treatment.

• Macroscopic examination of decedents and mice killed after 80 weeks of treatment, revealed pathology which was common to some animals from control and treated groups.

• Microscopic examination of decedents and mice killed at termination revealed changes consistent with the age and strain of mouse employed.

• Treatment with Bronopol did not alter the spontaneous tumor profile of the mice.

6. *Animal metabolism*. Rat and dogs were used in a metabolic study with both oral and cutaneous dosing as follows: Oral Dosing in Rats was by stomach tube with aqueous solutions of [14C]-Bronopol (1 mg/kg). Oral Dosing Dogs - Beagle dogs were dosed with [14C]-Bronopol (2 mg) mixed with unlabelled Bronopol (6–8 mg) as an aqueous solution in gelatin capsules. Cutaneous Dosing Rats and Rabbits - Initially solutions of [14C]-Bronopol (4 mg/kg) in water, acetone and acetone/water (9:1, v/v) were applied to the clipped backs of rats to determine the influence of the vehicle on percutaneous absorption. Acetone was determined to be the preferred application vehicle. In the main tests an acetone solution of [14C]-Bronopol (4.8 mg/ml) was applied to shaved/depilated areas of the backs of rats and rabbits at the rates of 0.05 ml per rat and 0.2–0.4 ml per rabbit, the treated areas being occluded with secured polythene. After an oral dose of [14C]-Bronopol (1 mg/kg) to rats or dogs, the radioactivity was completely absorbed, evenly distributed and rapidly excreted. Excretion was almost complete in 24 hours. During 5 days, rats excreted 83.3% in the urine, 5.8% in the feces (via the bile) and 8.4% in the expired air; 1.6% was still retained probably by incorporation into pathways of intermediary metabolism of [14C]-glycerol produced by biotransformation of [14C]-Bronopol. During 5 days, dogs excreted 81.8% in the urine and 3.1% in the feces. After an oral dose of [14C]-Bronopol (1 mg/kg), peak blood levels of radioactivity were reached in rats and dogs within 2 hours, and declined with an initial half-life of 4 ± 1 hour. After an oral dose of [14C]-Bronopol (1 mg/kg) to the rat and the dog, Bronopol and its metabolites were evenly distributed. Only in tissues concerned with excretion did levels of radioactivity exceed those in the blood. When applied to the skin of rats, [14C]-Bronopol was absorbed to a greater extent from an acetone solvent vehicle than from water:acetone (1:9, v/v) or water alone. In rats, at least 7 and 15% of an applied dose was percutaneously absorbed during 24 and 96 hours respectively. In rabbits, at least 9% of an applied dose was percutaneously absorbed during 24 hours. Pretreatment of rabbit skin with a depilatory enhanced absorption. Microhistoautoradiographs of rabbit skin showed that [14C]-Bronopol was mainly localized on the epidermis around the hair follicles. The limited percutaneous absorption of Bronopol may occur through the hair follicles. Five metabolites, which were more polar than Bronopol, were detected in the urine of rats and dogs given an oral dose of [14C]-Bronopol. One metabolite, shown by comparison of infra-red and mass spectra with synthetic material to be 2-nitropropane-1,3-diol, accounted for more than 40% of the administered dose. Unchanged Bronopol, which is unstable in plasma, was not detected. A similar pattern of urinary metabolites of [14C]-Bronopol was found after cutaneous application as after oral administration of the compound.

Further metabolic studies were carried out in male and female rats following single oral doses of [14C]-Bronopol at 10 and 50 mg/kg and repeated dosing at 10 mg/kg/day with Bronopol for 14 days followed by a single oral dose, 10 mg/kg of [14C]-Bronopol. The compound was well absorbed and rapidly excreted mainly via urine. Radioactivity found in the carcass and tissues at 168 hours after dosing accounted for less than 3% of dose. There were no major consistent differences between male and female rats. Bronopol was highly metabolized and intact compound was not detected in the urine. The urinary metabolite chromatographic patterns contained numerous polar metabolites and similar patterns were found for each group. The major metabolite observed was equivalent to desbromo-bronopol (2-nitro-propane-1,3-diol). Extensive metabolism led to radiolabeled one-carbon units excreted as carbon dioxide in expired air.

7. *Metabolite toxicology*. As determined in the animal metabolism studies in Unit B.6. numerous polar metabolites were identified in urine from rat and dog. Unchanged 2-bromo-2-nitro-1,3-propanediol was not detected. The major peak in most samples corresponded to desbromobronopol (debrominated bronopol), i.e. 2-nitropropane-1, 3-diol. This metabolite is not considered of toxicological concern.

8. *Endocrine disruption*. No specific tests have been conducted with 2-bromo-2-nitro-1,3-propanediol to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity tests, i.e., teratology and multi-generation reproduction studies, which would suggest that 2-bromo-2-nitro-1,3-propanediol produces effects characteristic of the disruption of endocrine functions.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. The proposed use of 2-bromo-2-nitro-1, 3-propanediol as a preservative in end-use pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals is not expected to result in any significant additional, dietary exposure, due to the low concentration of 2-bromo-2-nitro-1, 3-propanediol employed in the formulation and the extremely low probability of significant contact by the general public following treatment.

2-bromo-2-nitro-1, 3-propanediol has FDA approval for indirect food contact use as a preservative in adhesives that are components of food packaging or storage materials (21 CFR 175.105); as a slimicide for use in pulp and papermaking at a maximum level of 0.6 lb/ton of dry weight fiber (21 CFR 176.300); and paper components in contact with aqueous and fatty foods at a level not to exceed 0.01% by weight of those components (21 CFR 176.170). These uses are not expected to result in quantifiable residues of 2-bromo-2-nitro-1, 3-propanediol in the diet. Uses as a preservative in concentrates of agricultural pesticide products also is not expected to be a source of quantifiable residues in food.

There are no acute or chronic toxicological concerns associated with the proposed use of 2-bromo-2-nitro-1,3-propanediol as an inert ingredient in concentrates of agricultural pesticide products. An acute dietary risk assessment, therefore, is not required. Chronic exposure to 2-bromo-2-nitropropane-1, 3-diol through food is essentially insignificant.

ii. *Drinking water*. Contamination of drinking water would not be expected to

occur under the proposed use conditions of 2-bromo-2-nitro-1, 3-propanediol as a preservative at very low concentrations in pesticide products intended for applications, principally to growing crops, raw agricultural commodities after harvest, and animals; as either a direct pour-on application or as a spray. Neither method of application is expected to contaminate water supplies intended for human consumption. Bronopol is not applied to water and is not used for the disinfection of human or animal drinking water.

2. *Non-dietary exposure*. 2-bromo-2-nitro-1, 3-propanediol is used as an industrial biocide for the prevention of biofouling in areas such as recirculating water in cooling towers and evaporative condensers, air conditioners, air washers and humidifier systems, oil, gas and industrial process water, metal working fluids and paper mill pulp and process water; and for the preservation of surfactants, adhesives, starch, pigment and extender slurries, paints, latex and antifoam emulsions, absorbent clays, water based printing inks and print solutions, water based pesticides and chemical toilet solutions. The margins of exposure (MOEs) calculated for direct applicators occupationally exposed by either the dermal or inhalation route, based on worst-case estimates, revealed there is no level for concern. Estimated exposures to professional painters using paint preserved with 2-bromo-2-nitro-1, 3-propanediol were used as the worst-case for estimating secondary occupational exposure risk. MOEs were not exceeded and EPA has concluded that risk associated with secondary exposure are not of concern.

2-bromo-2-nitro-1, 3-propanediol is also used in the preservation of consumer, household and institutional products. Based on the worst-case estimate for professional painters chronically exposed to 2-bromo-2-nitro-1, 3-propanediol, EPA has concluded that risk associated with these uses are not of concern.

2-bromo-2-nitro-1, 3-propanediol also is used to preserve pharmaceuticals, cosmetics, and toiletries, which are regulated by FDA. The Cosmetic, Toiletries and Fragrance Association's (CTFA's) Cosmetic Ingredient Review (1980) states that 2-bromo-2-nitro-1,3-propanediol is safe as a cosmetic ingredient at concentrations up to 0.1% except where there is a risk of nitrosamine or nitrosamide formation. Similarly, 2-bromo-2-nitro-1,3-propanediol is listed in Annex VI of the EC Cosmetics directive as an approved preservative for use up to 0.1% except where there is a risk of nitrosamine formation.

Based on toxicity data, an aggregate risk or likelihood of the occurrence of an adverse health effect resulting from all routes of exposure to 2-bromo-2-nitro-1, 3-propanediol is not expected.

*D. Cumulative Effects*

There is no reliable information that would indicate or suggest that 2-bromo-2-nitro-1, 3-propanediol has any toxic effects on mammals that would be cumulative with those of any other chemical.

*E. Safety Determination*

1. *U.S. population*. The reference dose (RfD) for 2-bromo-2-nitro-1, 3-propanediol based on the 2-year chronic study (drinking water) in rats with a NOAEL of 10 mg/kg/day and using an uncertainty factor of 100 is calculated to be 0.1 mg/kg of body weight (bwt)/day. The estimated worst-case theoretical maximum residue contribution (TMRC) resulting from this action will be 0.000024 mg/kg/bwt/day for the overall U.S. population and represents 0.024 percent of the RfD. Based upon this information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health.

2. *Infants and children*. Nothing in the available literature would suggest that infants and children are more sensitive to the effects of 2-bromo-2-nitro-1, 3-propanediol than adults. Exposure of infants to 2-bromo-2-nitro-1, 3-propanediol resulting from its proposed use as an inert ingredient in certain pesticide formulations is expected to be negligible and will not put infants and children at increased risk.

*F. International Tolerances*

BASF Corporation is not aware of the existence of any international tolerances for 2-bromo-2-nitro-1, 3-propanediol.

[FR Doc. 02–32400 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–S

## 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–I's 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 Ccomment on Information Collection Proposal.**

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, 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 February 24, 2003.

**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 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. Cindy Ayouch, 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 (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Proposals to approve under OMB delegated authority the extension for three years, with revision, of the following reports:**

1. Report title: The Weekly Report of Eurodollar Liabilities Held by Selected U.S. Addressees at Foreign Offices of U.S. Banks.

*Agency form number:* FR 2050.

*OMB control number:* 7100–0068.

*Frequency:* Weekly.

*Reporters:* Foreign branches and banking subsidiaries of U.S. depository institutions.

*Annual reporting hours:* 1,872 burden hours.

*Estimated average hours per response:* 1.0 hour.

*Number of respondents:* 36.

Small businesses are not affected.

*General description of report:* This information collection is voluntary (12 U.S.C.§§248(a)(2), 353 et seq., 461, 602, and 625). Individual respondent's data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

*Abstract:* The report collects data on Eurodollar deposits payable to nonbank U.S. addressees from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations. The data are used for the construction of the Eurodollar component of the monetary aggregates and for analysis of banks' liability management practices.

*Current Actions:* The Federal Reserve proposes that the reporting cutoff be raised from a weekly average of $500 million to $550 million in Eurodollar liabilities.

2. Report title: The Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

*Agency form number:* FR 2502q.

*OMB control number:* 7100–0079.

*Frequency:* Quarterly.

*Reporters:* Large foreign branches and banking subsidiaries of U.S. depository institutions.

*Annual reporting hours:* 32,662 hours.

*Estimated average hours per response:* 3.5 hours.

*Number of respondents:* 2,333.

Small businesses are not affected.

*General description of report:* This information collection is required (12 U.S.C.§§248(a)(2), 353 et seq., 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* The report collects gross assets and liability positions from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations vis–a–vis individual countries. A separate schedule collects information on Eurodollar liabilities payable to certain U.S. addressees.

*Current Actions:* The Federal Reserve proposes to revise the country list in the body of the reporting form to conform to the Department of State's official country list. Claims and liabilities that are not allocated by country of customer would be further broken out into that portion that is attributable to the fair value of derivatives contracts. Claims on and liabilities to other non–U.S. offices of the parent bank would be further broken out into that portion that is attributable to unallocated claims and liabilities. In addition, the instructions would be clarified with respect to the year–end panel review process and the definition of unallocated claims. Finally, the single data item collected on Schedule A would be reported as a seven–day average (one number) instead of daily (five numbers).

**Proposal to approve under OMB delegated authority the revision, without extension, of the following reports:**

*Report title:* Financial Statements for Bank Holding Companies

*Agency form numbers:* FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES

*OMB control number:* 7100–0128.

*Frequency:* Quarterly, semiannually, and annually

*Reporters:* Bank holding companies (BHCs).

*Annual reporting hours:* 349,800.

Estimated average hours per response: FR Y–9C: 34.95 hours, FR Y–9LP: 4.85 hours, FR Y–9SP: 4.19 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

*Number of respondents:* FR Y–9C: 1,959, FR Y–9LP: 2,320, FR Y–9SP: 3,541, FR Y–9CS: 600; FR Y–9ES: 100.

Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

*Abstract:* The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to

collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES, effective for December 31, 2002, is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs). These BHCs previously filed either the FR Y–9LP or the FR Y–9SP reports.

*Current Actions:* Many of the proposed reporting revisions that pertain to the FR Y–9 reports are being requested to parallel revisions to the Federal Financial Institutions Examination Council (FFIEC) Commercial bank Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). However, there are other revisions not directly related to the Call Report. A detailed description of the proposed changes follows.

**FR Y–9C**

**Revisions to parallel proposed changes to the Call Report**

**Charge–offs of Accrued Fees and Finance Charges on Credit Card Accounts**

The Federal Reserve proposes to add the following items related to charge–offs of accrued fees and finance charges on credit card accounts.

(1) Add to Schedule HI–B, Part I, a new Memorandum item 3, ''Uncollectable credit card fees and finance charges reversed against income (i.e., not included in charge–offs against the allowance for loan and lease losses)'' to collect the amount of credit card fees and finance charges that the BHC reversed against either interest and fee income or a separate contra– asset account during the calendar year–to–date. This item would exclude credit card fees and finance charges reported as charge–offs against the allowance for loan and lease losses reported in Schedule HI–B, Part I, item 5.a, column A.

(2) Add to Schedule HI–B, Part II, a new Memorandum item 1, ''Separate valuation allowance for uncollectable credit card fees and finance charges'' to collect the amount of any valuation allowance or contra–asset account that the BHC maintains separate from the allowance for loan and lease losses to account for uncollectable credit card fees and finance charges. Because this amount is separate from the amount included in Schedule HC, item 4.c, and Schedule HI–B, Part II, item 7, this Memorandum item is only applicable for those BHCs that maintain an allowance or contra–asset account separate from the allowance for loan and lease losses.

(3) Add to Schedule HI–B, Part II, a new Memorandum item 2, ''Amount of allowance for loan and lease losses attributable to credit card fees and finance charges,'' to collect the amount of the allowance for loan and lease losses that is attributable to outstanding credit card fees and finance charges. This amount is included in the amount reported in Schedule HC, item 4.c, and Schedule HI–B, Part II, item 7.

(4) Add to Schedule HC–C a new Memorandum item 4, ''Outstanding credit card fees and finance charges,'' to collect the amount of fees and finance charges included in the amount of credit card receivables reported in Schedule HC–C, item 6.a.

(5) Add to Schedule HC–S, a new Memorandum item 4, ''Outstanding credit card fees and finance charges,'' to collect the amount of fees and finance charges included in the credit card receivables that the BHC has reported as securitized and sold in Schedule HC–S, item 1, column C.

Many institutions engaged in credit card lending have adopted the practice of ''purifying'' charge–offs for financial reporting purposes. ''Purification'' refers to the practice of reversing uncollectable accrued fees and finance charges against earnings rather than accounting for them as charge–offs against the allowance for loan and lease losses. This practice obscures charge–off ratios (i.e., charge–offs divided by loan balances) because the charged–off amount does not include the accrued fees and finance charges while the aggregate loan balance does include them. Thus, the transparency of financial reports is diminished.

Further, the effect of this practice on credit card lending institutions' financial statements has become more material as the level of accrued but uncollected finance charges and fees have become more significant during the past several years. Most if not all of the accrued fees and finance charges reversed under the purification practice are included in credit card loan balances, or in other words, have been capitalized into the credit card loan balances.

The proposed additional items would collect information on reversals of credit card fees and finance charges that are not reported as charge–offs against the loan loss allowance. The proposed additions would also collect information on the outstanding amount of fees and finance charges included in credit card receivables and the related allowance, whether it is a component of the allowance for loan and lease losses or a separate contra–asset account. These new items would cover both bank holding company–owned portfolios and securitized portfolios of credit cards. Additionally, these proposed changes would include clarifications to the instructions for three items: Schedule HC–S, items 1, 5.a, and 8, column C, as discussed below.

The proposed changes would improve financial reporting transparency for losses on credit card accounts and permit users of FR Y–9C data to calculate loss rates for credit card loan receivables that are comparable across credit card lending institutions. Users of FR Y–9C data would have more complete loss information relating to credit card fees and finance charges that are written off as uncollectable. Furthermore, the changes would provide better information regarding the composition of and level of credit risk in credit card loan receivables that the institution manages both for its own account and in securitizations. The items regarding outstanding credit card fees and finance charges would provide useful information to facilitate the agencies' supervision of credit card lending activities.

The proposed new items would be completed only by those BHCs that: (1) either individually or on a combined basis with their affiliated depository institutions report outstanding credit card receivables that exceed, in the aggregate, $500 million as of the report date. Outstanding credit card receivables will be measured as the sum of Schedule HC–C, Part I, item 6.a; Schedule HC–S, item 1, column C; and Schedule HC–S, item 6.a, column C.

OR

(2) are BHCs that on a consolidated basis are considered credit card specialty holding companies, defined as those that exceed 50 percent for the following two criteria:

(a) credit card loans (HC–C, Part I, item 6.a) plus securitized and sold credit card loans (HCS, item 1, column C) divided by total loans (HC–C, item 12, column A) plus securitized and sold credit card loans;

(b) total loans plus securitized and sold credit card loans divided by total assets (HC, item 12) plus securitized and sold credit card loans.

**Breakdown of Seller–provided Credit Enhancements to the Bank's Securitization Structures**

The Federal Reserve proposes to revise Schedule HC–S as follows.

(1) Revise item 2.b, ''Maximum amount of credit exposure arising from recourse or other seller provided credit enhancements provided to structures reported in item 1 in the form of standby letters of credit, subordinated securities, and other enhancements,'' to

collect the carrying value of ''Subordinated securities and other residual interests'' carried as on–balance–sheet assets that have been retained in connection with the securitization structures reported in Schedule HC–S, item 1, ''Outstanding principal balance of assets sold and securitized with servicing retained or with recourse or other seller–provided credit enhancements.''

(2) Add a new item 2.c, ''Standby letters of credit and other enhancements,'' to collect the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on–balance–sheet asset that have been provided or retained in connection with the securitization structures reported in Schedule HC–S, item 1.

(3) Clarify item 2.a, ''Retained interest–only strips,'' by changing the item description to ''Credit enhancing interest–only strips.''

These proposed revisions would distinguish between the amount of a BHC's seller–provided credit enhancements that are on–balance–sheet assets (other than credit–enhancing interest–only strips) and those that are not, and to better understand the types of credit support that BHCs are providing to their securitizations, including which types are typically used for different types of securitized loans. BHCs currently report the maximum amount of credit exposure from seller provided credit enhancements to securitization structures (other than credit–enhancing interest–only strips, which are reported separately) in Schedule HC–S, item 2.b. These credit enhancements include both on–balance–sheet assets (such as subordinated securities, spread accounts, and cash collateral accounts) and enhancements that are not assets (such as recourse liabilities and standby letters of credit). When credit enhancements are in the form of assets, credit losses on the securitized loans result in reduced cash inflows to the asset holder. In contrast, when seller–provided credit enhancements take some other form, cash outflows from the seller are required to cover credit losses on the securitized loans. In addition, under the risk–based capital standards that were revised as of January 1, 2002, seller–provided credit enhancements that are on–balance–sheet assets are ''residual interests'' subject to a dollar–for–dollar capital charge unless they qualify for the ratings–based approach. The capital charge for enhancements that are not assets generally is capped at 8 percent of the assets enhanced.

**Income from Insurance Activities**

The Federal Reserve proposes to split Schedule HI, item 5.h, ''Insurance commissions and fees'', into two new items, ''Insurance and reinsurance underwriting income'' and ''Income from other insurance and reinsurance activities.'' In new item 5.h.(1), ''Insurance and reinsurance underwriting income,'' BHCs would report all income from insurance and reinsurance underwriting, including the amount of premiums earned by property–casualty insurers and the amount of premiums written by life and health insurers. This item would also include the BHC's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged in insurance and reinsurance underwriting. In new item 5.h.(2), ''Income from other insurance and reinsurance activities,'' BHCs would report income from insurance agency and brokerage operations (including sales of annuities and supplemental contracts); service charges, commissions, and fees from the sale of insurance (including credit life insurance), reinsurance, and annuities; and management fees from separate accounts, deferred annuities, and universal life products. This item would also include the BHC's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged insurance activities other than insurance underwriting.

The risks arising from insurance underwriting are significantly different from those arising from other insurance activities. Given this distinction in risk, splitting the current single income statement item for insurance–related income into two items to separately identify underwriting income would enable the Federal Reserve to more clearly identify institutions engaged in underwriting and to better monitor the results of these underwriting activities.

**Proposed Revisions to the FR Y–9C Instructions**

(1)Modify the reporting instructions to include the ''Provision for allocated transfer risk'' with the ''Provision for loan and lease losses'' in item 4 of Schedule HI, Income Statement. In addition, in order for the end–of–period allowance in the reconciliation of the ''Allowance for loan and lease losses'' in Schedule HI–B, Part II, to equal the loan loss allowance on the balance sheet (Schedule HC, item 4.c), which excludes the – the instructions for Schedule HI–B, Part II, item 6, ''Adjustments,'' would also be revised to direct respondents to report as a negative number in item 6 the amount of any ''Provision for allocated transfer risk'' included in the amount of ''Provision for loan and lease losses'' reported in item 4 of the Income Statement (Schedule HI).

Prior to 2001, Schedule HI included a specific line item for ''Provision for allocated transfer risk,'' but amounts were reported in this item only infrequently and only by a small number of BHCs. This separate item was removed from the face of the income statement in 2001 and respondents were instructed to include these provisions in ''Other noninterest expense'' on Schedule HI, item 7.d. However, in reviewing the continuing merits of this instructional change, the Federal Reserve has found that institutions exposed to transfer risk generally view these provisions more like provisions for loan losses than a noninterest expense.

(2) Revise the Glossary entry for ''Trading Account'' to provide guidance for regulatory reporting purposes on the use of the trading account designation for loans. Conforming changes would be made elsewhere in the instructions where appropriate. A new second paragraph of the ''Trading Account'' Glossary entry would read as follows:

''There is a rebuttable presumption that loans and leases (hereafter, loans) should not be reported as trading assets. In order to overcome this presumption for particular loans, a BHC must demonstrate, from the pattern and practice of its activity, that it is acquiring these loans principally for the purpose of selling them in the near term with the objective of generating profits on short–term differences in price. Thus, such loans are held for only a short period of time (generally not months or years). This presumption is not overcome if a BHC acquires loans (through origination or purchase) with the intent or expectation that they may or will be sold at some date in the future. In addition, loans acquired and held for securitization purposes should not be reported as trading assets, but should be reported as loans held for sale.''

(3) Modify Schedule HC–S, item 1, ''Outstanding principal balance of assets sold and securitized by the reporting BHC with servicing retained or with recourse or other seller– provided credit enhancements'' to add the following sentence to the instructions for this item: –For credit card receivables, include in column C any fees and finance charges capitalized into the credit card receivable balances that the

reporting BHC has securitized and sold.''

(4) Modify Schedule HC–S, item 5.a, ''Charge–offs'' [on assets sold and securitized with servicing retained or with recourse or other seller–provided credit enhancements (calendar year–to–date)] to add the following sentence to the instructions for this item: ''Include in column C charge–offs or reversals of uncollectable credit card fees and finance charges that had been capitalized into the credit card receivable balances that have been securitized and sold.''

(5)Modify Schedule HC–S, item 8.a, ''Charge–offs'' [on loan amounts included in interests reported as securities in item 6.a (calendar year–to–date)] to add the following sentence to the instructions for this item: ''Include in column C the amount of credit card fees and finance charges written off as uncollectable that were attributable to the credit card receivables included in ownership interests reported as securities in item 6.a, column C.''

**Other Proposed Revisions Not Directly Related to Call Report Changes**

The following proposed revisions are not directly related to the proposed Call Report changes for March 2003. Some of these changes are proposed to provide greater consistency with current Call Report items that are not part of the March 2003 revisions.

**Accelerated Filing Deadline**

The Federal Reserve proposes to require the filing of FR Y–9C reports within 35 days after the quarter–end reporting date. This proposed change is consistent with the Call Report proposal to require all banks to file no later than 30 days after the quarter–end report date, effective with the June 30, 2003 reporting date, and the Security and Exchange Commission's (SEC's) final rule to accelerate the filing of quarterly reports from 45 days to 35 days after the quarter–end. In recognition of respondents' time and resource needs to modify reporting systems and review procedures, the proposed implementation date would be delayed until June 30, 2004.

The Federal Reserve seeks more timely filing of bank holding company information to obtain more immediate feedback about the risks and financial condition of these institutions, allowing the Federal Reserve to make evaluations and develop plans of action more quickly to address supervisory concerns. Accelerated disclosure of bank holding company information would also enhance data transparency and market discipline. Market discipline relies on market participants having timely information about the risks and financial condition of banking organizations. The FR Y–9C, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of bank holding company–specific data. Disclosure that increases transparency leads to more accurate market assessments of risk and value. This, in turn, should result in more effective market discipline on BHCs.

**Schedule HI – Income Statement**

The Federal Reserve proposes to revise Schedule HI as follows.

(1) Add two new items to the memoranda section, item 14, ''Stock–based employee compensation expense (net of tax effects)'' and item 15, ''Stock–based employee compensation expense (net of tax effects) calculated for all awards under the fair value method.'' Stock–based employee compensation plans include all arrangements by which employees receive shares of stock or other equity instruments of the employer or the employer incurs liabilities to employees in amounts based on the price of the employer's stock. Stock–ased employee compensation is used by many BHCs as a mechanism to provide substantial compensation to executives. Information on both the stock options expense and the amount of stock options expense related to all awards under the fair value method would provide an indication of the magnitude and the speed with which options are recognized as a cost of doing business. The information collected would be used in the analysis of the quality of earnings and comparability of profitability across BHCs.

The Financial Accounting Standards Board (FASB) recently proposed amendments to the disclosure provisions of FASB Statement 123, ''Accounting for Stock–Based Compensation'' to require more prominent disclosures about the method of accounting for stock–based employee compensation and the effect of the method used on reported results in both annual and interim financial statements. The proposed new items are captioned consistently with these disclosure requirements.[1] Currently; companies are not required to present stock option disclosures in interim financial statements. The proposed amendments prescribe transition provisions for companies that voluntarily adopt a fair value based method. For institutions choosing a fair value method, amendments to Statement 123 will be effective for financial statements with fiscal years ending after December 15, 2002.

(2) Modify the instructions for the Notes to the Income Statement to accommodate the collection of selected income information of large predecessor institutions for a reporting BHC engaged in a merger. The one–time reporting of this information would be event–driven and submitted only during the quarter in which the business combination(s) occur. The income statement items requested (26 items reported on Schedule HI) would refer to the financial performance of an acquired entity prior to a business combination, which otherwise would not be incorporated in the consolidated financial statements of the combined entity. Collection of predecessor information would be reported for acquired entities with total consolidated assets of $150 million or more.

In January 2001, FASB Statement No. 141, ''Business Combinations'' took effect prescribing that all business combinations are to be accounted for by the purchase method which instructs that the operating results of the acquired entity are to be included in the income and expenses of the acquiring entity only from the date of acquisition.

The current lack of information in this area is a significant problem for analysts attempting to achieve consistent comparisons of BHC financial trends. Because predecessor company information is not currently captured in the FR Y–9C for BHCs involved in purchase transactions, analysts currently must extract data from SEC filings, when available, and through manual entry manipulate the pro forma data. In addition, all classifications (items) requested are not necessarily available in SEC filings. With the collection of new predecessor data the Federal Reserve analysis of BHC data and overall market transparency would be improved by incorporating more meaningful financial measures, especially those that relate to earnings performance.

**Schedule HC – Balance Sheet**

The Federal Reserve proposes to modify the instructions for the Notes to the Balance Sheet to accommodate the collection of selected quarterly average information of large predecessor institutions for a reporting BHC engaged in a merger. The one–time reporting of this information would be event driven and only submitted during the quarter in which the business combination(s) occur. The balance sheet items requested (4 items reported on Schedule HC–K) would refer to the financial

[1] See FASB Financial Accounting Series Exposure Draft, ''Accounting for Stock–Based Compensation–Transition and Disclosure: an amendment of FASB Statement No. 123,'' Section 3.j.(2) and Section 3.j.(3).

performance of an acquired entity prior to a business combination, which otherwise would not be incorporated in the consolidated financial statements of the combined entity. Collection of predecessor information would be reported for acquired entities with total consolidated assets of $150 million or more.

**Schedule HC–F – Other Assets**

The Federal Reserve proposes to add a new item 5, ''Cash surrender value of life insurance'' to collect the amount of cash surrender value of life insurance that exceeds 25 percent of current item 5, ''Other'' assets. Items 5 and 6 would be renumbered as items 6 and 7. Many banking organizations have substantial holdings of life insurance that may expose the companies to credit, liquidity and market risks. In addition, the utility of these products could be adversely affected by tax law changes. Collection of this item is proposed to allow the Federal Reserve to identify companies with concentrations in these assets and to assess, where warranted, company management of these risks. This item is presently collected on the bank Call Report and on the FR Y–9SP when it represents more than 25 percent of ''other assets.'' It will also be collected on the FR Y–9ES (ESOP) as of year–end 2002.

**Schedule HC–M – Memoranda**

The Federal Reserve proposes to revise item 20, ''Net assets of broker–dealer subsidiaries engaged in underwriting or dealing securities pursuant to Section 4(k)(4)(E) of the Bank Holding Company Act as amended by the Gramm–Leach–Bliley Act'' to collect additional items for balances due from related institutions and balances due to related institutions. This item is completed only by top–tier BHCs who have made an effective election to become a financial holding company. Item 20 would be recaptioned with the heading ''Balances of broker–dealer subsidiaries engaged in underwriting or dealing in securities pursuant to Section 4(k)(4)(E) of the Bank Holding Company Act as amended by the Gramm–Leach–Bliley Act'', and ''net assets'' would be renumbered as item 20.a. The following new items would be added: under the heading 20.b, ''Balances due from related institutions, gross'' item 20.b.(1), ''Due from the bank holding company (parent company only), gross,'' item 20.b.(2), ''Due from subsidiary banks of the bank holding company, gross,'' and item 20.b.(3), ''Due from nonbank subsidiaries of the bank holding company, gross;'' under the heading 20.c, ''Balances due to related institutions, gross'' item 20.c.(1), ''Due to bank holding company (parent company only), gross,'' item 20.c.(2), ''Due to subsidiary banks of the bank holding company, gross,'' and item 20.c.(3), ''Due to nonblank subsidiaries of the bank holding company, gross;'' and item 20.d, ''Intercompany liabilities reported in items 20.c.(1), 20.c.(2) and 20.c.(3) above that qualify as liabilities subordinated to claims of general creditors.''

The Federal Reserve proposes to collect these additional items to restore the Federal Reserve's ability to monitor the potential impact of intercompany transactions as a source of funds to affiliate banks and BHCs, and the ability to monitor the degree to which financial transactions at the broker–dealer subsidiary are funded internally within the banking organization. In addition to eliminating the provisions of former section 20 of the Glass–Steagall Act, the Gramm–Leach–Bliley Act mandated a number of changes in the Federal Reserve's supervision of broker–dealers, including Section 20 subsidiaries, affiliated with BHCs. The Federal Reserve was advised to rely, to the fullest extent possible, on the supervisory activities and regulatory reports required by functional regulators (in this instance the SEC and the self–regulatory organizations under its auspices).

The Federal Reserve has also ceased collection of the Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank–Ineligible Securities Underwriting and Dealing (FR Y–20) collected from broker–dealers that operate under new authority granted to financial holding companies to engage in unlimited underwriting, dealing and market making in securities pursuant to section 4(k)(4)(E) of the BHC Act as amended by GLBA. Federal Reserve supervisors now rely upon the SEC Financial and Operational Combined Uniform Single report (FOCUS) report, internal management reports and publicly available financial reports for off–site monitoring the activities of these broker–dealers. However, none of these reports contain information formerly collected on the FR Y–20 for intercompany assets and liabilities.

By recapturing this vital intercompany financial data, supervisors would have an enhanced ability to monitor and understand changes in affiliated broker–dealer funding and capital structures and their effect on the banking organization. Also intercompany liabilities that are derived from subordinated debt agreements are considered capital under SEC net capital rules (Rule 15c3–1), and collection of proposed item 20.d (also formerly collected on the FR Y–20) would allow Federal Reserve to track this source of capital.

**Schedule HC–N – Past Due and Nonaccrual Loans, Leases, and Other Assets**

The Federal Reserve proposes to add the following two items to the memoranda section: item 7, ''Additions to nonaccrual assets,'' and item 8, ''Nonaccrual assets sold during the quarter.'' Although the overall quarter–to–quarter change in nonaccrual assets could be easily calculated based on end–of–values, collection of information relating to inflows and outflows of nonaccrual loans would enhance the Federal Reserve System's ability to track shifts in credit quality within a portfolio and their impact on an institution's credit costs and earnings. In aggregate, the information provided would facilitate the evaluation of fundamental trends underlying a credit cycle. Data on the outflow of nonaccrual loans would further reveal alternative management approaches to the resolution of problem assets.

Information on new additions to the level of nonaccrual assets during the period would indicate the extent of erosion or improvement in a BHC's portfolio. Aggregated data on the trend in new inflows of problem assets would aid in analyzing underlying credit cycle trends. For example, a slowdown in new inflows of problem assets may indicate an approaching peak level of nonperforming assets after the end of a recession.

Information on the volume of nonaccrual asset sales would enable the Federal Reserve System to track the growth of problem asset sales within an institution's portfolio. The new data collection would provide further insight into a banking organization's ability to manage credit risks and approaches in dealing with credit problems. In addition, the new data would lead to the identification of significant sales of nonaccrual or problem assets that have been a subject of supervisory and analytical interest. This interest is primarily oriented to the liquidity of the secondary markets in problem loans. Moreover, the information on problem loan sales would increase the Federal Reserve System's understanding of the evolution of financial markets. In particular, the secondary market for distressed loan sales, an avenue that was not available toBHCs in the past, has become prevalent only in recent years.

**Instructions**

Instructional revisions and clarifications would be done in accordance with changes made to the Call Report instructions or will

correspond to existing Call Report instructions. In addition, instructional revisions and clarifications would be made as necessary with respect to proposed revisions not directly related to the proposed Call Report changes for March 2003.

**FR Y–9LP**

The Federal Reserve proposes to make the following changes to the FR Y–9LP regarding the accelerated filing deadline and information on nonbank subsidiaries.

**Accelerated Filing Deadline**

The Federal Reserve proposes to require the filing of FR Y–9LP reports within 35 days after the quarter–end reporting date. This proposed change is consistent with the proposed change to the FR Y–9C described above, with the Call Report proposal to require all banks to file no later than 30 days after the quarter–end report date, and with the SEC's final rule to accelerate the filing of quarterly reports from 45 days to 35 days after the quarter–end. In recognition of respondents' time and resource needs to modify reporting systems and review procedures, the proposed implementation date would be delayed until June 30, 2004.

**Schedule PC–B – Memoranda**

The Federal Reserve proposes to add two new subitems to item 15 to collect additional information on nonbank subsidiaries of top–tier BHCs, item 15.b, ''Total combined loans and leases of nonbank subsidiaries,'' and 15.c, ''Total aggregate operating revenue of nonbank subsidiaries.'' Current items 15.b through 15.f would be renumbered accordingly. Operating revenue would be defined as the sum of total interest income and total noninterest income (before deduction of expenses and extraordinary items.)

Under Federal Reserve supervision procedures, complex BHCs with assets of $1 billion or less are subject to more extensive reviews than noncomplex BHCs with assets of $1 billion or less. In particular, they are assigned complete BOPEC (Banks, Other nonbank subsidiaries, Parent Company, Earnings, Capital) ratings, while their noncomplex peers are assigned only composite ratings based on the condition of their lead depository institutions. The Federal Reserve identifies complex companies based on a number of factors, including the nature and scale of any nonbank activities. In order to assist to ensure that complexity designations are up to date and accurate, the Federal Reserve has monitored aggregate nonbank revenue and nonbank loans using data reported by nonbank subsidiaries on the Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11). Recent revisions made to these reporting forms will significantly reduce the panel of companies filing detailed (or any) Y–11s on an annual basis, eliminating a key source of data for identifying complex BHCs.

**Instructions**

The FR Y–9LP instructions would be revised and clarified in accordance with changes made to the FR Y–9C instructions.

**FR Y–9SP**

The Federal Reserve proposes to make the following changes to the FR Y–9SP in a manner consistent with the previously described changes to the FR Y–9C or FR Y–9LP.

**Accelerated Filing Deadline**

The Federal Reserve proposes to require the filing of FR Y–9SP reports within 35 days after the June 30 and December 31 reporting dates. This proposed change is consistent with the proposed change to the FR Y–9C described above, with the Call Report proposal to require all banks to file no later than 30 days after the quarter–end report date, and with the SEC's final rule to accelerate the filing of quarterly reports from 45 days to 35 days after the quarter–end. In recognition of respondents' time and resource needs to modify reporting systems and review procedures, the proposed implementation date would be delayed until June 30, 2004.

**Balance Sheet**

The Federal Reserve proposes to add two new subitems to Memorandum item 17 to collect additional information on top–tier BHC nonbank subsidiaries, item 17.b, ''Total combined loans and leases of nonbank subsidiaries,'' and 17.c, ''Total aggregate operating revenue of nonbank subsidiaries.'' Current items 17.b through 17.d would be renumbered accordingly. Operating revenue would be defined as the sum of total interest income and total noninterest income (before deduction of expenses and extraordinary items.) As described above for the proposed addition of similar items to the FR Y–9LP, the Federal Reserve proposes to add these items to the FR Y–9SP to retain information formerly available on the Annual Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11I) needed to identify small complex BHCs.

**Instructions**

The FR Y–9SP instructions would be revised and clarified in accordance with changes made to the FR Y–9C instructions.

Board of Governors of the Federal Reserve System, December 18, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–32275 Filed 12–23–02; 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 January 9, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. L. Michael Ashbrook*, Monroe, Louisiana, and Charles Bruce, Cut Off, Louisiana; to acquire up to 40 percent of the voting shares of FBT Bancorp, Inc., Baton Rouge, Louisiana, and thereby indirectly acquire voting shares of Fidelity Bank and Trust Company, Baton Rouge, Louisiana.

**B. Federal Reserve Bank of Minneapolis** (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Richard M. Wall*, Burnsville, Minnesota; John K. Wall, Excelsior, Minnesota; and Elizabeth Wall Lee, Mendota Heights, Minnesota, as a group acting in concert, to gain control of Highland Bancshares, Inc., Bloomington, Minnesota, and thereby indirectly gain control of Highland Bank, St,. Michael, Minnesota.

Board of Governors of the Federal Reserve System, December 19, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–32436 Filed 12–23–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. DB Acquisition Corp.*, Wausau, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Dorchester Bancshares, Inc., Dorchester, Wisconsin, and thereby indirectly acquire voting shares of Dorchester State Bank, Dorchester, Wisconsin.

Board of Governors of the Federal Reserve System, December 18, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–32274 Filed 12–23–02; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 62475–77, dated October 07, 2002) is amended to reorganize the Office of Analysis, Epidemiology and Health Promotion, NCHS.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statements for the Data Monitoring and Analysis Branch (CS462) and the title and functional statement for the State and Local Support Branch (CS463) in their entirety.

Dated: December 13, 2002.

**Julie Louise Gerberding,**

*Director.*

[FR Doc. 02–32340 Filed 12–23–02; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:*

*Title:* Biennial Child Care Report for High Performance Bonus.

*OMB No.:* ACF–900.

*Description:* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, established the Temporary Assistance for Needy Families (TANF) program under title IV–A of the Social Security Act (the Act), 42 U.S.C. 401 et seq. Section 403(a)(4) of the Act requires the Secretary to award bonuses to ''high performing States.'' (Indian tribes are not eligible for these bonuses.) The term ''high performing State'' is defined in section 403(a)(4) of the Act to mean a State that is most successful in achieving the purposes of the TANF program as specififed in section 401(a) of the Act.

The final rule covering the TANF high performance bonuses to States in FY 2002 and beyond was published August 30, 2000 (65 FR 52814) followed by an interim final rule published May 10, 2001 (66 FR 23854). The final and interim final rules set forth how CCB will compute scores and rank States on the three components, i.e., Accessibility, Affordability, and Quality, that comprise the child care measure.

In FY 2002, CCB will measure State performance based upon a composite ranking of the Accessibility and Affordability components. No additional reporting burden will be required since the data/information for the Accessibility and Affordability components are currently reported under the CCDF program (ACF Reports 800 and 801). However, there will be a reporting burden (related to the Quality component) for the information States must submit if they wish to compete on the child care measure in FY 2003. The information includes:

(1) All age-specific rates for children 0–13 years of age reported by the child day care centers and family day care homes responding to the State's market rate survey; and

(2) The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

*Respondents:* States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–900 | 56 | 0.5 | 40 | 1,120 |
| Estimated Total Annual Burden Hours | | | | 1,120 |

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 28, 2002.

**Robert Sargis,**

*Report Clearance Officer.*

[FR Doc. 02–32367 Filed 12–23–02; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:*

*Title:* Evaluation of Independent Living Program Funded Under the Chafee Foster Care Independence Program.

*OMB No.:* New Collection.

*Description:* The Foster Care Independence Act of 1999 (Public Law 106–169) mandates evaluations of promising Independent Living Program administered by state and local child welfare agencies. The Administration for Children and Families proposes an evaluation of six Independent Living Program (ILP) over a five year period using a randomized experimental design. Youth aged 14–21 years receiving ILP services and their caseworkers will be interviewed at three points during the evaluation period. Program administrators, staff, and supplementary youth will also participate in interviews and focus groups conducted at each program site.

*Respondents:* Youth, caseworkers, and program administrators and staff.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Youth | 1,200 | 1.5 | 1 | 1,800 |
| Caseworker | 1,800 | 1.0 | 1 | 1,800 |
| Program Admin/staff/extra youth | 600 | 1.0 | 1 | 600 |
| *Estimated Total Annual Burden Hours* | | | | 4,200 |

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 18, 2002.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–32368 Filed 12–23–02; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Online Interstate Referral Guide.

*OMB No.:* 0970–0209.

*Description:* The IRG is an essential reference maintained by OCSE that provides states with an effective and efficient way of viewing and updating state profile, address, and FIPS code information by consolidating data available through numerous discrete sources into a single centralized, automated repository.

*Respondents:* State IV–D Child Support Programs.

**Annual Burden Estimates**

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Online IRG | 54 | 18 | .3 | 292 |
| *Estimated Total Annual Burden Hours* | | | | 292 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 3780 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for ACF.

Dated: December 18, 2002.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 02–32369 Filed 12–23–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 78N–0227; DESI 11853]**

### Trimethobenzamide Hydrochloride Injection and Capsules; Drug Efficacy Study Implementation; Final Evaluation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the resolution of issues concerning trimethobenzamide hydrochloride injection and capsules. This notice announces the approval of a supplemental new drug application (NDA) for Tigan (trimethobenzamide hydrochloride) Capsules, 300 milligrams (mg), and states that continued marketing of unapproved trimethobenzamide hydrochloride injection and capsule products is unlawful and is subject to FDA regulatory action.

**ADDRESSES:** Requests for FDA's opinion on whether a supplement to an abbreviated new drug application (ANDA) is required for a specific trimethobenzamide hydrochloride injection product should be identified with Docket No. 78N–0227 and reference number DESI 11853 and be directed to the Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., rm. 150, Rockville, MD 20855–2773. Requests for an opinion on the applicability of this notice to a specific trimethobenzamide hydrochloride injection or capsule product should be identified with Docket No. 78N–0227 and reference number DESI 11853 and directed to the Division of Prescription Drug Compliance and Surveillance (HFD–330), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:** Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

## I. Background

As part of its Drug Efficacy Study Implementation (DESI) program, in a notice published in the **Federal Register** of February 24, 1971 (36 FR 3435) (the 1971 notice), FDA announced its conclusion that certain drug products containing trimethobenzamide hydrochloride were: (1) Probably effective for nausea and vomiting due to radiation therapy or travel sickness and for emesis associated with operative procedures, labyrinthitis, or Meniere's syndrome; (2) lacking substantial evidence of effectiveness for the treatment of nausea and vomiting due to infections, underlying disease processes, or drug administration; and (3) possibly effective for all other labeled indications. The 1971 notice listed three trimethobenzamide hydrochloride products: Tigan Solution for Injection (NDA 11–853), Tigan Capsules (NDA 11–854), and Tigan Suppositories (NDA 11–855). Roche Laboratories held the NDAs for these three products.

In the **Federal Register** of January 9, 1979 (44 FR 2017) (the 1979 notice), FDA published a notice announcing that the agency was reclassifying trimethobenzamide hydrochloride injection and capsules to effective for certain indications and to lacking substantial evidence of effectiveness for their other (previously designated) less-than-effective indications. Specifically, FDA concluded that trimethobenzamide hydrochloride injection and capsules are effective for the treatment of postoperative nausea and vomiting and for nausea associated with gastroenteritis. The agency also concluded that trimethobenzamide hydrochloride injection and capsules lack substantial evidence of effectiveness for their other labeled indications. (In the same issue of the **Federal Register** (44 FR 2021), FDA published a notice reclassifying trimethobenzamide hydrochloride suppositories to lacking substantial evidence of effectiveness and proposed to withdraw approval of NDAs for trimethobenzamide hydrochloride suppositories.)

The 1979 notice stated that two NDAs for trimethobenzamide hydrochloride injection and capsules not included in the February 1971 notice were affected by the new notice: NDA 17–530, for Tigan Injection, and NDA 17–531, for Tigan Capsules, both held by Beecham Laboratories (Beecham) (44 FR 2017 at 2018). The 1979 notice stated that, according to bioavailability studies submitted by Beecham, the relative bioavailability or extent of absorption of a 250-mg capsule was 56–62 percent of that of the 200-mg intramuscular injection. Based on these studies, FDA concluded that the oral dose of trimethobenzamide hydrochloride should be approximately two times the intramuscular dose. FDA noted that on May 2, 1978, Beecham supplemented its NDA for Tigan Capsules to reformulate the capsule dosage form from 100 mg

and 250 mg to 200 mg and 400 mg, respectively. The agency stated that the reformulated products were being handled through the normal supplemental NDA procedures (44 FR 2017 at 2019).

FDA stated in the 1979 notice that the agency was prepared to approve ANDAs and abbreviated supplements to previously approved NDAs for trimethobenzamide hydrochloride injection and capsules under certain conditions pertaining to the form of the drug (i.e., the drug product was in sterile aqueous solution suitable for intramuscular administration or in capsule form suitable for oral administration) and in its labeling. Labeling was to state, among other things, that the drug was indicated for the treatment of postoperative nausea and vomiting and for nausea associated with gastroenteritis. The section on dosage and administration was to specify the following:

For the treatment of nausea secondary to gastroenteritis: 200 mg intramuscularly or 400 mg orally.

For the treatment of nausea and vomiting postoperatively: 200-mg intramuscular injection followed in 1 hour by a second 200-mg intramuscular injection, or 400 mg orally.

(44 FR 2017 at 2019)

The 1979 notice stated that the marketing of trimethobenzamide hydrochloride injection and capsule products that were the subject of an approved or effective NDA could be continued provided that, on or before March 12, 1979, the holder of the application submitted a supplement for revised labeling and a supplement to provide other specified information. In addition, for the capsule dosage form, each application holder was required to submit, by July 9, 1979, evidence demonstrating the in vivo bioavailability of the drug product by comparing the oral capsule product with Beecham's intramuscular injection and with an oral solution. The notice also stated that approval of an ANDA must be obtained prior to marketing other trimethobenzamide hydrochloride injection and capsule products (44 FR 2017 at 2019).

In the 1979 notice, FDA gave notice of an opportunity for a hearing to the holders of NDAs for trimethobenzamide hydrochloride injection and capsules, and to all other interested persons, that the agency proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the NDAs and all amendments and supplements thereto providing for the indications determined by the agency to lack substantial evidence of effectiveness (44 FR 2017 at 2020). The agency stated that the notice of an opportunity for a hearing encompassed all issues relating to the legal status of the drug products subject to the notice, including identical, related, or similar drug products as defined in § 310.6 (21 CFR 310.6). In accordance with section 505 of the act and parts 310 and 314 (21 CFR parts 310 and 314), FDA gave the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named in the notice an opportunity for a hearing to show why approval of the NDAs providing for the claims involved (i.e., those claims found to be lacking substantial evidence of effectiveness) should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of a named drug product and all identical, related, or similar drug products (44 FR 2017 at 2020).

The 1979 notice stated that the failure of an applicant or any other person subject to the notice to file a timely written appearance and request for a hearing as required by § 314.200 constituted an election by such person not to make use of the opportunity for a hearing and a waiver of any contentions concerning the legal status of any drug product subject to the notice. The notice further stated that any such drug product labeled for the indications lacking substantial evidence of effectiveness specified in the notice could not thereafter lawfully be marketed, and the agency would initiate appropriate regulatory action to remove any such drug products from the market (44 FR 2017 at 2020).

In a letter dated January 30, 1979, Beecham requested a hearing on the proposed NDA withdrawals. In a letter dated March 5, 1979, Beecham submitted data in support of its request for a hearing. Beecham was the only party to request a hearing.

## II. King Pharmaceuticals' Supplemental NDAs for Tigan Injection and Capsules

On November 12, 1999, King Pharmaceuticals, Inc. (King), purchased the NDAs for three Tigan (trimethobenzamide hydrochloride) products previously held by Beecham: NDA 17–530 (injection), NDA 17–531 (capsules), and NDA 17–529 (suppositories). FDA subsequently initiated discussions with King on bringing the Tigan products into compliance with the 1979 notices on trimethobenzamide hydrochloride drugs.

### *A. Supplemental NDA for Tigan Capsules*

As a step toward resolution of the issues in the 1979 notice regarding trimethobenzamide hydrochloride injection and capsules, and pending resolution of Beecham's request for a hearing, in December 1999, FDA agreed to allow King to attempt to demonstrate that a 300-mg trimethobenzamide hydrochloride capsule product is bioequivalent to the 200-mg Tigan injection product. In a supplemental NDA dated February 8, 2001, and received by FDA on February 14, 2001, King requested approval of a 300-mg Tigan (trimethobenzamide hydrochloride) capsule product.

In an agreement that became effective on August 16, 2001 (the Agreement), FDA and King agreed to take several actions to resolve the matter of the compliance of Tigan products with the 1979 notices. Among other things, King agreed to withdraw the request for a hearing (originally submitted by Beecham) on matters related to NDAs 17–529 (Tigan Suppositories), 17–530 (Tigan Injection), and 17–531 (Tigan Capsules), and all amendments and supplements thereto, within 10 days of the effective date of the Agreement. In a letter dated August 24, 2001, King withdrew its request for a hearing on these matters in accordance with the Agreement.

In a letter dated December 13, 2001, FDA approved King's supplemental NDA for 300-mg Tigan Capsules. The approval letter states that the supplemental NDA provides for the following in response to the 1979 notice classifying the drug as effective for postoperative nausea and vomiting and nausea associated with gastroenteritis: Draft labeling; results of bioavailability studies; and updated manufacturing, control, and testing procedures.

### *B. Supplemental NDA for Tigan Injection*

In a letter dated December 19, 2001, King submitted a supplemental NDA, in accordance with the Agreement and § 314.70(c), to incorporate in NDA 17–530 (Tigan Injection) the new Tigan labeling approved by FDA on December 13, 2001, as part of the approval of King's supplemental NDA for Tigan Capsules. Among other things, the labeling states that Tigan is indicated for the treatment of postoperative nausea and vomiting and for nausea associated with gastroenteritis (the indication specified in the 1979 notice and in the recently-approved labeling for Tigan Capsules), and that the dosage of Tigan Capsules is 300 mg. Under § 314.70(c),

the supplemental NDA for Tigan Injection did not require prior agency approval.

### III. Marketing of Other Trimethobenzamide Hydrochloride Injection and Capsule Products

In light of King's withdrawal of its hearing requests, FDA's approval of 300-mg Tigan Capsules, and King's revision of the labeling for Tigan Injection, FDA is issuing this notice in final resolution of all matters in this proceeding involving trimethobenzamide hydrochloride injection and capsules. (At a later date, FDA intends to issue a notice resolving all matters in FDA Docket No. 78N–0224 (DESI 11853) involving trimethobenzamide hydrochloride suppositories.)

As stated above, no party other than Beecham submitted a request for a hearing in response to the 1979 notice. Therefore, all other parties waived any possible contentions regarding the legal status of their trimethobenzamide hydrochloride injection and capsule products (including those products listed in the 1971 notice).

Trimethobenzamide hydrochloride capsule products made by several different manufacturers are currently listed with FDA. Continued marketing of an unapproved trimethobenzamide hydrochloride capsule product is unlawful and is subject to regulatory action. Any person wishing to market a trimethobenzamide hydrochloride capsule product must submit and obtain FDA approval of a new NDA or ANDA.

With respect to trimethobenzamide hydrochloride injection, the FDA publication entitled ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (the Orange Book), 22d ed. (2002), includes two products other than Tigan Injection on the ''Prescription Drug Product List.'' Four trimethobenzamide hydrochloride injection products are on the Orange Book's ''Discontinued Drug Product List.'' For some of these trimethobenzamide hydrochloride injection products, an ANDA supplement to revise product labeling may be required for continued or renewed marketing. To determine whether an ANDA supplement is required for a particular product, write to the Office of Generic Drugs (see **ADDRESSES**).

Any drug product that is identical, related, or similar to the trimethobenzamide hydrochloride injection and capsule products named above, and is not the subject of an approved application, is covered by the applications named above (i.e., NDAs 17–530 and 17–531) and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Prescription Drug Compliance and Surveillance (see **ADDRESSES**).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 505, 52 Stat. 1041, 1050–1053), as amended (21 U.S.C. 321(n), 352, 355), and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.100).

Dated: December 18, 2002.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 02–32344 Filed 12–23–02; 8:45 am]

**BILLING CODE 4160–01–S**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on January 17, 2003, from 8:30 a.m. to 5 p.m.

*Location*: Hilton DC North--Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: Jeffrey Cooper, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 301–594–1220, ext. 121, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss, make recommendations, and vote on a premarket approval application for a device for the treatment of gastroesophageal reflux disease. Background information, including the agenda and questions for the committee, will be available to the public one business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panel*. Material will be posted on January 16, 2003.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 8, 2003. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 8, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 9, 2002.

**Linda Arey Skladany,**

*Associate Commissioner for External Relations.*

[FR Doc. 02–32277 Filed 12–23–02; 8:45 am]

**BILLING CODE 4160–01–S**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Behavioral and Social Sciences Research (OBSSR), the National Institutes of Health (NIH) has submitted

to the Office of Management and Budget (OMB) a requests for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 21, 2002, page 64652 and allowed 60-days for public comments. No public comments were received. The purposes of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implement on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection*: *Title*: Training Tomorrow's Scientists: Linking Minorities and Mentors Through the Web. Type of Information *Collection Request:* REVISION, OMB control number 0925–0475, Expiration Date 1/31/2003. *Need and Use of Information Collection*: This website allows federally-funded researchers supported by any of 27 Institutes and Centers of the NIH to submit an electronic form describing his or her research areas, as well as interests in mentoring minority students or junior faculty. The researcher's description is posted on the website for searching by interested minority applicants. Minority students or junior faculty search the website to identify researchers with whom they would like to work. The research projects in the database are located all over the country and involve cutting edge research activities by scientists funded through the Institutes and Centers of the NIH. These research projects range from studies of children to research on older adults, from laboratory research to field research, from social research to a combination of biological and behavioral research. Applicants conduct an electronic search using categories such as research areas of interest, desired geographic location of the researcher, and their level of education. The primary objective of the program is to ensure that, in the coming decades, a concentration of minority researchers will be available to address behavioral and social factors important in improving the public health and eliminating racial disparities. Increasing the number of minority scientists in the U.S. will expand our currently limited knowledge about the epidemiology and treatment of diseases in minority population. *Frequency of Response*: On occasion. *Affected Public*: Individuals or households. *Type of Respondents*: Students, Post-doctorals, Junior Faculty, and Principal Investigators. The annual reporting burden is as follows: *Estimated Number of Respondents*: 50; *Estimated Number of Responses per Respondent*: 1; *Average Burden Hours Per Response*: 10 minutes; and *Estimated Total Annual Burden Hours Requested*: 8. There is no annualized cost to respondents. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Dana Sampson, Program Analyst, OBSSR, OD, NIH, Building 1, Room 256, 1 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–1146 or E-mail your request, including your address to: *SampsonD@od.nih.gov.*

*Comments Due Date*: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 13, 2002.

**John Jarman,**

*Executive Officer, Office of the Director, National Institutes of Health.*

[FR Doc. 02–32365 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Improved Non-Viral Mammalian Expression Vector**

Gary Nabel, Zhi-yong Yang (NIAID/VRC).

DHHS Reference No. E–318–2002/0 filed 24 Sep 2002.

Licensing Contact: Carol Salata; 301/435–5018; *salatac@od.nih.gov.*

This invention provides an improved expression vector that generates a higher level of protein than vectors currently in use. The expression vector is unique in that it uses a specific translational enhancer in combination with specific enhancer/promoters to yield high levels of protein expression and enhanced immunogenicity for DNA vaccines. This is particularly important because the potency of these vaccines in humans is marginal and this type of improvement can increase the effectiveness of various DNA vaccines. The expression vector cassettes can be used in other gene based vaccines as well, or for production of recombinant proteins from eukaryotic expression vectors. The invention may be useful in the production of genetic vaccines and gene therapies for a wide variety of diseases, including cancer and viral diseases such as HIV.

**Contiguous Capillary Separation and Electrospray Ionization Sources and Analytical Devices**

George Janini *et al.* (NCI)
DHHS Reference No. E–307–2002/0 filed 21 Oct 2002
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a device that acts as an interface between micro-scale separation instruments and electrospray ionization (ESI) mass spectrometers (MS), thus facilitating the separation and MS characterization of almost any type of analyte such as proteins, peptides, and small molecules. The device may be used as an interface between ESI–MS and any micro-scale separation technology such as capillary zone electrophoresis (CZE) capillary electrochromatography (CEC), capillary isoelectric focusing (cIEF), capillary isotachophoresis (cITF), electrokinetic chromatography (EKC), and high performance liquid chromatography (HPLC). The invention integrates a separation column, an electrical junction and a spray tip on a single piece of fused silica capillary. This invention offers advantages over existing ESI–MS interfaces, including ease of fabrication, ruggedness and a true zero dead volume junction between the separation column and the ESI tip.

**Methods and Devices for Intramuscular Stimulation of Upper Airway and Swallowing Muscle Groups**

Christy Ludlow *et al.* (NINDS)
DHHS Reference No. E–181–2002/0 filed 27 Sep 2002
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method and device that induces intramuscular stimulation of the extrinsic and intrinsic laryngeal musculature to improve swallowing and voice and upper esophageal sphincter opening in humans. The device may be used to augment airway protection in persons with swallowing problems (dysphagia) who are at risk of aspiration. This invention will assist those persons who have chronic long-standing dysphagia and have not been benefited from early rehabilitative efforts, putting them at chronic risk of developing life-threatening pneumonia because of repeated aspiration. Limiting the entry of food or liquids into the lungs while swallowing, which is the objective of this invention, can prevent aspiration. Patients at risk of aspiration pneumonia currently require enteric (tube) feeding, a costly method for sustaining nutrition and one that greatly reduces quality of life. The invention comprises three unique components for preventing aspiration during swallowing for some persons now requiring enteric feeding: (1) Intramuscular implantation to produce two synergistic actions; (2) independent long term control of stimulation during swallowing by patients; and, (3) a unique system of combining indwelling intramuscular electrodes and controllers.

**Assays for Assembly of Ebola Virus Pseudoparticles Relevant to Antiviral Therapy and Vaccines**

Gary Nabel, Yue Huang (NIAID/VRC)
DHHS Reference No. E–090–2002/0 filed 12 Jul 2002
Licensing Contact: Carol Salata; 301/435–5018; *salatac@od.nih.gov*

This invention relates to assays for the identification of compounds that inhibit assembly of NP, VP35, and VP24, or inhibit the glycosylation of NP, required for nucleocapsid formation for the use as anti-viral agents. The invention also relates to assays for the identification of compounds that block glycosylation of proteins having a glycosylation domain that is substantially homologous to a glycosylation domain of NP required for polymerization. The invention further relates to pseudoparticles for presentation of antigens or antigenic epitopes for immunogenic or vaccination purposes especially filovirus vaccines such as Ebola.

**Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in the 3′-UTR of Dengue Types 1, 2, 3, and 4**

Stephen S. Whitehead (NIAID), Brian R. Murphy (NIAID), Lewis Markoff (FDA), Barry Falgout (FDA)
DHHS Reference No. E–089–2002/0 filed 03 May 2002
Licensing Contact: Carol Salata; 301/435–5018; *salatac@od.nih.gov*

The invention relates to a dengue virus tetravalent vaccine containing a common 30-nucleotide deletion (Δ30) in the 3′-untranslated region (UTR) of the genome of dengue virus serotypes 1, 2, 3, and 4. The previously identified Δ30 attenuating mutation, created in dengue virus type 4 (DEN4) by the removal of 30 nucleotides from the 3′-UTR, is also capable of attenuating a wild-type strain of dengue virus type 1 (DEN1). Removal of 30 nucleotides from the DEN1 3′-UTR in a highly conserved region homologous to the DEN4 region encompassing the Δ30 mutation yielded a recombinant virus attenuated in rhesus monkeys to a level similar to recombinant virus DEN4Δ30. This established the transportability of the Δ30 mutation and its attenuation phenotype to a dengue virus type other than DEN4. The effective transferability of the Δ30 mutation establishes the usefulness of the Δ30 mutation to attenuate and improve the safety of commercializable dengue virus vaccines of any serotype.

A tetravalent dengue virus vaccine containing dengue virus types 1, 2, 3, and 4 each attenuated by the Δ30 mutation is being developed. The presence of the Δ30 attenuating mutation in each virus component precludes the reversion to a wild-type virus by intertypic recombination. In addition, because of the inherent genetic stability of deletion mutations, the Δ30 mutation represents an excellent alternative for use as a common mutation shared among each component of a tetravalent vaccine.

**VAC–BAC Shuttle Vector System**

Bernard Moss, Arban Domi (NIAID)
DHHS Reference No. E–355–2001/0 filed 10 Apr 2002
Licensing Contact: Carol Salata; 301/435–5018; *salatac@od.nih.gov*

This invention relates to a VAC–BAC shuttle vector system for the creation of recombinant poxviruses from DNA cloned in a bacterial artificial chromosome. A VAC–BAC is a bacterial artificial chromosome (BAC) containing a vaccinia virus genome (VAC) that can replicate in bacteria and produce infectious virus in mammalian cells.

The following are some of the uses for a VAC–BAC:

1.VAC–BACs can be used to modify vaccinia virus DNA by deletion, insertion or point mutation or add new DNA to the VAC genome with methods developed for bacterial plasmids, rather than by recombination in mammalian cells.

2. It can be used to produce recombinant vaccinia viruses for gene expression.

3. It can be used for the production of modified vaccinia viruses that have improved safety or immunogenicity.

Advantages of the VAC–BAC shuttle system:

1. VAC–BACs are clonally purified from bacterial colonies before virus reconstitution in mammalian cells.

2. Manipulation of DNA is much simpler and faster in bacteria than in mammalian cells.

3. Modified genomes can be characterized prior to virus reconstitution.

4. Only virus with modified genomes will be produced so that virus plaque isolations are not needed.

5. Generation of a stock of virus from a VAC–BAC is accomplished within a week rather than many weeks.

6. Multiple viruses can be generated at the same time since plaque purification is unnecessary.

Dated: December 13, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–32348 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Immunotherapy With In Vitro-Selected Antigen-Specific Lymphocytes After Nonmyeloablative Lymphodepleting Chemotherapy**

Mark E. Dudley, Steven A. Rosenberg, John R. Wunderlich (NCI)
DHHS Reference No. E–275–2002/0–US–01 filed 06 Sep 2002
Licening Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

This invention discloses a novel method of treating cancer. The approach uses autologous T-cells, which are selected for their highly avid recognition of an antigen expressed by the cancer. In studies performed at the National Cancer Institute (NCI), this method has proven effective in promoting the regression of cancer in patients with metastatic melanoma.

The treatment of 13 patients at NCI resulted in tumor shrinkage of at least 50 percent in six of the 13, and several patients remain cancer free more than a year after treatment. All of the patients enrolled in this trial had been unresponsive to previous therapies including, surgery, radiation and chemotherapy. This method represents a step forward in the treatment of cancer and offers a clinically proven approach to effectively promote the regression of tumors. Not only may this method apply to a variety of cancers, but it may also be applicable in treating other diseases such as AIDS, immunodeficiency, or other autoimmunity for which immune effector cells can impact the clinical outcome.

**Humanized Anti-TAG 72 CC49 for Diagnosis and Therapy of Human Carcinomas**

Syed V. Kashmiri (NCI), Jeffrey Schlom (NCI), Eduardo Padlan (NIDDK)
DHHS Reference No. E–013–2002/0–US–01 filed 28 Jun 2002
Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov*

Tumor associated glycoprotein (TAG–72) is expressed on the cells of a majority of human carcinomas, including colorectal, gastric, pancreatic, breast, lung, and ovarian. The murine monoclonal antibody (mAb) CC49 specifically recognizes TAG–72 and has a higher affinity for TAG–72 than its predecessor, B72.3.

The present invention discloses new humanized variants of CC49 that have a higher binding affinity to TAG–72 than previous humanized variants. Identified as HuCC49V15 and HuCC49V14, these variants also retain low immunogenicity of variable regions using sera of patients vaccinated with murine CC49.

These variants have potential benefits for use in the detection and/or treatment of a range of human carcinomas. Certain fields of use may not be available. Please contact OTT for information regarding the availability of specific fields of use.

**Identification of Potential Ovarian Cancer Tumor Markers and Therapeutic Targets**

Dr. Amir Jazaeri *et al.* (NCI)
DHHS Reference No. E–310–2001/0–US–01 filed 13 Feb 2002
Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@od.nih.gov*

Genes that are differentially expressed in cancerous ovarian tissue as compared to normal ovarian tissue were identified using microarray technology. This technique was used to characterize gene expression patterns in BRCA–1 associated tumors, BRCA–2 associated tumors, sporadic tumors and immortalized ''normal'' ovarian epithelial cells. As a result of this analysis, genes that are up-regulated in ovarian cancer were identified. Approximately two-thirds of the sequences identified were previously known genes, while approximately one-third were expressed sequence tags (ESTs), representing sequences that are cloned and identified but not yet characterized. Eighty-three (83) genes were over-expressed in 50% of all tumors and these over-expressed sequences may be used as markers for ovarian cancer and/or targets for therapy.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

**A Metastasis Suppressor Gene on Human Chromosome 8 and Its Use in the Diagnosis, Prognosis, and Treatment of Cancer**

Naoki Nihei (NIEHS), J. Carl Barrett (NCI), Natalay Kouprina (NCI), Vladimir Larionov (NCI)
DHHS Reference No. E–238–2001/0–US–01 filed 21 Dec 2001
Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov*

The subject technology is directed to a gene on human chromosome 8 that suppresses metastasis of prostate cancer. The gene has been shown to suppress the metastatic ability of rat prostate cancer and is down-regulated in human prostate cancers from metastatic foci. Embodiments of the technology include gene therapy to prevent the metastasis of human cancer, in particular prostate cancer, use of the gene as a clinical marker in the diagnosis and prognosis of cancer, in particular prostate cancer, and the development of small molecules that mimic the effect of the gene product.

The present invention provides an isolated or purified nucleic acid molecule consisting essentially of a nucleotide sequence encoding the metastasis suppressor gene located at p21–p12 on human chromosome 8, which has been named Tey 1, or a fragment thereof comprising at least 455 contiguous nucleotides.

**Detection and Quantification of Cripto-1 in Human Milk Using ELISA**

Caterina Bianco, David S. Salomon (NCI)
DHHS Reference Nos. E–290–2000/0–US–01 filed 26 Jan 2001 and E–290–2000/0–PCT–02 filed 23 Jan 2002 (PCT/US02/02225)
Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov*

Cripto-1 (CR1) is a member of the epidermal growth factor (EGF)-related families of peptides and is involved in the development and progression of various human carcinomas. In particular, CR1 overexpression has been detected in 50–90% of carcinomas of the colon, pancreas, stomach, gallbladder, breast, lung, endometrium and cervix. Current methodologies of cancer detection, *e.g.* immunohistochemistry, can be time consuming, inconvenient and oftentimes, inaccurate, and therefore, a need exists for more efficient, reliable and less time consuming methods of detection. The invention relates to such a method of detection. The inventors disclose methods for the detection and quantification of CR1 in human milk, using an ELISA-based protocol. Thus, this test could be used to more effectively detect and perhaps stage cancers. Additionally, should particular tumor cells, *e.g.* breast tumor cells, express a sufficiently high level of CR1, it may be possible to use the disclosed assay to detect and measure CR1 in human serum and/or plasma. Claims to these routes of detection are also present in the patent application. As such, a novel, efficient and useful in vitro diagnostic and prognostic test is now available to suitable commercial partners.

**Improving Chemotherapy by Increased Killing of Tumor Cells and Protection of Normal Cells Through p38 Kinase Inhibition**

Dmitry Bulavin and Albert J. Fornace, Jr. (NCI)
DHHS Reference Nos. E–235–2000/0–US–01 filed 07 Nov 2000 and E–235–2000/0–PCT–02 filed 06 Nov 2001 (PCT/US01/47669)
Licensing Contact: Catherine Joyce; 301/435–5031; *joycec@od.nih.gov*

Responses to genotoxic stress include the initiation of cell-cycle arrest and the maintenance of cell-cycle arrest during DNA repair. Although maintenance of G2/M checkpoints is known to involve Chk1, Chk2/Rad53 and upstream components, the mechanisms involved in initiation of the G2/M checkpoint are less well defined. The inventors have discovered that p38 kinase has a critical role in the initiation of a G2/M delay after genotoxic stress such as ultraviolet radiation. The inventors contemplate that p38 MAPK inhibition will enhance the efficacy of chemotherapy by inhibiting the initiation of G2/M arrest in stressed cells and promoting the progression of such cells into M phase.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

**Pyrimidine Phosphorylase as a Target for Imaging and Therapy**

RW Klecker and JM Collins (FDA)
DHHS Reference Nos. E–156–1999/0–US–01 filed 19 Jan 2001 and E–156–1999/0–PCT–02 filed 18 Jan 2002 (PCT/US02/01216)
Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov*

The present invention describes methods to diagnose and monitor the treatment of tumors with high expression of thymidine phosphorylase (TP). Overexpression of TP has been shown to correlate with angiogenesis, and this fact can be used, via TP's enzyme function, to preferentially label angiogenic cells through the introduction of relevant precursors. These precursors consist of labeled thymine analogues which are converted by TP into retained cell-components. This can allow for the non-invasive imaging of tumors with high angiogenic activity. The technique can also be used to kill tumor cells by providing the analogues in higher concentrations or with therapeutic isotopes so as to be toxic to cells with high TP levels.

Dated: December 13, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–32349 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Tryptophan as a Functional Replacement for ADP-ribose-arginine in Recombinant Proteins**

Dr. Joel Moss *et al.* (NHLBI), DHHS Reference No. E–160–2002/0–US–01 filed 28 Jun 2002 Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

Bacterial toxins such as cholera toxin and diphtheria toxin catalyze the ADP-ribosylation of important cellular target proteins in their human hosts, thereby, as in the case of cholera toxin, irreversibly activating adenylate cyclase. In this reaction, the toxin transfers the ADP-ribose moiety of Nicotinamide Adenine Dinucleotide (NAD) to an acceptor amino acid in a protein or peptide. ADP-ribosylation leads to a peptide/protein with altered biochemical or pharmacological properties. Mammalians proteins catalyze reactions similar to the bacterial toxins. The ADP-ribosylated proteins represent useful pharmacological agents, however, their use is limited by the inherent instability of the ADP-ribose-protein linkage.

The NIH announces a new technology wherein recombinant proteins are created that substitute phenylalanine or tryptophan for an arginine, thereby making the protein more stable, and better suited as agents for therapeutic purposes. The modification creates an effect similar to ADP-ribosylation of the arginine. An example of a protein that can be modified is the defensin molecule, which is a broad-spectrum antimicrobial that acts against infectious agents and plays an important role in the innate immune defense in vertebrates.

**Identification of Anti-HIV Compounds Inhibiting Virus Assembly and Binding of Nucleocapsid Protein to Nucleic Acid**

Drs. Robert Shoemaker and Michael Currens (STB, DTP, DCTD, NCI), Drs. Alan Rein and Ya-Xiong Feng (DRP, CCR, NCI), Drs. Robert Fisher, Andrew Stephen, Shizuko Sei, Bruce Crise, and Louis Henderson, and Ms. Karen Worthy (SAIC-Frederick), DHHS Reference No. E–121–2002/0 filed 08 Oct 2002, Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention identified potent inhibitors of HIV particle assembly and nucleocapsid/nucleic acid binding. Two series of active antiviral compounds are described in this invention. One series

comprises aromatic, antimony-containing compounds while the other an aromatic tricarboxylic acid. Both series have been shown to exhibit anti-HIV viral activity by inhibiting viral particle assembly and by inhibiting the binding of the nucleocapsid protein to nucleic acid and protecting susceptible human cells from the cytopathic effect of HIV. Compounds in both classes show potent activity in mechanistic assays and cell-based antiviral assays and are quite non-toxic in vitro. Thus, these compounds, or derivatives, may be useful in treatment of AIDS patients.

**Apparatus and Method for In Vitro Recording and Stimulation of Cells**

David Ide (NIMH), George Mentis (NINDS), DHHS Reference No. E–068–2002 filed 05 Jul 2002, Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov.*

The invention is an apparatus that allows in vitro recording and stimulation of neuronal tissue using extracellular and intracellular techniques. This system enables the experimenter to combine commercially available motorized micromanipulators (used to position electrodes for intracellular recordings) with newly designed miniature micromanipulators to perform simultaneously extracellular recordings and/or stimulations. The apparatus consists of a circular plexiglas in vitro chamber, an aluminum base that allows adjustment to securely positioned preparations at various rotated positions during the course of the experiment (without having to re-position the preparation), and a set of several (maximum ten) miniaturized micromanipulators, allowing four-dimensional control. The positioning of the electrodes for extracellular recordings/stimulation is done manually without any motor control. The miniature micromanipulators can also be used to position multi-barrel electrodes for local application of pharmacological agents as well as for different purposes (mini temperature probe, pH probe, outlet or inlet tubing etc). This is a unique system that permits a practical, versatile electrophysiological setup for simultaneous extracellular and intracellular recordings. The apparatus is fully documented and ready for transfer from the laboratory to the commercial environment.

Dated: December 13, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–32350 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Complementary and Alternative Medicine.

*Date:* January 27, 2003.

*Closed:* 8:30 to 11:30 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Open:* 12:30 to 5:30 p.m.

*Agenda:* The agenda includes opening remarks by Director, NCCAM, concept reviews: Dietary Supplements Resource Center; Health Services Research; Probiotics, and Clinical Research. Presentations: Cancer CAM Working Group; General Principals for Collaboration with NCI; Patient Focus Groups on Cancer and CAM and other business of the Council.

*Place:* Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

*Contact Person:* Jane F. Kinsel, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 5–5:30 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, 301–496–6701, Fax: 301–480–0087 or via email *NCCAMES@mail.nih.gov*. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 17, 2003. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to 10 calendar days (February 6, 2003) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301—496–6701, Fax 301–480–0087, or via email at *NCCAMES@mail.nih.gov*. This information will be posted two weeks prior to the meeting on the NCCAM website at *NCCAM@nih.gov*.

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 02–32360 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* February 6, 2003.

*Open:* 8:30 a.m. to 2 p.m.

*Agenda:* For discussion of program policies and issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 2 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892. 301/435–0260.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32355 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings 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 interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council Training Subcommittee.

*Date:* Febrary 5, 2003.

*Time:* 8 p.m. to 10 p.m.

*Agenda:* To discuss the training programs of the Institute.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

*Date:* February 6, 2003.

*Time:* 8 a.m. to 10 a.m.

*Agenda:* To discuss research mechanisms and infrastructure needs.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, 8A–28, Bethesda, MD 20892.

*Contact Person:* Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32352 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

*Date:* February 6, 2003.

*Open:* 8 a.m. to 8:30 a.m.

*Agenda:* To discuss clinical trials policy.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Closed:* 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological, Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, (301) 496–9248.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* February 6–7, 2003.

*Open:* February 6, 2003, 10:30 a.m. to 4 p.m.

*Agenda:* Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research; Report by the Director of NIH, and other administrative and program developments.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Closed:* February 6, 2003, 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Closed:* February 7, 2003, 8 a.m. to 11:30 a.m.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological, Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32353 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory council for Nursing Research.

*Date:* January 28–29, 2003.

*Open:* January 28, 2003, 1 p.m. to 5 p.m.

*Agenda:* For discussion of program policies and issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Open:* January 29, 2003 8:30 a.m. to 10:30 a.m.

*Agenda:* For discussion of program policies and issues.

*Place:* National Institutes of Health Building 31, 31 Center Drive, Bethesda, MD 20892.

*Closed:* January 29, 2003, 10:30 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health Building 31, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Mary Leveck, PhD, Deputy Director, NINR, NIH Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html,* were an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32354 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee.

*Date:* February 13, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Bethesda, MD 20814.

*Contact Person:* Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

*Name of Committee:* National Institute of Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee.

*Date:* February 21, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 443–2926. *skandasa@mail.nih.gov.*

*Name of Committee:* National Institute of Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

*Date:* February 27–28, 2003.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Bethesda, MD 20814.

*Contact Person:* Elsie Taylor, MS, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32356 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, CC (10)—P01 Review.

*Date:* February 18–19, 2003.

*Time:* 5 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003. (301) 443–2860.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32357 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Primate Core Immunology Virology Laboratories—Part A—Cellular Immunology Laboratory.

*Date:* January 15, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616. 301 496–2550. *yli@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Primate Core-Immunology Virology Laboratories—Part B—Humoral Immunology Laboratory.

*Date:* January 16, 2003.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institues of Health, 6700B, Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616. 301 496–2550. *yli@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Primate Core Immunology-Virology Laboratories—Part C—Auantitative Viral RNA Laboratory.

*Date:* January 17, 2003.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616. 301 496–2550. *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32358 Filed 12–23–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Integrated Preclinical/Clinical AIDS Vaccine Development.

*Date:* January 27, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Hagit David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2117, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–496–2550. *hdavid@mercury.niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, HIV Research and Development Program.

*Date:* January 28, 2003.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Hagit David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2117, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301–496–2550. *hdavid@mercury.niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32359 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, December 10, 2002, 3 p.m. to December 10, 2002, 4 p.m., which was published in the **Federal Register** on November 1, 2002, 67 FR 66650.

The telephone conference call meeting will be held in January 14, 2003 at 1 p.m., instead of December 10, 2002, as previously advertised. The meeting is closed to the public.

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32361 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Ms. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–25H, Bethesda, Maryland 20892, telephone: 301–496–7301, fax 301–402–0224. Ms. Dieffenbach will provide a summary of the meeting, and a roster of Council members.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory General Medical Sciences Council.

*Date:* January 23–24, 2003.

*Closed:* January 23, 2003, 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Open:* January 24, 2003, 8:30 a.m. to adjournment.

*Agenda:* For discussion of program policies and issues, report to the Director, NIGMS, new potential opportunities and other business of the Council.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1 and E2, Bethesda, MD 20892.

*Contact Person:* Norka Ruiz Bravo, PhD, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN2AG, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and signin at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://pub.nigms.nih.gov/council/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 12, 2002.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 02–32363 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Risks, Genetics and Cell Growth in Interstitial Cystitis.

*Date:* January 10, 2002.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH–NIDDK, Two Democracy Plaza, 6707 Democracy Boulevard, Room 754, Bethesda, MD 20892. (Telephone conference call.)

*Contact Person:* Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600. (301) 594–7799. *Is38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32364 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* February 6–7, 2003.

*Open:* February 6, 2003, 9 a.m. to 11 a.m.

*Agenda:* Administrative reports and program discussions.

*Place:* National Library of Medicine Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

*Closed:* February 6, 2003, 11 a.m. to 5 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 28, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

*Closed:* February 7, 2003, 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate journals as potential title to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

*Contact Person:* Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice.The statement should include the name, address, telephone number and, when applicable, the business of professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to shown a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 02–32351 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

*Date:* February 10, 2003.

*Closed:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, Conf. Room B, Center Drive, Bethesda, MD 20894.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

*Date:* February 11, 2003.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Program documents.

*Place:* National Library of Medicine, Building 38, Conf. Room B, Center Drive, Bethesda, MD 20894.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* February 11–12, 2003.

*Open:* February 11, 2003, 9 a.m. to 4:30 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* February 11, 2003, 4:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockvile Pike, Bethesda, MD 20892.

*Open:* February 12, 2003, 9 a.m. to 12 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room, 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor/html,* where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 17, 2002.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–32362 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Methods and Compositions for the Promotion of Hair Growth Utilizing Actin Binding Peptides

**AGENCY:** National Institutes of Health, Public Health Services, DHHS.

**ACTION:** None.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR

404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in U.S. provisional patent application 60/351,386 (DHHS ref. no. E–053–2002/0–US–01) filed January 25, 2002, and entitled ''Methods and compositions for the promotion of hair growth utilizing actin binding peptides,'' to Lee's Pharmaceutical (Hong Kong) Ltd. having a place of business in Hong Kong. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license territory will be China, Hong Kong and Taiwan. The field of use may be limited to use of actin binding peptides for the promotion of hair growth.

**DATES:** Only written comments and/or license applications which are received by the National Institutes of Health on or before February 24, 2003, will be considered.

**ADDRESSES:** Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Jonathan V. Dixon, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301.435.5559; Facsimile 301.402.0220; email *dixonj@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The above-referenced patent application relates to the discovery of actin binding peptides that have been shown to promote hair growth. Specifically the patent application discloses a seven amino acid peptide of Thymosin-beta4 that promotes hair growth.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within 60 days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 13, 2002.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02–32347 Filed 12–23–02; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Prevention Program Outcomes Monitoring System (PPOMS)—New—Section 516 of the Public Health Service Act [42 U.S.C. 290bb–22] directs SAMHSA's CSAP to ''address priority substance abuse prevention needs of regional and national significance through the provision of knowledge development and application projects for prevention and the conduct or support of evaluations of such projects''.

Since 1999, CSAP has used the National Registry of Effective Prevention Programs (NREPP, OMB No. 0920–0210) to review and rate substance abuse prevention programs utilized nationwide. Through NREPP, CSAP has expanded its information collection to include programs conducted by entities external to CSAP, including state and local governments, nonprofit entities, and the private sector. Programs that are well implemented, rigorously evaluated, produce consistent positive results, and are able to assist in the dissemination effort are selected as model programs. Model programs are then promoted to substance abuse professionals and practitioners nationwide through various channels, including CSAP's State Initiative Grant recipients.

PPOMS is a national probability sample of schools (public and private, serving grades K–12), colleges (2- and 4-year, private and public), youth agencies and other community organizations and community coalitions to quantify the extent of the field application of NREPP identified science-based prevention programs. PPOMS will also examine such parameters as program fidelity and adaptation, for science-based prevention programs identified through NREPP, as well as documented outcomes of program effectiveness.

PPOMS utilizes a data collection system that will consider several parameters related to CSAP science-based program replication. PPOMS will: gauge practitioner access to CSAP science-based materials and programs, estimate the proportion of practitioners replicating these programs, quantify and explain barriers to replication and facilitating structures and mechanisms that aid in program replication, document the degree of fidelity and adaptations of program replications, and measure program replication outcomes. Knowledge of these factors will allow CSAP to better direct its dissemination of NREPP identified programs, provide access to training and technical assistance for practitioners, and gain a more comprehensive understanding of the decision making processes involved in choosing NREPP identified programs for replication.

Data derived from the Prevention Program Outcomes Monitoring Systems (PPOMS) will be used by the Center for Substance Abuse Prevention (CSAP) to determine the extent, magnitude, and effectiveness of CSAP's science-based program replications. The Prevention Programs Outcomes Monitoring System will determine the efficacy of NREPP in identifying, promoting, and disseminating the best science based substance abuse prevention programs to the field and subsequently, to the American public. The final report of PPOMS findings will contain appropriate information for use by governmental agencies, private organizations, and nonprofit entities.

Annual burden estimates for PPOMS are shown in the following table.

| Form name | Number of respondents | Responses/respondent | Hours/response | Total hour burden |
|---|---|---|---|---|
| Screener | 1,080 | 1 | .17 | 184 |
| Survey scheduling post card | 1,080 | | .08 | 86 |

| Form name | Number of respondents | Responses/respondent | Hours/response | Total hour burden |
|---|---|---|---|---|
| Survey | 1,080 | 1 | .333 | 508 |
| Total | 1,080 | | | 778 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–32332 Filed 12–23–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Community Mental Health Services Performance Partnership

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** Notice: Request for comments.

**SUMMARY:** Section 1949 of the Public Health Service Act as amended by Pub. L. 106–310 requires the Secretary of Health and Human Services to submit a plan to Congress detailing how the Secretary intends to change the current Community Mental Health Services (CMHS) Block Grant into a performance partnership. The plan, by statute, must include the following:

—A description of the flexibility that would be given to the States under the plan;
—The common set of performance measures that would be used for accountability;
—The definitions for the data elements to be used under the plan;
—The obstacles to implementation of the plan and the manner in which such obstacles would be resolved;
—The resources needed to implement the performance partnerships under the plan; and
—An implementation strategy complete with recommendations for any necessary legislation.

Section 1949 requires that the Secretary develop the plan in conjunction with the States and other interested parties. SAMHSA has been in discussion with the States for several years over this proposal. This FRN provides State and other interested parties an opportunity to comment on those discussions.

**DATES:** Comments on the information must be in writing and should be sent to: Joseph D. Faha, Director of Legislation/SAMHSA, 5600 Fishers Lane, Room 12–95, Rockville, Maryland 20857, by February 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Joseph D. Faha, Director of Legislation/SAMHSA, 5600 Fishers Lane, Room 12–95, Rockville, Maryland 20857. Mr. Faha may be reached on (301) 443–4640.

**SUPPLEMENTARY INFORMATION:** SAMHSA seeks comments on its proposal to develop a plan for the changing of the CMHS Block Grant from its current emphasis on requirements, earmarks, and accountability based on expenditures to a system referred to as a ''Performance Partnership'' that offers States more flexibility in the expenditure of funds while basing accountability on how well the system is providing access to quality mental health services for adults with serious mental illness and children with serious emotional disturbance as measured by the appropriateness and the outcomes of services.

The current CMHS Block Grant program had its origins in the Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grant first legislated in 1981. The ADMS Block Grant gave Federal funds to States based on a formula in statute for the purposes of providing substance abuse and community-based mental health services with minimal programmatic and reporting requirements. Over time, however, a number of requirements, earmarks and set asides were added to the statute. In mental health, though the requirements have traditionally been far less than those imposed for the use of substance abuse funding, the statute, at one time, required that States spend at least 50 percent of their allotment for mental health services on new programs, 10 percent of their mental health funds on children with a serious emotional disturbance, and services had to be provided through community mental health centers.

In 1992, the ADMS Block Grant was replaced by two separate block grant programs, one for substance abuse and one for mental health services. At that time, some requirements were dropped, some changed and others were added. Very few changes were made in the reauthorization of the programs in 2000.

A Performance Partnership for the CMHS program represents a new paradigm in Federal and State relations and cooperation. It is built on three principles:

—That the Federal Government and the State governments are partners in the provision of mental health services and that our shared goal is ''continuous quality improvement.''
—That States understand the needs of their population and should be given more flexibility in the use of the funds.
—That accountability should be built on performance not entirely on expenditures.

The first principle is reached in this proposal when both the Federal and State governments identify the strengths and weaknesses of various systems of service and work in tandem to improve those systems. The new partnerships will be built on incentives to improve services rather than penalties for non-compliance.

The second principle is achieved in this proposal by reducing the number of requirements, simplifying the planning process, giving greater freedom in the use of the funds to States and reducing administrative costs and burden. States have tremendous flexibility in the use of the funds now which this proposal retains.

The shift to mutually agreed upon performance measures provides a focus on the efficiency and effectiveness of services and, therefore, helps both the Federal and State governments to identify how to improve the system of services. For example, the measures will permit both the Federal and State governments to identify steps that need to be taken to further improve the system of care to increase favorable outcomes.

**Current Program**

In fiscal year (FY) 2002, $433 million was appropriated to assist States in providing community based mental health services for adults with serious mental illness and children with serious emotional disturbance. States are

eligible for their allotment under a statutorily prescribed formula if they submit an application that is approved by the Secretary. The application must include (1) assurances from the State that it will comply with the requirements of the statute; (2) a State mental health plan developed within the framework of five criteria that describe the community based system of care for adults with serious mental illness and children with serious emotional disturbance complete with goals and measures; and (3) an implementation report detailing the extent to which the State mental health plan for the previous year was implemented. The Secretary is required to review the application and determine whether the State ''completely implemented'' its plan. If a State failed to ''completely implement'' its plan for the year, the State may be subject to a 10 percent penalty against its allotment.

The five criteria from section 1912(b) of the Public Health Service Act that provide the frame work of the State mental health plans are:

''(1) *Comprehensive Community-Based Mental Health Systems*—The plan provides for an organized community-based system of care for individuals with mental illness and describes available services and resources in a comprehensive system of care, including services for dually diagnosed individuals. The description of the system of care shall include health and mental health services, rehabilitation services, employment services, housing services, educational services, substance abuse services, medical and dental care, and other support services to be provided to individuals with Federal, State and local public and private resources to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Individuals with Disabilities Education Act. The plan shall include a separate description of case management services and provide for activities leading to reduction of hospitalization.

''(2) *Mental Health System Data and Epidemiology*—The plan contains an estimate of the incidence and prevalence in the State of serious mental illness among adults and serious emotional disturbance among children and presents quantitative targets to be achieved in the implementation of the system described in paragraph (1).

''(3) *Children's Services*—In the case of children with serious emotional disturbance, the plan—

(A) Subject to subparagraph (B), provides for a system of integrated social services, educational services, juvenile services, and substance abuse services that, together with health and mental health services, will be provided in order for such children to receive care appropriate for their multiple needs (such system to include services provided under the Individuals with Disabilities Education Act);

(B) Provides that the grant under section 1911 for the fiscal year involved will not be expended to provide any service under such system other than comprehensive community mental health services; and

(C) Provides for the establishment of a defined geographic area for the provision of the services of such system.

''(4) *Targeted Services to Rural and Homeless Populations*—The plan describes the State's outreach to and services for individuals who are homeless and how community-based services will be provided to individuals residing in rural areas.

''(5) *Management Systems*—The plan describes the financial resources, staffing and training for mental health providers that is necessary to implement the plan, and provides for the training of providers of emergency health services regarding mental health. The plan further describes the manner in which the State intends to expend the grant under section 1911 for the fiscal year involved.''

States are permitted to use the block grant funds for the following purposes:

—Carrying out the State mental health plan;
—Evaluating programs and services carried out under the plan; and
—Planning, administration, and educational activities related to providing services under the plan.

The block grant funds may not be used:

—To provide inpatient care;
—To make cash payments to patients;
—To purchase or improve land or to construct or provide major renovations to a facility and to purchase major medical equipment;
—To use the funds to satisfy any requirement for a State match against another Federal program; and
—To make grants to for-profit organizations.

Some of the statutory requirements include:

—The State must spend at least as much on community-based mental health services for children with serious emotional disturbance as it did in 1994; if the State relies on community mental health centers, those centers must meet certain requirements stipulated in Federal statute;
—The State must have and maintain a State Mental Health Planning Council that meets specific membership requirements and reviews the State mental health plan and implementation report providing recommendations for modifications to the plan when necessary; serves as an advocate for persons with mental illness; and monitors, reviews, and evaluates, not less than once each year, the allocation and adequacy of mental health services within the State;
—Unless waived for extraordinary economic conditions, the State is required to maintain State expenditures for community-based mental health services for adults with serious mental illness and children with serious emotional disturbance at a level equal to the average of what the State spent over the previous 2 years;
—The State must conduct an audit of the funds;
—The State is to ensure an opportunity for public comment; and
—The State is required to conduct an independent peer review of no less than 5 percent of entities receiving funding a year.

**Proposal**

After considerable discussion with the States and the National Association of State Mental Health Program Directors, SAMHSA is seeking your comments on a proposal to implement a performance partnership by creating more flexibility for States and accountability based on performance. This proposal is offered in two parts. The first will deal with the operationalization of the program—how will it work? The second will present the performance measures that are currently under discussion.

*Operationalization*

Under the performance partnership, the 50 States, the District of Columbia and the Territories would be eligible for direct funding and the current formula for distribution of the funds would still apply. (For the purposes of this discussion, the term ''States'' will include the District of Columbia and the Territories.) States would still be able to use the funds to carry out their mental health plan; to evaluate programs and services carried out under the plan; and to plan, administer, and carry out educational activities related to providing services under the plan.

The current restrictions on the use of funds related to inpatient care, cash

payments, purchase and renovation of properties, matching against other Federal funds, and making grants to for-profit organizations would remain in place.

Currently the funds must be spent on community-based mental health services for adults with serious mental illness and children with serious emotional disturbance. The terms ''adults with serious mental illness'' and ''children with a serious emotional disturbance'' were defined in the May 20, 1993, **Federal Register** on page 29422 and following. The new program would continue to focus on these populations.

Under the new program, States would be required to submit yearly mental health plans but may opt to submit plans every 2 or 3 years. The plans may be modified with the Secretary's approval if the State or the Secretary believes circumstances dictate the need to revise the plan in the interim.

The plans would include three sections, the first of which would describe the system of services using as a framework the five elements in current statute. SAMHSA does request your comments on how these elements might be made more meaningful to the system of care.

SAMHSA is well aware that the single State agency for mental health does not necessarily provide for all of the services that may be detailed in the plan. This section is only intended to help SAMHSA and other policymakers on how mental health services are provided in each of the States.

A second section would discuss the system using any State and/or Federal data that might be available including performance data that the State is collecting and an analysis of the data that describes both the strengths of the system and areas where improvement may be needed. This section would include the presentation and analysis of the basic measures which all States will be required to submit.

A third section, based on an analysis in the second section, would propose for the Secretary's approval the areas the State wishes to focus on, the specific objectives/targets the State wants to achieve during the course of the plan and the measures that would be used to assess the State's progress on those objectives. For the purpose of assessing the progress and to inform both the Federal and State governments of such progress, the State is expected to choose basic measures as its performance indicators. If a State chooses to focus on a particular area not among those covered by the basic measures, then the Secretary would have to approve both the focus and the measures. Where a pattern develops of several States focusing on the same particular area, not measured by the basic measures, *e.g.*, stigma, SAMHSA and the States will work to develop a common measure for that area.

A State would be required to submit annual reports to the Secretary detailing how it has complied with the requirements that would continue in statute and how well it met its objectives. The performance measurement data that is submitted annually to the Secretary would be used by the Department to help the State further improve its system of care. The Secretary has no interest in comparing and contrasting one State against another. A comparison report would create an unhealthy and unnecessary competition based on the comparison of divergent systems and divergent populations. SAMHSA will in using the data abide by four rules:

—When presenting data, States must be given the opportunity to provide explanatory notes regarding the data presented.

—States should have a respective protocol to address notifications and/or approvals needed with certain parties before data is released to the public. (There could be a specific internal process for States to review and comment upon data before release to the public.)

—If a State is not able to report on certain data requirements, reasons should be cited as to why it is not available.

—It is recommended that a standard statement of disclaimer be adopted and cited to explain issues around comparability to serve as a warning or caution when readers attempt to make State comparisons.

The Secretary would use the information from the State annual reports in preparing an annual report to Congress summarizing the programs in each State and their progress in meeting their objectives.

In the spirit of partnership and continuing quality improvement, SAMHSA proposes to eliminate the penalties for non-compliance except in the case of maintenance of effort choosing instead to work with the States to improve services. This will significantly change the agency's relationship with the States and cause SAMHSA to consider how the agency provides assistance to the States. SAMHSA's responsibility for technical assistance and dissemination of best practices will replace much of its current monitoring role. To meet the requirements of its changing role, SAMHSA staff will have to be trained in their new responsibilities and funding for technical assistance and continued performance measurement support will be needed.

With regard to some of the particular requirements listed above, the proposal would retain the *set-aside for children's services* but change it to require States to maintain funding for children with serious emotional disturbance at a level that is equal to the average of what the State spent over the previous 2 years. To create an incentive for States to increase funding, SAMHSA proposes to grant the Secretary authority to remove from the calculation one-time infusions of State funds that are for a non-recurring purpose. The change in the requirement is being made to be consistent with the general maintenance of effort requirement in the statute.

The proposal would require States to use only appropriate qualified community programs to provide the services as described in current law.

The State Planning Councils would be retained in their current form and continue to provide the State with recommendations on how to improve services. The Planning Councils remain a critical element of the planning and reporting process.

SAMHSA proposes to keep the Maintenance of Effort requirement along with the waiver and penalty authority and the new authority to remove certain expenditures from the calculation of the Maintenance of Effort requirement. The proposal also would retain the limit on State use of funds for administrative expenses to 5 percent.

With the implementation of Performance Partnership, SAMHSA is considering requiring States to use a certain percentage of any new funds to increase the use of evidence-based practices in the community-based mental health service system and would appreciate your comments.

SAMHSA proposes to eliminate the requirement that States independently peer review 5 percent of facilities under the program each year to assess the quality, appropriateness and efficacy of treatment services. The rationale for this decision is explained later in this FRN.

*Performance Measures*

All States will be required to submit data on a set of basic measures as part of their annual report to the Secretary which are intended to give a ''snapshot'' of how well the system of care is performing in the State. In developing this set of basic measures, several principles are taken into consideration. First, it is difficult to reach agreement

on what such a basic set of measures should be, what specific data elements should be collected and what the definitions should be for those data elements. Fortunately, SAMHSA has the benefit of several years of work with the States in the development and testing of such measures both through the Community Mental Health Services Block Grant and the current 16 State Pilot Study on Performance Measures. Second, basic measures that are identified today may need revision or replacement. It may also be found that the measures need to be expanded to improve the snapshot of the system. Third, it is costly and administratively burdensome to collect and report data. Outcome data requiring post-treatment measurement is particularly expensive. The more data required the greater the cost and less money for services is available.

This remains an issue of critical importance. Without improved data infrastructures in States, many will not be able to collect and report on performance measures. States will begin to submit performance data according to their ability to do so. Their ability to do so, in many cases, will be dependent on the resources available to develop the data infrastructure needed to collect and report on such data.

There are now two categories of measures: basic and developmental. The difference is the degree to which the measures have been worked out and to which the States have agreed and are prepared to submit them. With regard to the basic measures, while they remain subject to further clarification and evaluation, most of the work has been completed and States have agreed and are prepared to submit data.

With regard to the developmental measures, there remains a great deal of work to clarify the intent of these measures and the definitions of terms. States will not be required to submit this data until this work has been completed. It is expected that most of this work will be completed in fiscal year 2003 and, if so, then States would submit the data in their fiscal year 2005 applications which would be submitted to SAMHSA in September of 2004.

Basic Measures

With these understandings SAMHSA proposes the following basic measures be used:

—What is the estimated number of adults with serious mental illness (SMI) and children with serious emotional disturbance (SED) in each State for the reporting year and 3 years into the future?

—What is the total number of individuals in the State who received public mental health services in institutional and community settings in the reporting year?

—What are the living arrangements of individuals (homeless or other) served by the State public mental health system (institutional and non-institutional settings) in the reporting year?

—What is the employment status of adult clients served in the reporting year by age and gender?

—How many people received services supported by Medicaid funding sources in the reporting year? What are their gender, and race/ethnicity?

—What is the rate of client turnover in State hospitals and community programs by age in the reporting year?

—What are the expenditures for public mental health services for the State and the source of funding in the reporting year?

—What are the community mental health block grant expenditures for non-direct service activities in the reporting year?

—What is the range of services provided or funded by the State mental health agency in the reporting year?

—What are the agencies receiving community mental health block grant funds directly from the State mental health agency in the reporting year?

—What are the State findings for client perceptions of care in the reporting year on the following:

• Percentage of clients reporting positively about access to care.

• Percentage of clients reporting positively about quality and appropriateness of care.

• Percentage of clients reporting positively about outcomes.

• Percentage of family members of children reporting positively about care received by their children.

—For the following topics, what is the State mental health agency profile?

• Percentage of adults with SMI and children with SED meeting the Federal definitions.

• Percentage of adults with SMI and children with SED with a dual diagnosis of mental illness and substance abuse.

• State responsibilities for mental health services provided through Medicaid/Medicaid managed care.

• State capacity to report unduplicated data.

These basic measures have been scrutinized and are generally accepted by the States and SAMHSA. They have also been subject to review and comment by the public when they were published as part of the revised block grant application for fiscal years 2002 through 2004.

Developmental Measures

There is also a list of additional measures that will be scrutinized for the next year that are not ready for inclusion in the basic list of measures but are expected to be added if the scrutiny bears them out. They include the following:

—What is the estimate of unmet need for services in the State in the reporting year? (Unmet need is defined as adults with serious mental illness and children with serious emotional disturbance who need mental health services now and who will need to rely on the public sector for assistance but who are not yet being served.)

—How many adults with SMI and children with SED are served by the public mental health system in the reporting year? What is their profile by age, gender and race/ethnicity?

—How many children served by the State Mental Health Agency have family-like living arrangements or other 24-hour residential care in the reporting year and what are their ages and gender? How many adults served live independently and/or in other 24-hour residential care in the reporting year and what are their ages, gender and race/ethnicity?

—How many adults received supported housing services in the reporting year and what are their ages and race/ethnicity?

—What is the rate of client turnover in general hospitals and in high priority services such as assertive community treatment, new generation medication, supported housing, supported employment, and therapeutic foster care?

—For the following outcomes, what are the State findings for client perceptions in the reporting year?

• Percent of children with SED who have an increase in the level of school attendance.

• Percent of children with SED who have had contact with the juvenile justice system.

• Percent of adults with SMI who have had contact with the criminal justice system.

**Explanation**

The performance partnership for the CMHS program is built on three principles:

• That the Federal Government and the State governments are partners in the provision of mental health services and that our shared goal is ''continuous quality improvement.''

• That States understand the needs of their population and should be given more flexibility in the use of the funds.

• That accountability should be built on performance not entirely on expenditures.

The first principle is reached in this proposal when both the Federal and State governments identify the strengths and weaknesses of various systems of service and work in tandem to improve those systems. The new partnerships will be built on incentives to improve services rather than penalties for noncompliance.

The second principle is achieved in this proposal by reducing the number of requirements, simplifying the planning process, giving greater freedom in the use of the funds to States and reducing administrative costs and burden. States have tremendous flexibility in the use of the funds now which this proposal retains.

The shift to performance measures provides a focus on the efficiency and effectiveness of services and therefore helps both the Federal and State governments to identify how to improve the system of services. For example, the measures will permit both the Federal and State governments to identify steps that need to be taken to further improve the system of care to increase favorable outcomes.

The States, Territories and the District of Columbia will continue to be the only eligible entities for PPG funds and there is no attempt in this proposal to change the distribution of the funding. This proposal addresses a new paradigm in the relationship between the Federal Government and eligible entities.

The use of funds will remain as flexible as it is in current law. The restrictions will be retained to ensure that the funds will be used for community based mental health services.

Plans will have a slightly different twist. While States will continue to discuss their respective programs for the provision of community-based mental health services, and provide data on that system, there will be a requirement that States examine the system and establish objectives for improving the system. The objectives will be targeted improvements in certain basic measures or in areas not addressed by the basic measures for which the State will offer measures.

States will continue to be responsible for providing the Secretary with annual reports detailing their progress in meeting their goals and for providing necessary expenditure data to demonstrate compliance with such provisions as maintenance of effort and the set aside for children with serious emotional disturbance.

The Annual Report to Congress is not part of current law. SAMHSA and its predecessor agency, the Alcohol, Drug Abuse and Mental Health Administration were on occasion required to submit a report to Congress. The last such report was in 1994 but it only dealt with the Substance Abuse Prevention and Treatment Block Grant. The report will serve to demonstrate to Congress that the funds are being used efficiently and effectively and to show how the State systems are improving. The reports will not compare and contrast State systems. SAMHSA believes this would be counterproductive to our goal of continuing quality improvement as States would present themselves in the best of light. The reports will be responsive to the needs of Congress and the submission will coincide with the appropriation process.

States are currently required to ensure that individuals have an opportunity to review and comment on the State plan. SAMHSA proposes to continue this requirement but at the same time to elicit ways of improving public participation.

Current statute authorizes the Secretary to penalize States for non-compliance. Penalties, however, serve only to remove funds from the mental health system of the State and grip both the staff of the State and the Federal government in a bureaucratic process that keeps both from carrying out their mission and goals. Instead, SAMHSA requests ideas on an incentive to encourage States to improve their service system.

Maintenance of effort presents an economic burden on States especially in these times where the State budgets are running in the red and they are looking for ways to reduce spending. SAMHSA, however, proposes to retain the requirement to ensure continuation of services for those in need of community-based mental health services.

SAMHSA proposes to eliminate the requirement that States independently peer review 5 percent of facilities under the program each year to assess the quality, appropriateness and efficacy of treatment services. While this specific provision was added with the Anti-Drug Abuse Act of 1988, there had always been a provision in statute requiring States to evaluate the performance of facilities receiving funds under the Block Grant program. The Department has monitored the usefulness of the requirement and believes that it has not achieved the purpose for which it was included in statute largely because the States, while they fulfilled their obligation under the provision, did not use it to improve performance. In addition, the Department believes that this provision not only requires that it be done but that it stipulates the way it should be done when there is nothing to suggest that an independent peer review is the best way to accomplish the goal of the provision.

The Department is extremely interested in improving the quality of services. This is one of the purposes of the whole Performance Partnership program—continuous quality improvement. It is our belief, however, that the State analysis that has to be done as part of the second section of the plan will identify where the State, as a whole, needs to improve if the system is to improve. The only way that States have of improving their system is to work with the individual providers. As an example, the analysis may very well identify that programs are not using evidenced based practices. If this is true, the Department can work with the States to share the findings from the National Institute on Mental Illness services research programs, knowledge gained from other States or communities, findings from the Department's own programs, information from the technical assistance centers that the Department supports and from other sources. It would naturally be in the best interest of the State to ensure that the providers are actually then using those practices. The end result is that the State undertakes activities in support of its own interests and not because of a requirement in statute.

*Performance Measures*

The performance measures used in this program have been developed after considerable consultation with experts in the field and State commissioners. Their acceptance, however, is largely based on what we know today. In 1 or 2 years after some experience, SAMHSA and the States may find that the measures do not measure what we thought they would or that what they measured was not critical to understanding the service system. Therefore, the performance partnership program must have built into it the ability to change the basic measures.

SAMHSA has also considered the practicality of the measures that it has been and will be developing. The collection and reporting of data on individuals, much of which will have to be gathered from individuals not living in facilities, is a very expensive undertaking and administratively

burdensome. So while SAMHSA is interested in getting a picture of the system, SAMHSA wants to accomplish this without requiring the States to incur a significant financial and administrative burden. SAMHSA believes that it has accomplished that goal. In giving comments, SAMHSA asks that you keep this criterion in mind.

Critical to the collection and reporting on performance measures is the ability to upgrade the data infrastructure of the State. This involves ensuring that each mental health program begins to collect standardized data and has the infrastructure to record and report it. It also assumes that States have the ability to receive and analyze that data. While some States are in a good position as far as data infrastructure is concerned, many are not and will need further financial assistance to bring their data infrastructure in line. SAMHSA and the States accept shared responsibility for this financial burden.

**Questions for You To Consider in Making Your Comments**

*In General*

1. Please comment, if you care to, in general about the benefits and challenges of converting to performance partnerships. What areas of greater flexibility are needed in the administration of the CMHS BG and what measures of accountability are needed in the performance of the program and for the overall community based system of care?

2. Please comment, if you care to, on the use of a ''continuous quality improvement'' model instead of a penalty structure?

*Operationalization*

1. Please comment, if you care to, about the continuation of the flexibility in the use of funds under the program for carrying out the mental health plan, to evaluate programs and to plan and administer the program.

2. SAMHSA is proposing new elements for the mental health plan. Please comment, if you care to, about those elements and make recommendations for their improvement.

3. SAMHSA proposes to maintain the current restrictions on the use of funds as are in current statute. Please comment, if you care to, on both the proposal and the value of the restrictions themselves.

4. SAMHSA is proposing to retain the set aside for children's services but is simplifying it to ensure that States maintain their level of support for children with serious emotional disturbance at a level equal to the average expenditures of the previous 2 years. Please comment, if you care to, on retaining the provisions and the change in the maintenance of effort requirement on children's services.

5. States would be required to submit yearly reports showing their progress in meeting their objectives under the program. SAMHSA would then use this information to create a report for Congress to demonstrate how each State is using the funds efficiently and effectively to provide access to quality care. The report to Congress would not be a comparison of States but a presentation on the programs in each State and what steps the States are taking to further improve their system of services. Please comment, if you care to, on the annual State report and the report to Congress.

6. Please comment, if you care to, on SAMHSA's proposal to continue the current maintenance of effort requirement including the exclusion from the calculation funds for one time expenditures of a singular purpose.

*Performance Measures*

1. Under the proposal, 12 basic measures and 6 developmental measures are identified. Please comment, if you care to, about the benefits and challenges of using this information to describe performance by individual States and to describe the overall capacity, accountability and effectiveness of the systems of community based services for the Nation.

2. How would you improve the measures if you could? Which measures do you believe should be kept, which ones dropped, and which ones amended and how? Are there other measures that you believe should be added that do not appear?

3. This notice suggests that States will be ready to submit basic measurement data in time for their applications for FY 2005 funds. Do you believe that this time table is realistic?

4. SAMHSA has developed a matrix of program priorities and cross cutting principles that now guides the agency's daily operations and overall program and management decisions. Programs and issues prioritized in this matrix include: co-occurring disorders; substance abuse treatment capacity; seclusion and restraint; prevention and early intervention; children and families; New Freedom Initiative (including the President's Mental Health Commission); terrorism/bio-terrorism; homelessness; aging; HIV/AIDS and Hepatitis C; and criminal justice. As we move forward in measuring the extent to which the agency has been successful in these 11 areas, we are asking the public to comment on how to begin work on ways to measure progress by the States in these and other program areas.

*Economic Impact*

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Public Law 96–354), the Unfunded Mandated Reform Act of 1995 (Public Law 104–4), and Executive Order 13132 (August 1999, Federalism). Executive Order 12866 (the Order), as amended by Executive Order 13258, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principles set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this proposed regulation, will not have a significant economic impact on a substantial number of small entities. This proposed rule applies only to States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or

otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this proposal does not impose substantial direct requirement costs on State and local governments, preempt State law, or otherwise has Federalism implications. On the contrary, the proposal provides for more flexibility for the States in the use of Federal funds, and establishes a working relationship between the Federal and State governments that will help the States improve access to quality care for those individuals in need of substance abuse or mental health services.

*Paperwork Reduction*

This proposal would assume information collection requirements that would be subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. This **Federal Register** notice, however, is only seeking comment on proposed information collection and is not establishing a collection requirement. Therefore, doing a Paperwork Reduction Act analysis would be premature. The Department will comply with the requirements of the Paperwork Reduction Act when determinations have been made on the information to be collected and in advance of requiring the submission of that information.

Dated: November 18, 2002.

**Charles G. Curie,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

Dated: December 18, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–32304 Filed 12–23–02; 8:45 am]

**BILLING CODE 4162–20–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Community Mental Health Services Performance Partnership

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** Notice: Request for comments.

**SUMMARY:** Section 1949 of the Public Health Service Act as amended by Public Law 106–310 requires the Secretary of Health and Human Services to submit a plan to Congress detailing how the Secretary intends to change the current Community Mental Health Services (CMHS) Block Grant into a performance partnership. The plan, by statute, must include the following:

A description of the flexibility that would be given to the States under the plan;

The common set of performance measures that would be used for accountability;

The definitions for the data elements to be used under the plan;

The obstacles to implementation of the plan and the manner in which such obstacles would be resolved;

The resources needed to implement the performance partnerships under the plan; and

An implementation strategy complete with recommendations for any necessary legislation.

Section 1949 requires that the Secretary develop this plan in conjunction with the States and other interested parties. SAMHSA has been in discussion with the States for several years over this proposal. This FRN provides States and other interested parties an opportunity to comment on those discussions.

**DATES:** Comments on the information must be in writing and should be sent to: Joseph D. Faha, Director of Legislation/SAMHSA, 5600 Fishers Lane, Room 12–95, Rockville, Maryland 20857, by February 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Joseph D. Faha, Director of Legislation/SAMHSA, 5600 Fishers Lane, Room 12–95, Rockville, Maryland 20857. Mr. Faha may be reached on (301) 443–4640.

SAMHSA seeks comments on its proposal to develop a plan for the changing of the current SAPT Block Grant from its current emphasis on process requirements, financial earmarks, and accountability based on narrative documentation of compliance and expenditure reports to a system referred to as a performance partnership that offers States more flexibility in the expenditure of funds while basing accountability on performance and develops a partnership between the Federal Government and State governments in the provision of substance abuse prevention and treatment services.

The current SAPT Block Grant program has its origins in the Alcohol, Drug Abuse and Mental Health Services Block Grant, first legislated in 1981. In its conception, the Federal Government gave funds to States based on a formula in statute for the purposes of providing substance abuse and community based mental health services with minimal programmatic and reporting requirements. Over time, the statute authorizing the program was changed to require the States to spend certain stipulated amounts on or to emphasize public health issues such as HIV, tuberculosis, pregnant addicts and others.

Performance Partnership Grants (PPG) represent a new paradigm in Federal and State relations and cooperation. Under this grant program, the Federal Government would acknowledge the ability of States to both recognize their own needs and to address them as they relate to the provision of substance abuse prevention and treatment services by increasing flexibility for the States in their use of block grant funds. It would also shift State accountability away from Federal monitoring of State processes and related expenditures to identifying the strengths of a State's service system and areas where it could be improved to the benefit of those in need of such services. The goal is ''continuous quality improvement.''

The next section of this notice presents the proposal. The first part of this section discusses how the new program will work and the second part of this section will share the measures that have been agreed to so far in our discussions with the States. This is followed by a section that lends some explanation for the changes. Finally, there is a section suggesting both general and specific questions to which you may wish to respond. Public comments will be taken into consideration in developing the plan the Secretary will submit to Congress.

**Proposal**

*Operationalization*

*Eligibility and Distribution of Funds:* SAMHSA proposes that those entities which are currently eligible to receive direct funding under the SAPT Block Grant would continue to be eligible and that the formula, recently revised, would be retained. Eligible entities include the 50 States, the District of Columbia, the Territories and the Red Lake Indian Tribe of Minnesota.

*Use of Funds:* SAPT Block Grant funds would be available as they are now for substance abuse prevention and treatment activities and for carrying out programs required under section 1924 of the Public Health Service Act which deals with early intervention services for HIV and with tuberculosis services. Language would be added to clarify in statute that funds may be used to train counselors and to collect and report performance measurement data.

In addition, under performance partnerships, SAMHSA proposes

retaining restrictions on the use of funds as follows:

For construction and major rehabilitation (unless waived by the Secretary as set out in current law) or purchase of major medical equipment;

For inpatient hospital substance abuse treatment, except if the treatment is a medical necessity for the individual involved as set out in current law;

To make cash payments to patients;

To support needle exchange programs;

To be used as a State match against other Federal programs;

To provide financial assistance to for-profit private entities;

To provide treatment in penal and correctional facilities of the State beyond what the State spent in 1991; and

For administrative expenses above 5 percent of the State's allocation.

*Plans:* States would be required to submit a plan every 3 years for the use of the funds including performance objectives for the 3 years unless the State or the Secretary believes circumstances dictated the need to revise the plan in the interim.

The plans would include three sections, the first of which would describe the system of services in the State including a demographic and client characteristic profile, client screening and placement procedures, the treatment options that are available, the use of Federal and non-Federal funds to provide substance abuse services, how the principal agency coordinates with other service delivery systems, and how the block grant funds are used.

A second section would be an analysis of any State or Federal data that might be available including performance data to identify the strengths of the system and areas where improvement may be needed.

A third section would propose, for the Secretary's approval, the areas the State wants to focus on for the 3 years of the plan to further improve the system. The areas that the State may want to focus on could be, but must not necessarily be, selected from among the core measures being used. For example, the data may show that a large percentage of those completing treatment are unemployed at the time of discharge and steady employment is a precursor of success in treatment. If a State chooses to focus on a particular area not among those covered by the core measures, for example, stigma against individuals with a substance abuse problem, then the State would be asked to identify a performance measure that could be used. If it appears that several States are focusing on an area, SAMHSA, the States and other interested parties will work together to develop a common measure. To clarify, all States will be required to submit data on the core measures. This paragraph is only a discussion of what areas a State would like to focus on for the sake of the plan. For a more complete discussion of the measures, please read that section later in this notice.

*Annual Reports to SAMHSA:* These reports would serve to keep SAMHSA and the States informed of the States' progress in meeting their goals and to report on remaining expenditure requirements including State maintenance of effort. States also would be required to report on their intended use of PPG funds for the next fiscal year. States are currently required to submit an annual report to the Secretary as part of their application which details how they met the requirements in statute.

*Congressional Reports:* Each year SAMHSA would submit a report to Congress summarizing the programs in each State and the State's progress in meeting its objectives. These reports will not compare and contrast States. Currently there is no requirement for a report to Congress.

*Public Comment:* SAMHSA proposes to retain the current requirements on seeking public comments which require the State to make the State application public in such a manner as to facilitate comment from any person during the development of the application. SAMHSA will be working with the States to further improve public access and participation.

*Incentives:* SAMHSA seeks ideas on building incentives into the system to encourage States to further improve the service system. Currently the system is built on enforcement principles of withholding funds and financial penalties for non-compliance with requirements of the program.

*Particular Requirements in Current Law*

*Prevention Set Aside:* SAMHSA proposes to retain the requirement that a minimum of 20 percent of PPG funds be expended for prevention activities. SAMHSA also proposes to change the current definition of prevention to one developed by the Institute of Medicine that refers to universal, selected and indicated interventions. Universal interventions are designed to reach an entire population or large audience, for example, a radio message on preventing substance abuse. Selective interventions target subgroups who may be at risk to use substances, for example, children of alcoholics. Indicated interventions identify individuals who are experiencing early signs of substance use and other problems.

*Expenditure Requirement for Pregnant Women and Women with Dependent Children:* SAMHSA proposes to retain the current set aside requirement that single State agencies maintain their level of financial support for pregnant addicts and women with children at the level the single State agency expended in 1994. SAMHSA also proposes to permit the Secretary to waive the requirement based on performance criteria to be developed.

*Mandatory Services for Intravenous Drug Users:* SAMHSA proposes to eliminate the requirement in favor of a performance measure related to the reduction of HIV transmissions.

*Early Intervention for HIV:* SAMHSA proposes to retain the requirement that States whose incidence of AIDS is at or greater than 10 per 100,000 of the general population use between 2 and 5 percent of their allocations for HIV early intervention services. SAMHSA also proposes to permit a waiver against this requirement with the criterion being based on the State's reduction of HIV transmissions among the substance abusing population.

SAMHSA also proposes to permit, but not require, States whose incidence of AIDS is below 10 per 100,000 of the general population to spend between 2 and 5 percent of their allotment on early intervention services if their incidence rate had been at or above the threshold level in either of the previous 2 years. This permits a more consistent State policy.

*Tuberculosis Services:* SAMHSA proposes to retain the requirement that States are to ensure that entities which receive block grant funds make available tuberculosis services to each individual receiving treatment and, if an individual is denied treatment based on lack of capacity, will refer the individual to another provider of tuberculosis services. SAMHSA also proposes to give the Secretary the authority to waive this requirement using performance criteria.

*Group Homes:* Currently States have the option as to whether to maintain a $100,000 revolving fund to support recovery homes. SAMHSA proposes to maintain this as an optional requirement.

*Preference for Pregnant Addicts:* SAMHSA proposes to retain the requirement that pregnant addicts be given preferential placement in funded facilities.

*Improving Referrals/Continuing Education/Coordination of Services:* SAMHSA proposes to eliminate the requirements that States take deliberate steps to improve their referral systems

and that States ensure that substance abuse services are coordinated with other social service programs. States will be submitting information in the first section of the State plan on how they assess and refer individuals in need of treatment and how they coordinate with other service delivery systems. Because of the need to improve the skills of substance abuse counselors, SAMHSA proposes to retain the requirement on continuing education and as has been previously stated to affirm that block grant funds may be used for training.

*Maintenance of Effort:* SAMHSA proposes to retain the current requirement that States be required to spend State funds for the single State agency of the State responsible for substance abuse services at a level at least equal to the average that the State spent in the past 2 years. The penalty is a loss of a dollar of allocation under the program for each dollar the State is short in meeting its requirement. SAMHSA proposes to retain current statutory provisions which authorizes the Secretary to waive the requirement for a State experiencing ''extraordinary economic conditions.'' SAMHSA also proposes to retain the recently passed exclusion from calculation for one time expenditures for a single purpose.

*Audits:* SAMHSA proposes to retain the current audit requirement.

*Independent Peer Review:* SAMHSA proposes to eliminate the requirement that States ensure that 5 percent of facilities funded under the program are independently peer reviewed to assess the quality, appropriateness and efficacy of treatment services.

**Performance Measures**

SAMHSA and the States have been working for some time on a set of measures that would give both the Federal Government and the State government a view of how well the service system is doing in achieving its goal of providing access to quality services. SAMHSA expects to have a more complete list of such measures in June of 2003 after further discussion with the States and consideration of public comments.

*Treatment Measures*

The following table summarizes the preliminary measures that SAMHSA proposes to use in the performance partnership. The measures are divided into two categories: core and developmental. Core measures are those the States are committed to submitting. There is still work that needs to be done to further define and standardize the measures which will be completed prior to the submission of the plan to Congress. Measures for vulnerable populations or public health issues including pregnant women and women with children, HIV transmission, tuberculosis and co-occurring populations will be added to the core measures. These measures will be completed in time for the submission of the plan to Congress. The measure on individuals with a co-occurring substance abuse and mental health disorder will be developed jointly with State mental health commissioners and directors of substance abuse services and in the context of the previously mentioned Co-occurring Report.

Developmental measures are those which require additional work to ensure both the Federal Government and the State governments that these measures are necessary, provide the information that both levels of government need and are practicable. SAMHSA is committed to concluding work on these measures by October of 2003. If, after discussions with the States and public comment, any and or all of these measures prove to be helpful in understanding the service system, they will be added to the list of core measures.

SAMHSA is applying the principle of ''continuous quality improvement'' to the measures as well. SAMHSA will continuously evaluate whether certain areas of inquiry are helpful in determining the efficiency and effectiveness of the system of services, whether specific questions are providing the information needed and whether there might be other areas of inquiry that should be taken.

In the table below, there are two domains: effectiveness and efficiency. Effectiveness is measured by examining changes that have occurred in the individual with regard to their physical and mental health, their employment status and social functioning, living status, penetration rates, social support systems and general health. Efficiency will be measured by the percentage of clients who complete treatment and the average length of stay in treatment.

SAMHSA is managing the Office of National Drug Control Policy's National Treatment Outcome Management System (NTOMS) intended to assess on a national level treatment effectiveness of various modalities of treatment in terms of such outcomes as drug use, criminal behavior, health, employment and other factors through the interviewing of individuals entering and leaving some 200 treatment facilities nationwide. The performance measures being used in this performance partnership focus on the effectiveness of the State system using as areas of inquiry many of these same factors.

CORE MEASURES

| Domain | Indicator area | Specific indicator | Basis of measurement |
|---|---|---|---|
| Effectiveness | Health Status—Physical. | AOD Use | One measure for alcohol and one measure for other drugs (marijuana, cocaine, opiates, methamphetamines). For ''other drugs,'' take the highest frequency reported among all drugs used. Report frequency of use in past 30 days at admission to AOD treatment setting and discharge:<br>no past month use (0 days),<br>1—3 times/month (2 days),<br>1—2 times/week (6 days),<br>3—6 times/week (18 days),<br>Daily (30 days). |
| | Economic Self-Sufficiency. | Employment Status | Employment status at admission to AOD treatment setting and at 6 months post-admission.<br>—Employment (full and part-time or in school if under 18),<br>—Unemployed,<br>—Not in Labor Force (homemaker, student, disabled, retired, or looking in last days, institutionalized).<br>This measure is the percent employed at admission and at 6 months post-admission. |

CORE MEASURES—Continued

| Domain | Indicator area | Specific indicator | Basis of measurement |
|---|---|---|---|
| | Social Functioning | Criminal Justice Involvement. | Number of arrests during the past 6 months at time of admission to AOD treatment setting and at 6 months post-admission. |

*Core measures will be developed on pregnant addicts and women with children, HIV transmission, tuberculosis and co-occurring populations to be added to the plan to be submitted to Congress.

DEVELOPMENTAL MEASURES

| Domain | Indicator area | Specific indicator | Basis of measurement |
|---|---|---|---|
| Effectiveness | Health Status | | |
| | Social Functioning | Living Status. | |
| | | Social Support. | |
| Efficiency | Access | Penetration Rates. | |
| | Treatment Retention | Length of Stay. | |
| | | Treatment Completion. | |

It is expected that some States will be able to report on the performance data in time for the FY 2005 application. Other States will be asked for a plan of implementation on the collection and reporting on the data.

*Prevention Measures*

The States will submit data with regard to those programs supported in whole or in part with funding under the prevention set aside of the new PPG. The performance measures will cover three areas: capacity, process and outcomes. The outcome measures are sorted by whether an activity is focused on the individual, peers, schools, families or communities. States will collect outcome data from each of the activities supported in whole or in part with PPG prevention set aside funds and aggregate that data for submission to SAMHSA. Each activity, however, will only submit outcome data to the State that is appropriate to the focus of the activity. For example, if the funded activity focuses on schools, the activity must supply the State with information designated in the table below.

SAMHSA is particularly interested in your thoughts and comments on the Capacity measures.

The measures that are being used conform with the measures currently being used under the State Incentive Grant prevention program though they have been pared down to focus on those that are most important and to reduce the costs associated with implementation. They include attitudes toward health risks and attitudes regarding social acceptance.

PREVENTION MEASURES

| Area | Domain | Indicator | Measure |
|---|---|---|---|
| Capacity | | Coalition Building | (Coalitions are community based organizations that have as their mission the reduction of substance abuse in a comprehensive and long term manner, with a primary focus on youth in the community. These coalitions are made up of community leaders in all aspects of community life.) |
| | | Workforce Development. | |
| | | Technological Capacity. | |
| | | Ability to Assess Need. | |
| | | Ability to Conduct Exemplary Programs. | |
| | | Ability to Evaluate and Report. | |
| Process | | Name and type of program, number of prevention services rendered, service type by strategy and type of service. | |
| | | Demographic Information (Age groups, gender, race ethnicity, number of participants completing program. | |
| Outcome | Individual | Attitude toward drug use | How wrong do you think it is for someone your age to drink beer, wine or hard liquor regularly? |
| | | | How wrong do you think it is for someone your age to smoke cigarettes? |

PREVENTION MEASURES—Continued

| Area | Domain | Indicator | Measure |
|---|---|---|---|
| | | | How wrong do you think it is for someone your age to smoke marijuana? |
| | | Perceived risk/harm | How wrong do you think it is for someone your age to use LSD, cocaine, or methamphetamine? |
| | | | How much do you think people risk harming themselves (physically or in other ways) if they smoke one or more packs of cigarettes per day? |
| | | | How much do you think people risk harming themselves (physically or in other ways) if they try marijuana once or twice? |
| | | | How much do you think people risk harming themselves (physically or in other ways) if they try marijuana regularly? |
| | | | How much do you think people risk harming themselves (physically or in other ways ) if they take one or two drinks of an alcoholic beverage (beer, wine, liquor) nearly every day? |
| | | Resistance skills (social/life skills) | To be determined. |
| | Peer | Perceptions of peer alcohol, tobacco or other drug use. | To be determined. |
| | School | School bonding | How often do you feel that the school work you are assigned is meaningful and important? |
| | | | How interesting are most of your courses to you? |
| | | | How important do you think the things you are learning in school are going to be for your later life? |
| | | | Now thinking back over the past year in school— |
| | | | How often did you enjoy being in school? |
| | | | How often did you hate being in school? |
| | | | How often did you try to do your best in school? |
| | Family | Perceived parental attitudes | How wrong do your parents feel it would be for you to drink beer, wine or hard liquor regularly? |
| | | | How wrong do your parents feel it would be for you to smoke cigarettes? |
| | | | How wrong do your parents feel it would be for you to smoke marijuana? |
| | | Parenting skills/practices/bonding | My parents ask if I've gotten my homework done. |
| | | | My parents want me to call if I'm going to be late getting home. |
| | | | Would your parents know if you did not come home on time? |
| | | | When I am not at home, one of my parents knows where I am and who I am with? |
| | | | The rules in my family are clear? |
| | | | My family has clear rules about alcohol and drug abuse. |

PREVENTION MEASURES—Continued

| Area | Domain | Indicator | Measure |
|---|---|---|---|
| | Community | Perceived availability | If you wanted to get some beer, wine or liquor, how easy would it be for you to get some?<br>If you wanted to get some cigarettes, how easy would it be for you to get some?<br>If you wanted to get some marijuana, how easy would it be for you to get some?<br>If you wanted to get a drug like LSD, how easy would it be for you to get some? |
| | | Community norms | How wrong would most adults in your neighborhood think it was for kids your age:<br>—to use marijuana?<br>—to drink alcohol?<br>—to smoke cigarettes?<br>If a kid drank some beer, wine, or hard liquor in your neighborhood, would he or she be caught by the police?<br>If a kid smoked marijuana in your neighborhood, would he or she be caught by the police? |

All States will begin submitting some of the prevention information for the FY 2005 application, and all States will be able to submit all the data by FY 2006 applications.

**Explanation**

The performance partnerships for the Substance Abuse Prevention and Treatment program are built on three principles:

1. That the Federal Government and the State governments are partners in the provision of substance abuse prevention and treatment services and that our shared goal is ''continuous quality improvement'' of the service system.

2. That States understand the needs of their population and should have more flexibility in the use of Federal grant funds.

3. That accountability should be based on performance and not entirely on expenditures.

The first principle is reached in this proposal when both the Federal and State governments identify the strengths and weaknesses of various systems of service and work in tandem to improve those systems. The new partnerships will be built on incentives to improve services rather than penalties for noncompliance.

The second principle is achieved in this proposal by reducing the number of requirements, simplifying the planning process, giving greater freedom in the use of the funds to States, and reducing administrative costs and burden.

The shift to performance measures provides a focus on the efficiency and effectiveness of services and, therefore, helps both the State and the Federal Government to identify how to improve the system of services. For example, the measures will enable us to determine whether pregnant addicts are being effectively served. Currently, all we know is that States are giving pregnant addicts preference in treatment and spending the required amount on pregnant addicts and women with children.

Eligibility for the block grant and the formula for the distribution of the funds will not be affected by the changes.

The use of funds is not being changed except to make it clear that PPG funds may be used for training and to develop the data infrastructure necessary to collect and report on performance measures.

The plans bring a new dimension to this block grant. Currently, State plans have more to do with the expenditure of funds. The proposed plan calls for the State to describe the current system, present data on how well the system is giving access to quality care for individuals in need of substance abuse services, requires the State to focus on issues related to prevention and treatment that need to be addressed to improve the system of services, and finally to set performance objectives. SAMHSA is recommending a 3-year cycle on plans for several reasons: first, 3-year plans give States a chance to do more long range planning and they reduce the administrative burden of both the State and the Federal Government permitting resources to be better used to improve access to quality care. Recognizing that there will occasionally be the need to revise plans, the Secretary is authorized to consider changing the plans either at his/her request or the request of the State.

States will continue to be responsible for providing the Secretary with annual reports detailing their progress in meeting their performance objectives and for providing necessary expenditure data to demonstrate compliance with such provisions as maintenance of effort, the set-aside for women with children, and others.

The Annual Report to Congress is not part of current law. SAMHSA and its predecessor agency, the Alcohol, Drug Abuse and Mental Health Administration were on occasion required to submit a report to Congress on block grant activities. The last such report was provided in 1994. The proposed annual report will serve to demonstrate to Congress that the funds are being used efficiently and effectively and that the State systems are improving. The report will not compare and contrast State systems. SAMHSA believes this would be counterproductive to our goal of continuing quality improvement as States would present themselves in the best of light.

States are currently required to ensure that individuals have an opportunity to review and comment on the State plan.

SAMHSA proposes to continue this requirement but at the same time to elicit ways of improving public participation.

SAMHSA is not interested in penalizing States for not meeting performance objectives choosing instead to work with them to further improve the service system. However, there would remain a few statutory requirements which the States would have to comply with by law. In the case of the Synar provision and maintenance of effort, the penalties are clearly defined and the procedures for penalizing a State stipulated in statute. There are other requirements that would be retained as well including early intervention for HIV, tuberculosis, set aside for substance abusing pregnant women and women with children, and others for which States may be penalized if they failed to meet.

**Specific Requirements**

With regard to specific requirements in the statute, SAMHSA proposes to maintain the requirement that States spend a minimum of 20 percent of their allocation on prevention but permit the funds to be used for prevention as defined by the Institute of Medicine which used the universal, selected and indicated criteria. Using these criteria would permit for a better continuum of services.

Universal interventions are designed to reach an entire population or large audience, for example, a radio message on preventing substance abuse. Selective interventions target subgroups who may be at risk to use substances, for example, children of alcoholics. Indicated interventions identify individuals who are experiencing early signs of substance use. Some have registered concern that this definition does not include environmental efforts; however, SAMHSA believes that environmental efforts are incorporated under Universal.

SAMHSA proposes that both the set-aside for women with children and the requirement that pregnant addicts be given preferential consideration for placement in a treatment facility that is receiving block grant funds be retained. While both populations have improved access to services since these provisions were first put in statute, they remain a very vulnerable population that can benefit from such requirements.

The current statute requires that States carry out outreach activities to locate intravenous drug users and to provide treatment within a given period of time or the State incurs an obligation to provide them with interim services. The emphasis on the intravenous drug population arose in 1992 largely because of the concern for the transmission of HIV. SAMHSA proposes, however, to address the issue differently by having a core measure related to the transmission of HIV instead of the expenditures.

HIV among the substance abusing population remains a public health concern. To ensure that States maintain their effort to address this public health concern, SAMHSA proposes to retain the requirement that States having an incidence of AIDS at or above 10 per 100,000 of general population be required to spend between 2 and 5 percent of their allotment on HIV early intervention services.

SAMHSA realizes that most of the HIV services would be provided by an agency of the State government other than the single State agency and thus holding the State to a performance measure on HIV transmission would be difficult. Nonetheless, because of the importance of the issue and the requirement of the statute at section 1949(a)(2) of the Public Health Service Act a performance measure will be added as a core measure for all States to report on.

SAMHSA also proposes that the Secretary be granted the authority to waive this requirement for States whose performance is good in reducing the transmission rates.

SAMHSA also proposes to permit, but not require States whose incidence of AIDS is below 10 per 100,000 of general population to spend between 2 and 5 percent of their allotment on early intervention services if their incidence rate had been at or above the threshold level in either of the previous two years. This will permit States whose incidence rates are at or near 10 per 100,000 to provide more consistent services.

The same concern for the transmission of tuberculosis among the substance abusing population leads SAMHSA to retain the requirements with regard to tuberculosis. SAMHSA recognizes that in the case of tuberculosis, as in the case of HIV, another agency of the State government is responsible for providing these services. Despite this, because the public health issue is so important and because the statute at section 1949(a)(2) requires that a performance measure be developed on tuberculosis, a core measure will be added that focuses attention on tuberculosis. SAMHSA does propose, however, that the Secretary be authorized to waive the requirement for a State that demonstrates that tuberculosis rates among the substance abusing population are decreasing.

Current statute permits but does not require States to maintain a revolving fund to support recovery homes. SAMHSA proposes to retain the current statute so that States can maintain such funds if needed.

SAMHSA proposes to eliminate the requirement to improve referral systems. States will in their plans discuss the process for determining placement for treatment. Whether this system is working will surface as SAMHSA and the States review the effectiveness of treatment. SAMHSA also proposes to eliminate the requirement to coordinate services. The need to coordinate services is a well established principle of prevention and treatment. States will be required to discuss how the substance abuse service system coordinates with other service systems in section 1 of the plan.

SAMHSA proposes to retain the requirement for continuing education of counselors. With the ever increasing amount of information that is being accumulated on how best to provide prevention and treatment services, there needs to be a mechanism to ensure that counselors are kept informed. Continuing education is one mechanism.

Maintenance of Effort presents an economic burden on States especially in these times where the State budgets are running in the red and they are looking for ways to reduce spending. SAMHSA, however, proposes to retain the requirement. The Federal Government's contribution to the provision of substance abuse prevention and treatment services through the block grant accounts for over 50 percent of State expenditures. In 1995 the block grant accounted for 38 percent. Since the requirement does not require the States to increase their expenditures to match Federal allocations but only to maintain their level of support, SAMHSA does not believe it is over burdening the States. To address issues of the economies of the States, SAMHSA placed criteria in the regulation issued in 1993 on when the Secretary would exercise his authority to waive such requirements.

SAMHSA proposes to eliminate the requirement that States independently peer review 5 percent of facilities under the program each year to assess the quality, appropriateness and efficacy of treatment services. While this specific provision was added with the Anti-Drug Abuse Act of 1988, there had always been a provision in statute requiring States to evaluate the performance of facilities receiving funds under the Block Grant program. The Department has monitored the usefulness of the

requirement and believes that it has not achieved the purpose for which it was included in statute largely because the States, while they fulfilled their obligation under the provision, did not use it to improve performance. In addition, the Department believes that this provision not only requires that it be done but that it stipulates the way it should be done when there is nothing to suggest that an independent peer review is the best way to accomplish the goal of the provision.

The Department is extremely interested in improving the quality of services. This is one of the purposes of the whole Performance Partnership program—continuous quality improvement. It is our belief, however, that the State analysis that has to be done as part of the second section of the plan will identify where the State, as a whole, needs to improve if the system is to improve. The only way that States have of improving their system is to work with the individual providers. As an example, the analysis may very well identify that programs are not using evidenced based practices. If this is true, the Department can work with the States to share the findings from National Institute on Alcohol Abuse and Alcoholism and National Institute on Drug Abuse services research programs, the findings from National Treatment Outcome Management Survey, knowledge gained from other States or communities, findings from the Department's own programs, information from the technical assistance centers that the Department supports and from other sources. It would naturally be in the best interest of the State to ensure that the providers are actually then using those practices. The end result is that the State undertakes activities in support of its own interests and not because of a requirement in statute.

*Performance Measures*

The performance measures used in this program have been developed after considerable consultation with experts in the field and State directors. Their acceptance, however, is largely based on what we know today. In one to two years after some experience SAMHSA and the States may find that the measures need to be revised or replaced. Therefore, the performance partnership program must have built into it the ability to change the core measures.

SAMHSA has also considered the practicality of the measures that it has been and will be developing. The collection and reporting of data on individuals, most of whom are not living in facilities, is a very expensive undertaking and administratively burdensome. So while SAMHSA is interested in getting a picture of the service system, SAMHSA wants to accomplish this without incurring a significant financial and administrative burden. SAMHSA believes that it has accomplished that goal. In giving comments, SAMHSA asks that you keep this criterion in mind.

Critical to the collection and reporting on performance measures is the ability to upgrade the data infrastructure of the State. This involves ensuring that each prevention and treatment program begins to collect the data that is needed and has the infrastructure to record it. It also assumes that States have the ability to receive and analyze that data. This remains an issue of critical importance. Without improved data infrastructures in States, many will not be able to collect and report on performance measures.

States will begin to submit performance data according to their ability to do so. Their ability to do so, in many cases, will be dependent on the resources available to develop the data infrastructure needed to collect and report on such data.

With time SAMHSA expects the States to report common data elements for each of the measures. In the meantime, SAMHSA expects the States to use generally accepted methodological principles.

**Questions for You To Consider in Making Your Comments**

*In General*

1. Please comment in general about the benefits and challenges of converting to performance partnership grants. What areas of greater flexibility are needed in the administration of the SAPT PPG and what measures of accountability are needed in the performance of the program and for the overall community based service system?

2. SAMHSA through the creation of a performance based system is developing a partnership with the States in the provision of substance abuse services. Do you support this partnership? Are there other ways that the Federal Government and State governments could partner in the provision of substance abuse services?

*Operationalization*

1. Under this proposal, SAPT Block Grant funds would be available as they are now for substance abuse prevention and treatment activities and for carrying out programs required under section 1924 of the Public Health Service Act which deals with early intervention services for HIV and with tuberculosis, for training of counselors and for data infrastructure development. Do you agree with this approach? If not, why not?

2. SAMHSA is proposing to continue current statutory restrictions on the use of the funds as outlined previously in the notice. Do you agree with these proposals?

3. SAMHSA proposes to retain the set aside for women and children and the requirement that pregnant addicts be given preferential consideration in being given the opportunity for treatment. In addition it is our proposal that specific performance measures be established for both populations as a way of ensuring that women with children and pregnant addicts will receive the services they may require. If you have any comments on this or proposals for measures that could be used, please forward your comments.

4. States would be required under this proposal to develop a 3-year plan on how they intend to use the funds and how they intend to improve access to quality care. Do you agree that 3-year plans are appropriate?

5. Under the proposal, States would be required to submit yearly reports showing their progress in meeting their goals under the program. SAMHSA would then use this information to create a report for Congress to demonstrate how each State is using the funds efficiently and effectively to provide access to quality care. The report to Congress would not be a comparison of States but a presentation on the programs in each State and what steps the States are taking to further improve their system of services. Do you agree with this approach and can you recommend alternative, effective approaches to public disclosure of developments in State drug treatment and prevention?

6. SAMHSA proposes to eliminate several current requirements for intravenous drug users. Do you believe that these vulnerable populations will receive the services they need under this new approach?

7. While SAMHSA proposes to retain the set aside for prevention, we are proposing that the set aside be used for prevention as defined by the Institute of Medicine as universal, selected and indicated as explained earlier in the notice. Do you agree with this expansion of the use of the set aside?

8. SAMHSA proposes to continue the current maintenance of effort requirement including the exclusion from the calculation for one time

expenditures of a single purpose. Do you agree with this proposal?

9. Do you agree with the concept of ''continuous quality improvement'' and do you have any ideas on how to build in incentives for States to improve their system of services?

10. Do you agree with eliminating certain requirements in favor of performance measures which would clarify whether the goals of the requirements are actually being met?

*Performance Measures*

1. Core and developmental measures are listed for treatment and a set of core measures for prevention. Please comment about the benefits and challenges on using this information to describe performance by individual States and to describe the overall accountability, capacity, and effectiveness of the service system.

2. If you could, how would you improve them keeping in mind the need to minimize the costs of data collection? Provide specific information of the shortcomings of the measures and how you would improve them. In responding to this question consider whether there are measures listed above that should be improved, why they need improvement and how you would improve them. If you believe additional measures are necessary, please explain what is missing and what you would add to the list of core measures.

3. With the States, SAMHSA will be developing measures for vulnerable populations and for specific public health issues such as pregnant addicts, women with children, transmission of sexually transmitted diseases, and the co-occurring population. Do you have any recommendations for these measures?

4. Do you agree that States can and should begin submitting performance data as part of their FY 2005 application?

5. SAMHSA has developed a matrix of program priorities and cross cutting principles that now guides the agency's daily operations and overall program and management decisions. Programs and issues prioritized in this matrix include: Co-occurring disorders; substance abuse treatment capacity; seclusion and restraint; prevention and early intervention; children and families; New Freedom Initiative (including the President's Mental Health Commission); terrorism/bio-terrorism; homelessness; aging; HIV/AIDS and Hepatitis C; and criminal justice. As we move forward in measuring the extent to which the agency has been successful in these 11 areas, we are asking the public to comment on how to begin work on ways to measure progress by the States in these and other program areas.

*Economic Impact*

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), as amended by Executive Order 13258 (February 2002, Amending Executive Order 12866 on Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Public Law 96–354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (August 1999, Federalism). Executive Order 12866 (the Order), as amended by Executive Order 13258, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principles set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at 5 U.S.C. 804(2).

In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this proposed regulation, will not have a significant economic impact on a substantial number of small entities. This proposed rule applies only to States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that this proposal does not impose substantial direct requirement costs on State and local governments, preempt State law, or otherwise has Federalism implications. On the contrary, the proposal provides for more flexibility for the States in the use of Federal funds, and establishes a working relationship between the Federal and State governments that will help the States improve access to quality care for those individuals in need of substance abuse or mental health services.

*Paperwork Reduction*

This proposal would assume information collection requirements that would be subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. This **Federal Register** Notice, however, is only seeking comment on proposed information collection and is not establishing a collection requirement. Therefore, doing a Paperwork Reduction Act analysis would be premature. The Department will comply with the requirements of the Paperwork Reduction Act when determinations have been made on the information to be collected and in advance of requiring the submission of that information.

Dated: November 18, 2002.

**Charles G. Curie,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

Dated: December 18, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–32305 Filed 12–23–02; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by January 23, 2003.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information

Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:**

## Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with 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.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant:* Roger Heintzman, Aberdeen, SD, PRT–065782.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorca*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Frank R. Daigle, St. Michael, MN, PRT–065784.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorca*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

*Applicant:* Zoological Society of San Diego/San Diego Wild Animal Park, Escondido, CA, PRT–054066.

The applicant requests a permit to import two captive bred kagu (*Rhynochetos jubatus*) from the Yokohama Zoological Garden, Yokohama, Japan for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

*Applicant:* Cienegas Ranches, Ltd., Austin, TX, PRT–040025.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of three years. Permittee must apply for renewal annually.

*Applicant*: Barbara Hoffmann dba The Exotic Endangered Cats of the World, Gibsonton, FL, PRT–064800 & 064801.

The applicant requests a permit to export, re-export, and re-import captive-born tiger (*Panthera tigris*) and captive-born African leopard (*Panthera pardus*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

## Marine Mammals and Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and the regulations governing marine mammals (50 CFR part 18) and endangered species (50 CFR part 17). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant:* Florida Atlantic University, Boca Raton, FL, PRT–063561.

*Permit Type:* Take for scientific research.

*Name and Number of Animals*: Florida manatee (*Trichechus manatus latirostris*), 40 per year.

*Summary of Activity to be Authorized*: The applicant requests a permit to conduct a study to archive and evaluate manatee responses to controlled boat approaches. Half of the controlled boat approaches will incorporate a device which will project an alerting signal designed to be within the manatees' hearing sensitivity. The boat approaches will be monitored and recorded by in-boat manatee spotters, shore-based spotters, video from an aerial surveillance system and still photography. The boats will be equipped with propeller guards and will not approach any closer than three manatee body lengths.

*Source of Marine Mammals*: Animals in and near Haulover Canal, Brevard County, and Buzzard Island in Crystal River, Florida.

*Period of Activity:* Up to 3 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

## Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant:* Scott Vee, Brule, WI, PRT–065351.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

*Applicant:* Robert B. Michalek, Springville, NY, PRT–065467.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: December 6, 2002.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 02–32330 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for marine mammals.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** On September 25, 2002, a notice was published in the **Federal Register** (67 FR 60249), that an application had been filed with the Fish and Wildlife Service by Jordan Pearlman for a permit (PRT–058039) to import one polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population, Canada, for personal use.

Notice is hereby given that on November 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: December 13, 2002.

**Lisa J. Lierheimer,**

*Permit Policy Specialist, Branch of Permits, Division of Management Authority.*

[FR Doc. 02–32328 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permit for Marine Mammals

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permit for marine mammals.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** On April 18, 2002, a notice was published in the **Federal Register** (67 FR 19205), that an application had been filed with the Fish and Wildlife Service by Hubbs-Sea World Research Institute for a permit (PRT–054026) to conduct scientific research to measure the sonar acoustic reflectivity of captive held Florida manatees (*Trichechus manatus latirostris*).

Notice is hereby given that on December 4, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: December 6, 2002.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 02–32329 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–060–1020–PG]**

### Notice of Public Meeting, Central Montana 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) Central Montana Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held January 15 & 16, 2003 at the Chinook Motor Inn in Chinook, Montana. The January 15th meeting will begin at 1 p.m. with a 30-minute public comment period and will adjourn at 6:30 p.m. The January 16th meeting will begin at 8 a.m. with a 30-minute public comment period and will adjourn at 1:30 p.m.

**SUPPLEMENTARY INFORMATION:** This 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 north central Montana. During these meetings, the RAC will discuss:

The sage grouse plan recommendations;

The outfitter moratorium on the Upper Missouri National Wild and Scenic River;

The national RAC meeting held recently in Phoenix;

The council will set meeting dates for other meetings in 2003;

The RAC will meet the new Montana State Director;

Land exchanges;

The RAC will hear a scoping report concerning the monument resource management plan;

The BLM's 2003 project list;

The 2003 fire program; and

The council will consider recommendations from its Upper Missouri Visitor Use subgroup.

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 as detailed above. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**FOR FURTHER INFORMATION CONTACT:** Bruce Reed, Malta Field Manager, 501 S. 2nd St. East, Malta, Montana 406–654–1240.

Dated: December 17, 2002.

**David L. Mari,**

*Lewistown Field Manager.*

[FR Doc. 02–32299 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–010–1430–ES; NMNM 100202]**

### Notice of Realty Action; Recreation and Public Purpose (R&PP) Act Classification; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Sandoval County, New Mexico have been examined and found suitable for classification for lease to the Cuba Soil and Water Conservation District under the provisions of the Recreation and

Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Cuba Soil and Water Conservation District proposes to use the lands for an outdoor classroom and administrative site.

**New Mexico Principal Meridian**

T. 20 N., R. 1 W., sec. 5, NW¼SW¼NW¼ and W½NE¼SW¼NW¼.
Containing 15.00 acres, more or less.

The lands are not needed for Federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Albuquerque Field Office, 435 Montano NE, Albuquerque, New Mexico.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Albuquerque Field Office, 435 Montano NE, Albuquerque, NM 87107.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for an outdoor classroom and administrative site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an outdoor classroom and administrative site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 5, 2002.

**Edwin J. Singleton,**

*Albuquerque Field Manager.*

[FR Doc. 02–32370 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### Environmental Statements; Notice of Intent: Great Falls Park, VA; General Management Plan

**AGENCY:** National Park Service.

**ACTION:** Notice of Intent of a General Management Plan/Environmental Impact Statement, Great Falls Park, Virginia.

**SUMMARY:** In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies as part of a General Management Plan (GMP) for Great Falls Park, Virginia, a unit within George Washington Memorial Parkway.

The planning effort will result in a comprehensive GMP that encompasses preservation of cultural and natural resources, visitor use and interpretation, and necessary and appropriate facilities. In cooperation with local interests, attention will also be given to resources outside the boundaries that affect the integrity of the park. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the important natural and cultural resources be best protected and preserved, while providing for visitor use for present and future generations?
- What level and type of use is appropriate to be consistent with the park's purpose, and to relate to the park's significance?
- What facilities are needed to meet the mission goals of the park regarding natural and cultural resources management, visitor use and interpretation, partnerships, and operations?

*Public Involvement:* Public involvement will be a key component in the preparation of the GMP/EIS. The NPS will be holding a public scoping meeting in the evening sometime during the months of November 2002, December 2002 or January 2003 at the Great Falls Visitors Center, to provide to the public an opportunity to present your ideas, questions, and concerns directly to the planning team.

The purpose of this meeting is to determine the concerns/issues that should be addressed in the GMP/EIS. Individuals unable to attend the scoping meetings may request information from the Superintendent, George Washington Memorial Parkway at the address listed below, or by checking our homepage on the Internet at the following address: *http://www.nps.gov/grfa/*.

*Comments:* If you wish to submit issues or provide input to this initial phase of developing the GMP, you may do so by any one of several methods. In addition to attending scoping meetings, you may mail comments to: Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, Virginia 22101. You may comment via the Internet to *GWMP_Superintendent@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Great Falls GMP Team'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact Park Planner Debbie Feldman directly at telephone (703) 289–2512.

Scoping comments should be received no later than 60 days from the publication of this Notice of Intent. 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 addresses 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.

**FOR FURTHER INFORMATION CONTACT:** Park Superintendent Audrey Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, Virginia 22101.

Dated: October 18, 2002.

**Joseph M. Lawler,**

*Deputy Regional Director, National Capital Region, National Park Service.*

[FR Doc. 02–32240 Filed 12–23–02; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Repatriate Cultural Items: California Department of Parks and Recreation, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate cultural items in the possession of the California Department of Parks and Recreation, Sacramento, CA, that meet the definition of ''sacred objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Accession documents and information obtained in conversation with former California Department of Parks and Recreation (DPR) employees indicate that the sacred objects were taken from the ceremonial dance house at the Sulfur Bank Rancheria without permission from the Sulfur Bank community. About 1958, these cultural items were donated anonymously to the State of California Department of Natural Resources Division of Beaches and Parks, now Department of Parks and Recreation.

The 59 cultural items consist of regalia used in performing ceremonies related to the Maru Cult or Big Head Dance of the Pomo Indians. The claimed objects include 11 men's shirts, 3 women's skirts, 2 women's blouses, 7 women's dresses, 13 sashes, 17 patches, 2 bands, 3 flashers, and 1 cloth worn by ceremonial leaders and singers. Use of this type of clothing dates to the early 1870s when religious movements with various origins were active in Pomoan and other native communities throughout Northern California. A central belief of the religion is the power of spiritually significant dreaming. Certain gifted individuals, known as Maru or ''Dreamers'' by the Pomo, are the recipients of special dreams. These Maru are gifted with the ability to dream the rules of the ''Bid Head'' Ceremony, the way each should be performed, and what the regalia is made from, as well as how the regalia is put together.

The specific patterns appliquéd to the clothing and other accessories associated with ceremonial dances, such as the Big Head Dance and the Ball Dance, were patterns that the Maru had seen in his or her dream. The materials requested for repatriation appear to include items from two dreamers, Sarah Brigham and Elvy Patch, both of whom died in 1949 or before. Irvin Miranda, grandson of Sarah Brigham, recently identified some items in the collection as having his grandmother's design pattern (red heart and cross with a blue border of triangles facing inward). This dance regalia, ornamented with dream patterns, was used only for ceremonial occasions and was generally kept in the ceremonial dance house when not in use. The fact that they are decorated with patterns derived from a Maru's dream endows them with spiritual character.

In consultation with representatives of the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California, including traditional religious leaders and current Maru, Robert Geary, it has been determined that these objects are integral to present-day religious traditions associated with the Maru beliefs.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(C), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the California Department of Parks and Recreation also have determined that pursuant to 25 U.S.C. 3001, Sec. 2(2), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–7976 before January 23, 2003. Repatriation of these sacred objects to the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California may begin after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California that this notice has been published.

Dated: October 30, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–32174 Filed 12–23–02; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Revision of a Currently Approved Collection, Fiscal Year 2003 State Domestic Preparedness Program.

The Department of Justice, Office of Justice Programs, Office for Domestic Preparedness, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 24, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kerry Thomas, Branch Chief, State and Local Program Management Division, Office for Domestic Preparedness, 810 Seventh Street, NW., Washington, DC 20531,

phone at (202) 616–6707, or facsimile at (202) 514–5566.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* Revision of a Currently Approved Collection

(2) *The title of the form/collection:* Fiscal Year 2003 State Domestic Preparedness Program.

(3) *The agency form number, if any, the applicable component of the Department sponsoring the collection:* U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Domestic Preparedness (ODP).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, and Local. Section 1404 of the Defense Against Weapons of Mass Destruction Act of 1998 (Title XIV of Public Law 105–261; 50 U.S.C. 2301) as amended by Section 1064 of the National Defense Authorization Act of 2000 (Title X of Pub. L. 106–65; 50 U.S.C. 2301) authorizes the Department of Justice to collect information from state and local jurisdictions to assess the threat the risk of terrorist employment of weapons of mass destruction against cities and other local areas. This data collection will allow states to: (1) Report current jurisdictional needs for equipment, training, exercises, and technical assistance; (2) forecast projected needs for this support; and (3) identify the gaps that exist at the jurisdictional level in equipment, training, exercises, and technical assistance that OJP/ODP and other federal funding will be used to address. Additionally, the information collected will guide OJP/ODP and other federal agencies in the formulation of domestic preparedness policies and with the development of programs to enhance state and local first responder capabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimated total number of respondents in 2,059.

The data collection being proposed incorporates a terrorist threat and vulnerability assessment, and a needs and capabilities assessment for equipment, training, exercises and technical assistance. Information will be collected by approximately 2,003 local jurisdictions from representatives of law enforcement, fire services, Hazardous Materials response agencies, public safety communications, public health agencies, emergency medical services, public works, government/administrative agencies, health care, and emergency management agencies. In addition, a state administrative agency (SAA) in each state and territory (56 total) will roll-up the data submitted by all of the local jurisdictions in the state or territory and submit this consolidated state information to OJP/ODP. Local jurisdictions completing these assessments may experience an estimated burden of 6 hours to collect, tabulate and input data provided to the state. Once the local information is received by the SAA, the SAA may experience an estimated burden of 4 hours for data input and electronic submission of the data to OJP/ODP.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection will be approximately 12,242 hours.

If additional information is required, contact: Ms. Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: December 18, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 02–32327 Filed 12–23–02; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Definition of ''Plan Assets''—Participant Contributions

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Definition of Plan Assets—Participant Contributions, 29 CFR 2510.3–102. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted on or before February 24, 2003.

**ADDRESSES:** Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410 (not a toll-free number), FAX (202) 219–4745.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The regulation provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans on the requirements for transmission of employee contributions withheld from wages to the pension plan. In addition, for those employers who may have difficulty meeting regulation deadlines for participant contribution transmissions, the extension provision of the regulation provides an alternate means of employer compliance with the regulation while providing participants, beneficiaries, and the Department with sufficient information to protect their

rights under ERISA. Specifically, the ICR includes notification, bonding, and certification requirements that must be completed by the employer electing to use the extension provision.

**II. Desired Focus of Comments**

- The Department of Labor (Department) 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 submissions of responses.

**III. Current Actions**

Extension of the information collection provision of the regulation is important because delays in the transmittal of funds may result in lost earnings to pension plan participants and beneficiaries. This notice requests comments on the extension of the ICR included in the regulation governing the definition of ''plan assets.'' The Department is not proposing or implementing changes to the existing ICR at this time.

*Type of Review:* Extension of a currently approved information collection.

*Agency:* Pension and Welfare Benefits Administration.

*Title:* Definition of Plan Assets—Participant Contributions.

*OMB Number:* 1210–0100.

*Affected Public:* Business or other for-profit; not-for-profit institutions; individuals.

*Number of Respondents:* 1.

*Frequency:* On occasion.

*Number of Annual Responses:* 251.

*Total Burden Hours:* 3.

*Total Burden Cost (Operating and Maintenance):* $300.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 18, 2002.

**Joseph S. Piacentini,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 02–32366 Filed 12–23–02; 8:45 am]

BILLING CODE 4510–29–P

## LIBRARY OF CONGRESS

### Copyright Office

### Notification of Agreement Under the Small Webcaster Settlement Act of 2002

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of agreement.

**SUMMARY:** The Copyright Office is publishing an agreement which sets rates and terms for the performance of sound recordings under two statutory licenses by small commercial webcasters. Small commercial webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreement published herein rather than the rates and terms adopted by the Librarian of Congress in an earlier proceeding.

**FOR FURTHER INFORMATION CONTACT:** Susan Grimes, CARP Specialist, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

**SUPPLEMENTARY INFORMATION:** On Wednesday, December 4, 2002, President Bush signed into law the Small Webcaster Settlement Act of 2002 (''SWSA''), Pub. L. 107–321, 116 Stat. 2780, which amends the section 112 and section 114 statutory licenses in the Copyright Act, title 17 of the United States Code, as they relate to small webcasters and noncommercial webcasters. Among other things, the SWSA allows SoundExchange, the Receiving Agent designated by the Librarian of Congress in his June 20, 2002, order for collecting royalty payments made by eligible nonsubscription transmission services under the section 112 and section 114 statutory licenses, *see* 67 FR 45239 (July 8, 2002), to enter into agreements on behalf of all copyright owners and performers to set rates, terms and conditions for small commercial webcasters operating under the section 112 and section 114 statutory licenses.

The rates and terms set forth in such agreements apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings. To make this point clear, Congress included language expressly addressing the precedential value of such agreements. Specifically, section 114(f)(5)(C), as added by the SWSA, states that:

> Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral recordings or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice and recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

17 U.S.C. 114(f)(5)(C) (2002).

On December 13, 2002, SoundExchange and the Voice of Webcasters, a coalition of small commercial webcasters, notified the Copyright Office that they had negotiated such an agreement for the reproduction and performance of sound recordings by small commercial webcasters under the section 112 and section 114 statutory licenses and requested that the Copyright Office publish the Rates and Terms in the **Federal Register**, as required under section 114(f)(5)(B) of the Copyright Act, as amended by the SWSA.

Thus, in accordance with the requirement set forth in amended section 114(f)(5)(B), the Copyright Office is publishing the submitted agreement, as Appendix A, thereby making the rates and terms in the agreement available to any small commercial webcasters meeting the eligibility conditions of the agreement as an alternative to the rates and terms

announced by the Librarian in his July 8, 2002 order.

The Copyright Office has no responsibility for administering the rates and terms of the agreement beyond the publication of this notice. For this reason, questions regarding the rates and terms set forth in the agreement should be directed to SoundExchange (for contact information, see *http://www.soundexchange.com*).

Dated: December 18, 2002.

**Marybeth Peters,**

*Register of Copyrights.*

**Note:** This Appendix Will Not Be Codified in Title 37, Part 261, of the Code of Federal Regulations.

## Appendix A

**Rates and Terms Available to Certain Small Commercial Webcasters**

*1. General*

(a) As an option, an eligible small webcaster (as defined in Section 8(f) hereof), may elect to be subject to the rates and terms set forth herein (the ''Rates and Terms'') in their entirety, in lieu of other rates and terms applicable under 17 U.S.C. 112 and 114, by complying with the procedure set forth in Section 2 hereof.

(b) Any eligible small webcaster relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, these Rates and Terms and other governing provisions established by the Copyright Office.

(c) These Rates and Terms are without prejudice to, and subject to, any voluntary agreements that an eligible small webcaster may have entered into with any sound recording copyright owner.

(d) An eligible small webcaster that elects to be subject to the Rates and Terms agrees that it has elected these terms in lieu of participating in a copyright arbitration royalty panel (''CARP'') proceeding to set rates for the 2003–2004 period and in lieu of any different rates and terms that may be determined through such a CARP proceeding. Thus, once a webcaster has elected the Rates and Terms, it cannot opt out of these Rates and Terms in order to elect different rates and terms arrived at by a CARP. However, should there be any voluntarily negotiated rates and terms arrived at between copyright owners and webcasters that are adopted by the Librarian of Congress as rates and terms for eligible nonsubscription transmission services following publication of such rates and terms in the **Federal Register** pursuant to 37 CFR § 251.63(b), any eligible small webcaster that qualifies for such rates and terms may by written notice to SoundExchange elect, for any calendar year which has not yet begun, to pay royalties under the rates and terms adopted by the Librarian in lieu of the Rates and Terms applicable hereunder.

*2. Election for Treatment as Eligible Small Webcaster*

(a) *Election Process.* An eligible small webcaster that wishes to elect the royalty rates specified in these Rates and Terms in lieu of any other royalty rates that otherwise might apply under 17 U.S.C. 112 and 114 for the period beginning on October 28, 1998, and ending on December 31, 2002, or the period 2003 and 2004, shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com* by no later than the first date on which the webcaster would be obligated under these Rates and Terms to make a royalty payment for such period. An eligible small webcaster that fails to make a timely election shall pay royalties as otherwise provided in 17 U.S.C. 112 and 114. If a webcaster timely elects to be treated as an eligible small webcaster for the period beginning on October 28, 1998, and ending on December 31, 2002, or for 2003 and 2004, the webcaster shall thereafter be obligated to pay royalties under and comply with the provisions of these Rates and Terms as an eligible small webcaster through December 31, 2004, without need to submit any further election form, provided that such webcaster continues to meet the conditions for eligibility as an eligible small webcaster, as set forth in Section 8(f), except to the extent that the eligible small webcaster elects otherwise in accordance with Section 1(d).

(b) *Default.* As a condition of the election provided in Section 2(a), an eligible small webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the eligible small webcaster that, unless the breach is remedied within thirty days from the date of notice and not repeated, the eligible small webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. 501 and fully subject to the remedies provided by 17 U.S.C. 502–506 and 509.

*3. Royalty Rates for Eligible Small Webcasters*

(a) *For the Period 1998–2002.* For eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on December 31, 2002, the royalty rate shall be 8 percent of the webcaster's gross revenues during such period, or 5 percent of the webcaster's expenses during such period, whichever is greater, except that an eligible small webcaster that is a natural person shall exclude from expenses those expenses not incurred in connection with the operation of a service that makes eligible nonsubscription transmissions, and an eligible small webcaster that is a natural person shall exclude from gross revenues his or her income during such period, other than income derived from—

(1) A media or entertainment related business that provides audio or other entertainment programming, or

(2) A business that primarily operates an Internet or wireless service, that is in either case directly or indirectly controlled by such natural person, or of which such natural person beneficially owns 5 percent or more of the outstanding voting or non-voting stock.

(b) *For 2003 and 2004.* For eligible nonsubscription transmissions made by an eligible small webcaster during 2003 or 2004, the royalty rate shall be 10 percent of the eligible small webcaster's first $250,000 in gross revenues and 12 percent of any gross revenues in excess of $250,000 during the applicable year, or 7 percent of the webcaster's expenses during the applicable year, whichever is greater.

(c) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by an eligible small webcaster to facilitate transmissions for which it pays royalties as and when provided in Sections 3 and 4 hereof shall be deemed to be included within, and to comprise 9 percent of, such royalty payments.

*4. Payment of Royalties*

(a) *For the Period 1998—November 2002.* Except as provided in Sections 5(a)(1), 5(a)(2) and 5(b), the balance of any amounts specified in Section 3(a) for eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on November 30, 2002, which has not already been paid, shall be paid in three equal installments, with the first due by January 15, 2003, the second due by May 31, 2003, and the third due by October 31, 2003.

(b) *For the Period December 2002–2004.* The amounts specified in Section 3 for eligible nonsubscription transmissions made by an eligible small webcaster during December 2002 or any month thereafter shall be paid on or before the last day of the month next succeeding such month.

(c) *Qualification To Make Current Payments as Eligible Small Webcaster in 2003 and 2004.* If the gross revenues, plus the third party participation revenues and revenues from the operation of new subscription services, of a transmitting entity and its affiliates have not exceeded $1,250,000 in any year, and the transmitting entity expects to be an eligible small webcaster in 2003 and 2004, the transmitting entity may make payments for 2003 or 2004, as the case may be, on the assumption that it will be an eligible small webcaster for that year for so long as that assumption is reasonable.

(d) *True-Up Between Gross Revenues and Expenses.* In making payments under Section 3, an eligible small webcaster shall, at the time a payment is due, calculate its gross revenues and expenses for the year through the end of the applicable month and pay the applicable percentage of gross revenues or expenses, as the case may be, for the year through the end of the applicable month, less any amounts previously paid for such year.

(e) *True-Up if Eligibility Condition Is Exceeded.* If a transmitting entity has made payments under Section 3(b) for 2003 or 2004 based on the assumption that it will qualify as an eligible small webcaster, as provided in Section 4(c), but the actual gross revenues in 2003, or the actual gross revenues plus third

party participation revenues and revenues from the operation of new subscription services in 2004, of the eligible small webcaster and its affiliates, exceed the maximum amounts provided in Section 8(f), then the transmitting entity shall immediately commence to pay monthly royalties based on the royalty rates otherwise applicable under 17 U.S.C. 112 and 114, and on the third payment date after the month in which such maximum amounts are exceeded, it shall pay an amount of royalties based on such otherwise applicable rates for the whole year through the end of the immediately preceding month, less any amounts previously paid under Section 3(b) for such year.

(f) *Remittance.* Payments of all amounts specified in Section 3 shall be made to SoundExchange and shall under no circumstances be refundable, but if an eligible small webcaster makes overpayments during a year, it shall be entitled to a credit in the amount of its overpayment, and such credit shall be applicable to its payments in subsequent years. Payments shall be accompanied by a statement of account in the form made available on the SoundExchange Web site located at *http://www.soundexchange.com.*

*5. Minimum Fee*

(a) *Minimum Amounts.* Notwithstanding Section 3, eligible small webcasters that elect the royalty rates specified in Section 3 shall pay a minimum fee for the periods specified in this Section 5(a), as follows:

(1) For eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on December 31, 1998, the minimum fee for the year shall be $500.

(2) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 1999 through 2002, the minimum fee for each year in which such transmissions are made shall be $2,000.

(3) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 2003 and 2004, the minimum fee for each year in which such transmissions are made shall be $2,000 if the eligible small webcaster had gross revenues during the immediately preceding year of not more than $50,000 and expects to have gross revenues during the applicable year of not more than $50,000.

(4) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 2003 and 2004, the minimum fee for each year in which such transmissions are made shall be $5,000 if the eligible small webcaster had gross revenues during the immediately preceding year of more than $50,000 or expects to have gross revenues during the applicable year of more than $50,000.

(b) *Time of Payment.* The minimum fees specified in Sections 5(a)(1) and (2) shall be paid by January 15, 2003, except in the case of an eligible small webcaster with gross revenues during the period beginning on November 1, 1998, and ending on November 30, 2002, of not more than $100,000, which may pay such minimum fees in three equal installments at the times specified in Section 4(a). The minimum fees specified in Sections 5(a)(3) and (4) shall be paid in two equal installments, with the first due by January 31 of the applicable year and the second due by June 30 of the applicable year.

(c) *Remittance.* Payments of all amounts specified in this Section 5 shall be made to SoundExchange and shall under no circumstances be refundable.

(d) *Credit Toward Royalties.* All amounts paid under this Section 5 shall be fully creditable toward amounts due under Section 3 for the year for which such amounts are paid under this Section 5, but not any subsequent year.

*6. Notice and Recordkeeping*

(a) *Reports to Be Provided.* For either or both of calendar years 2003 and 2004, an eligible small webcaster that makes an election pursuant to Section 2 covering that year shall, for that year, keep records, and make available to each designated agent of copyright owners of sound recordings and other persons entitled to payment under 17 U.S.C. 114(g), reports of use, covering the following on a channel by channel basis:

(1) The featured recording artist, group or orchestra;

(2) The sound recording title;

(3) The title of the retail album or other product (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the eligible small webcaster for purchase of the sound recording);

(4) The marketing label of the commercially available album or other product on which the sound recording is found—

(A) For all albums or other products commercially released after 2002; and

(B) In the case of albums or other products commercially released before 2003, for 67 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003 and all of the eligible small webcaster's digital audio transmissions during 2004;

(5) The International Standard Recording Code (''ISRC'') embedded in the sound recording, if available—

(A) For all albums or other products commercially released after 2002; and

(B) In the case of albums or other products commercially released before 2003, for 50 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003, and for 75 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2004, to the extent that such information concerning such pre-2003 releases can be provided using commercially reasonable efforts;

(6) The copyright owner information provided in the copyright notice on the retail album or other product (*e.g.*, following the symbol (P) (the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track)—

(A) For all albums or other products commercially released after 2002; and

(B) In the case of albums or other products commercially released before 2003, for 50 percent of an eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003, and for 75 percent of an eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2004, to the extent that such information concerning such pre-2003 releases can be provided using commercially reasonable efforts;

(7) The aggregate tuning hours, on a monthly basis, for each channel provided by the eligible small webcaster as computed by a recognized industry ratings service or as computed by the eligible small webcaster from its server logs;

(8) The channel for each transmission of each sound recording; and

(9) The start date and time of each transmission of each sound recording.

(b) *Computation of Percentages.* For purposes of Sections 6(a)(4)(B), 6(a)(5)(B), and 6(a)(6)(B), all percentages shall be computed for the full year, rather than on a monthly basis.

(c) *Provision of Reports.* Reports of use described in Section 6(a) shall be provided, at the same time royalty payments are due under Section 4(b), to the designated agents.

(d) *Other Matters as Provided by Regulation.* For calendar years 2003 and 2004, details of the means by which copyright owners may receive notice of the use of their sound recordings, and details of the requirements under which reports of use concerning the matters identified in Section 6(a) shall be made available, shall be as provided in regulations issued by the Librarian of Congress under 17 U.S.C. 114(f)(4)(A).

*7. Additional Requirements*

(a) *Proof of Eligibility.* An eligible small webcaster that makes an election pursuant to Section 2 shall make available to SoundExchange, within 30 days after SoundExchange's written request at any time during the 3 years following a period during which it is to be treated as an eligible small webcaster for purposes of these Rates and Terms, sufficient evidence to support its eligibility as an eligible small webcaster during that period. Any proof of eligibility provided hereunder shall be provided with a certification signed by the eligible small webcaster if a natural person, or by an officer or partner of the eligible small webcaster if the eligible small webcaster is a corporation or partnership, stating, under penalty of perjury, that the information provided is accurate and the person signing is authorized to act on behalf of the eligible small webcaster.

(b) *Third Party Participation Revenues.* An eligible small webcaster that makes an election pursuant to Section 2 shall provide to SoundExchange, by not later than January 31 of the year following a period during which it is to be treated as an eligible small webcaster for purposes of these Rates and Terms, a good faith estimate of its third party participation revenues for the previous year. For the year 2004, the eligible small webcaster shall provide an accounting of such third party participation revenues.

SoundExchange may share with individual copyright owners the accounting provided by an eligible small webcaster under this Section 7(b) if SoundExchange does so in such a way that the eligible small webcaster cannot readily be identified.

(c) *Regulations Applicable.* Any otherwise applicable terms determined in accordance with 17 U.S.C. §§ 112 and 114 and applicable to payments under 17 U.S.C. 112 and 114 shall apply to payments under these Rates and Terms except to the extent inconsistent with these Rates and Terms.

(d) *Cooperation in Study.* An eligible small webcaster that makes an election pursuant to Section 2 shall use commercially reasonable efforts to cooperate with the Comptroller General of the United States and the Register of Copyrights in preparing their report to Congress concerning the economic arrangements among eligible small webcasters and third parties, and the effect of those arrangements on royalty fees payable on a percentage of revenue or expense basis, as required by Section 6 of the Small Webcaster Settlement Act of 2002. For purposes of this Section 7(d), ''commercially reasonable efforts'' shall not be interpreted to include any requirement that any principal or employee of an eligible small webcaster travel to attend any proceedings held in connection with such study, or provide confidential business information unless that information will only be disclosed to the public in such a way that the eligible small webcaster cannot readily be identified.

*8. Definitions*

As used in these Rates and Terms, the following terms shall have the following meanings:

(a) An ''*affiliate*'' of a transmitting entity is a person or entity that directly, or indirectly through one or more intermediaries—

(1) Has securities or other ownership interests representing more than 50 percent of such person's or entity's voting interests beneficially owned by—

(A) Such transmitting entity; or

(A) A person or entity beneficially owning securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity;

(2) Beneficially owns securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity; or

(3) Otherwise controls, is controlled by, or is under common control with the transmitting entity.

(b) The term ''*aggregate tuning hours*'' has the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the **Federal Register** on July 8, 2002.

(c) A ''*beneficial owner*'' of a security or other ownership interest is any person or entity who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power with respect to such security or other ownership interest.

(d) The term ''*control*'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(e) The term ''*designated agent*'' shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the **Federal Register** on July 8, 2002.

(f) An ''*eligible small webcaster*'' means a person or entity that has obtained a compulsory license under 17 U.S.C. 112 or 114 and the implementing regulations therefor to make eligible nonsubscription transmissions and ephemeral recordings that—

(1) For the period beginning on October 28, 1998, and ending on December 31, 2002, has gross revenues during the period beginning on November 1, 1998, and ending on June 30, 2002, of not more than $1,000,000;

(2) For 2003, together with its affiliates, has gross revenues during 2003 of not more than $500,000; and

(3) For 2004, together with its affiliates, has gross revenues plus third party participation revenues and revenues from the operation of new subscription services during 2004 of not more than $1,250,000.

In determining qualification under this Section 8(f), a transmitting entity shall exclude—

(A) Income of an affiliate that is a natural person, other than income such natural person derives from another affiliate of such natural person that is either a media or entertainment related business that provides audio or other entertainment programming, or a business that primarily operates an Internet or wireless service; and

(B) Gross revenues of any affiliate that is not engaged in a media or entertainment related business that provides audio or other entertainment programming, and is not engaged in a business that primarily operates an Internet or wireless service, if the only reason such affiliate is affiliated with the transmitting entity is that (i) it is under common control of the same natural person or (ii) both are beneficially owned by the same natural person.

(g) The term ''*expenses*''—

(1) Means all costs incurred (whether actually paid or not) by an eligible small webcaster, except that capital costs shall be treated as expenses allocable to a period only to the extent of charges for amortization or depreciation of such costs during such period as are properly allocated to such period in accordance with United States generally accepted accounting principles (''GAAP'');

(2) Includes the fair market value of all goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property) provided by an eligible small webcaster to any third party in lieu of a cash payment and the fair market value of any goods or services purchased for or provided to an eligible small webcaster by an affiliate of such webcaster; and

(3) Shall not include—

(A) The imputed value of personal services rendered by up to 5 natural persons who are, directly or indirectly, owners of the eligible small webcaster, and for which no compensation has been paid;

(B) The imputed value of occupancy of residential property for which no Federal income tax deduction is claimed as a business expense;

(C) Costs of purchasing phonorecords of sound recordings used in the eligible small webcaster's service;

(D) Royalties paid for the public performance of sound recordings; or

(E) The reasonable costs of collecting overdue accounts receivable, provided that the reasonable costs of collecting any single overdue account receivable may not exceed the actual account receivable.

(h) The term ''*gross revenues*''—

(1) Means all revenue of any kind earned by a person or entity, less—

(A) Revenue from sales of phonorecords and digital phonorecord deliveries of sound recordings;

(B) The person or entity's actual costs of other products and services actually sold through a service that makes eligible nonsubscription transmissions, and related sales and use taxes imposed on such transactions, costs of shipping such products, allowance for bad debts, and credit card and similar fees paid to unrelated third parties;

(C) Revenue from the operation of a new subscription service for which royalties are paid in accordance with provisions of 17 U.S.C. 112 and 114; and

(D) Revenue from the sale of assets in connection with the sale of all or substantially all of the assets of such person's or entity's business, or from the sale of capital assets; and

(2) Includes—

(A) All cash or cash equivalents;

(B) The fair market value of goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property);

(C) In-kind and cash donations and other gifts (but not capital contributions made in exchange for an equity interest in the recipient); and

(D) Amounts earned by such person or entity but paid to an affiliate of such person or entity in lieu of payment to such person or entity.

Gross revenues shall be calculated in accordance with GAAP, except that a transmitting entity that computes Federal taxable income on the basis of the cash receipts and disbursements method of accounting for any taxable year may compute its gross receipts for any period included in such taxable year on the same basis.

(i) The term ''*new subscription service*'' has the meaning given that term in 17 U.S.C. 114(j)(8).

(j) The ''*third party participation revenues*'' of a transmitting entity are revenues of any kind earned by a person or entity, other than the transmitting entity, including those:

(1) That relate to the public performance of sound recordings and are subject to an economic arrangement in which the transmitting entity receives anything of value; or

(2) That are earned by such person or entity from the sale of advertising of any kind in connection with the transmitting entity's eligible nonsubscription transmissions.

[FR Doc. 02–32419 Filed 12–23–02; 8:45 am]

BILLING CODE 1410–31–P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden 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 those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments on this notice must be received by February 24, 2003 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* 2003 Survey Of Doctorate Recipients.

*OMB Approval Number:* 3145–0020.

*Expiration Date of Approval:* April 30, 2003.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

**1. Abstract**

The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. The 2003 SDR will consist of a sample of individuals under the age 76 who have earned research doctoral degrees in science and engineering from U.S. institutions. The purpose of this longitudinal study is to provide national estimates on the doctoral science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The SDR is designed to comply with these mandates by providing information on the supply and utilization of nation's doctorate level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disability in Science and Engineering and Science and Engineering Indicators. The NSF publishes statistics from the survey in many reports, but primarily in the biennial series, Characteristics of Doctoral Scientists and Engineers in the United States. A public release file of collected data, designed to protect respondent confidentiality, also is expected to be made available to research on CD–ROM and on the World Wide Web.

The National Opinion Research Corporation at University of Chicago will conduct the study for NSF. Data are obtained by mail questionnaire, computer assisted telephone interviews and web survey beginning October 2003. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

**2. Expected Respondents**

A statistical sample of approximately 40,000 U.S. doctorates will be contacted in 2003. A total response rate in 2001 was 83%.

**3. Estimate of Burden**

The amount of time to complete the questionnaire may vary depending on an individual's circumstance; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 16,666 hours during the year.

Dated: December 18, 2002.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 02–32298 Filed 12–23–02; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Call for nominations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for three positions on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). These positions are: (1) Nuclear cardiology physician; (2) State government representative; and (3) patients' rights advocate.

**DATES:** Nominations are due on or before February 24, 2003.

**ADDRESSES:** Submit four copies of your resume or curriculum vitae to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION, CONTACT:** Angela R. Williamson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–5030; e-mail *arw@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-

routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiology physician; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State government representative; (k) interventional cardiology physician; and (l) health care administrator.

NRC is inviting nominations for the approaching vacancies of nuclear cardiology physician, State government employee, and patients' rights advocate. The terms of the individuals currently occupying these positions on the ACMUI will end April 2004. Appointed ACMUI members serve a 3-year term, with possible reappointment to an additional 3-year term.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to ACMUI business. Members who are not State or Federal employees are compensated for their services. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees or State government employees are reimbursed travel expenses only. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated this 18th day December, 2002.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Advisory Committee Management Officer, Office of the Secretary of the Commission.*

[FR Doc. 02–32404 Filed 12–23–02; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act; Meeting

**DATES:** Weeks of December 23, 30, 2002, January 6, 13, 20, 27, 2003.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

*Week of December 23, 2002*

There are no meetings scheduled for the week of December 23, 2002.

*Week of December 30, 2002—Tentative*

There are no meetings scheduled for the week of December 30, 2002.

*Week of January 6, 2003—Tentative*

There are no meetings scheduled for the week of January 6, 2003.

*Week of January 13, 2003—Tentative*

Tuesday, January 14, 2003

10 a.m.—Discussion of security issues (closed—Ex. 1).

2 p.m.—Briefing on NRC Lessons Learned: Davis-Besse RVH Degradation (public meeting) (contact: Stacey Rosenberg, 301–415–1733).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*Week of January 20, 2003—Tentative*

Thursday, January 23, 2003

2 p.m.—Briefing on status of NMSS programs, performance, and plans—Materials Safety (public meeting) (contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

*Week of January 27, 2003—Tentative*

There are no meetings scheduled for the Week of January 27, 2003.

* 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: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

*Additional Information:* The briefing on status of NRR programs, performance, and plans tentatively scheduled on January 14, 2003, has been rescheduled tentatively on February 10, 2003.

By a vote of 5–0 on December 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of (a) Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI–02–03, 55 NRC 158 (2002) (Granting Applicant's Petition for Review of Board's Admission of Terrorism Contention in LBP–01–35, 54 NRC 403 (2002)), (b) Private Fuel Storage, L.L.C. (independent spent fuel storage installation), CLI–02–03, 55 NRC 155 (2002) (Accepting Referred Ruling Denying Admission of Utah's Terrorism Contention in LBP–01–37, 54 NRC 476 (2001)), (c) Duke Energy Corp. (McGuire Nuclear Station, units 1 & 2; Catawba Nuclear Station, units 1 & 2), CLI–02–06, 55 NRC 164 (2002) (Accepting Certification of Terrorism-related issue in LBP–02–04, 55 NRC 49 (2002)), (d) Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, until no. 3), CLI–02–05, 55 NRC 131 (2002) (Accepting Referred Ruling Denying Admission of the Interventors' Terrorism Contention in LBP–02–05, 55 NRC 161 (2002)), (e) Duke Energy Corporation (McGuire Nuclear Station, units 1 & 2, Catawba Nuclear Station, units 1 & 2, and (f) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI; Utah's ''Suggestion of Lack of Jurisdiction'' and Petition for Rulemaking under the Nuclear Waste Policy Act be held on December 18, and on less than one week's notice to the public.

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: December 17, 2002.

**R. Michelle Schroll,**

*Acting Technical Coordinator, Office of the Secretary.*

[FR Doc. 02–32544 Filed 12–20–02; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No SIgnificant Hazards Considerations

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section

189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, November 25, through December 12, 2002. The last biweekly notice was published on December 10, 2002 (67 FR 75867).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 23, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, (TMI Unit 1) Dauphin County, Pennsylvania*

*Date of amendment request:* November 8, 2002.

*Description of amendment request:* The proposed amendment would delete sections 3.15.3 and 4.12.3, ''Auxiliary and Fuel Handling Building Air Treatment System,'' of the TMI Unit 1 Technical Specifications (TSs) and their corresponding Bases. Various minor typographical corrections and other administrative corrections are also proposed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This change will delete the existing Technical Specifications 3.15.3 and 4.12.3. It does not impact nor change the physical configuration of any system, structure or component, nor does it change the manner in which any system is operated. Any change to the system design will be evaluated in accordance with the requirements of [title 10 of the Code of Federal Regulations (10 CFR)] 10 CFR 50.59. Failure of the AFHBVS [Auxiliary and Fuel Handling Building Ventilation System] will neither initiate any type of accident nor increase the severity of the consequences of an accident.

Previously approved analyses of the dose consequences of the accidents described in the TMI Unit 1 UFSAR [Updated Final Safety Analysis Report] confirmed that potential dose consequences were below the limits of 10 CFR 100 or 10 CFR 50.67 without the operation of the AFHBVS. These analyses are not affected by the proposed Technical Specification change. Thus the AFHBVS is not required for mitigation of any accident as described in TMI Unit 1 UFSAR chapter 14.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This activity will delete sections of the Technical Specifications applicable to the AFHBVS. This change does not physically alter any system, structure or component. Any change to the system design will be evaluated in accordance with the requirements of 10 CFR 50.59. The proposed change will not cause the AFHBVS to operate outside its design basis. There will be no impact to any operational feature of the system or any procedures that control its operation. The design basis of the AFHBVS as described in the UFSAR is not revised.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The deletion of Technical Specification sections 3.15.3 and 4.12.3 will not impact the operation of the Auxiliary Fuel Handling Building Air Treatment System or the Fuel Handling Building ESF (engineered safety features) Ventilation system. The proposed change will not cause these systems to be placed in a configuration outside of their design basis nor will it reduce the margin of safety of these systems. The AFHBVS will continue to be operable in accordance with the applicable plant operating procedures. The AFHBVS will also continue to be tested and maintained under periodic operations surveillance and the TMI Unit 1 Preventive Maintenance Program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Richard J. Laufer.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* October 24, 2002, as supplemented November 21, 2002.

*Description of amendment request:* The proposed amendments would

revise the Technical Specifications to extend the completion time for an inoperable train of low pressure injection from 72 hours to seven days. The proposed amendments are risk-informed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. The specific responses to the criterion are discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change allows for one train of Low Pressure Injection to be inoperable for up to seven days. The Low Pressure Injection system is not an initiator for any accident previously evaluated and the consequences of an event during the extended Completion Time are no more severe than the consequences of the same event during the current Completion Time. Therefore, the consequences of an event previously analyzed are not increased. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change allows for one train of Low Pressure injection to be inoperable for up to seven days. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods of governing normal plant operation. Therefore, the proposed changes does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

The proposed change allows for one train of Low Pressure injection to be inoperable for up to seven days. An evaluation presented in Topical Report BAW–2295 and accepted by the NRC concluded that the extended Completion Time did not result in a significant reduction in the margin of safety. Therefore, the proposed changes does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

*NRC Section Chief:* John A. Nakoski.

*Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington*

*Date of amendment request:* October 22, 2002.

*Description of amendment request:* The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, ''Elimination of Requirements for a Post Accident Sampling System (PASS).'' The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated October 22, 2002.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

*Criterion 1*—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase

in the consequences of any accident previously evaluated.

*Criterion 2*—The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

*Criterion 3*—The proposed change does not involve a significant reduction in the margin of safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Stephen Dembek.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of amendment request:* August 19, 2002.

*Description of amendment request:* The proposed amendment would modify the Technical Specifications (TSs) 3/4.2, ''Protective Instrumentation,'' and TS 3/4.7, ''Containment Systems,'' by changing requirements associated with post-accident monitoring (PAM) instrumentation. This will reflect the guidance of the U.S. Nuclear Regulatory Commission Regulatory Guide 1.97, and adopt standard TS requirements for PAM instrumentation. The proposed amendment would also modify the associated Bases.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

*Response:* No.

Post-Accident Monitoring (PAM) Instrumentation is not an initiator of any previously evaluated accident because there is no credible failure of PAM instrumentation that could initiate previously evaluated accidents. Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously analyzed.

The availability and use of PAM instrumentation help to ensure that the manual operator actions for mitigating an accident will be taken, and that the operator will be able to verify that automatic actions have occurred. The proposed changes make the requirements in the Technical Specifications more consistent with assumed operator actions. The proposed required actions, allowed out-of-service times, and surveillance intervals are appropriate based on operating experience, other instrumentation available, the passive nature of the instrument (no critical automatic action is assumed to occur from these instruments), and the low probability of an event requiring PAM instrumentation. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously analyzed.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

*Response:* No.

The proposed change does not involve the physical modification of structures[,] systems, or components, plant design basis, or the manner in which the plant is operated. PAM instrumentation is passive and does not initiate automatic actions. As a result, there are no credible failures that could initiate a new or different kind of accident from any accident previously evaluated.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the change involve a significant reduction in the margin of safety?

*Response:* No.

PAM instrumentation performs no automatic functions. PAM instruments help to ensure that operators take necessary manual actions to mitigate the consequences of an accident, and that operators have adequate information to confirm the operation of automatic accident mitigation functions have occurred. The proposed required actions, allowed out-of-service times, and surveillance intervals are appropriate based on operating experience, other instrumentation available, the passive nature of the instrument (no critical automatic action is assumed to occur from these instruments), and the low probability of an event requiring PAM instrumentation.

Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

*NRC Section Chief:* James W. Andersen, Acting.

*Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* February 26, 2002, as revised on October 9, 2002 and supplemented on October 30, 2002. This notice supersedes 67 FR 34495 published on May 14, 2002, which was based on the licensee's application dated February 26, 2002.

*Description of amendment request:* Revise the definition of Operable in Technical Specification (TS) 1.0.K with respect to support system requirements for AC power sources. Conforming changes are made to specific support system TSs in sections 3/4.5, ''Core and Containment Cooling Systems,'' 3/4.7, ''Station Containment Systems,'' and 3/4.10, ''Auxiliary Electrical Power Systems,'' and associated Bases.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised definition of ''Operable'' redefines the AC power source requirements to allow either normal or emergency power available for equipment requiring AC power to be considered operable and provides conforming changes to specific supported system TSs. None of the proposed changes

affects any parameters or conditions that could contribute to the initiation of any accident. The proposed change does not affect the ability of the AC power sources to perform their required safety functions nor does the proposed change affect the ability of the systems requiring AC power to perform their respective safety functions. As a result, the ability of these systems to mitigate accident consequences is unchanged. As such, these changes do not impact initiators of analyzed events, nor the analyzed mitigation of design-basis accident or transient events.

More stringent requirements for the inoperable AC power source action provisions that ensure availability of all TS required systems, subsystems, trains, components, and devices and the purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event.

The elimination of some explicit requirements to verify the operability of remaining equipment (*i.e.*, to verify which TS action is required to be entered and taken) does not affect the initiation of any event, nor does it negatively impact the mitigation of any event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modification to the plant, change in TSs setpoints, change in plant design basis, or a change in the manner in which the plant is operated. No new of different type of equipment will be installed. No safety-related equipment or safety functions are altered as a result of these changes. In addition, there are no changes in methods governing normal plant operation. No new accident modes are created since plant operation is unchanged. None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. The changes do not introduce any new accident or malfunction mechanism that could create a new or different kind of accident, thus, no new failure mode is created. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not involve a significant reduction in a margin of safety.

The manner in which plant systems relied upon in the safety analyses to provide plant protection is not changed. Plant safety margins continue to be maintained through the limitations established in the TSs Limiting Conditions for Operation and Actions. These changes do not impact plant equipment design or operation, and there are no changes being made to safety limits or safety system settings that would adversely affect the ability of the plant to respond as assumed in the accident analyses as a result of the proposed changes. Since the changes have no effect on any safety analysis assumptions or initial conditions, the margins of safety in the safety analyses are maintained.

In addition, administrative changes that do not change technical requirements or meaning, and the imposition of more stringent requirements to ensure operability, have no negative impact on margins of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

*NRC Section Chief:* James W. Andersen, Acting.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of amendment request:* November 22, 2002.

*Description of amendment request:* The proposed amendment would allow for a one-time change to revise the steam generator (SG) inservice inspection frequency requirements in Technical Specification 4.4.5.3.a to allow a 40-month inspection interval after one inspection, rather than after two consecutive inspections, based on the results falling into the C–1 classification.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident preciously evaluated?

*Response:* No.

There are no damage mechanisms that are active in the ANO–2 (Arkansas Nuclear One, Unit 2) SGs that would prematurely create an accident or increase SG leakage. The scope of inspections performed during 2R15, the first refueling outage following SG replacement, exceeded the TS (technical specification) requirements for ensuring that the ANO–2 steam generator[s] fell into the C–1 category. The ANO–2 steam generator[s] meet the current industry examination guidelines without performing inspections during the next refueling outage. The results of the Condition Monitoring Assessment performed during 2R15 demonstrated that all performance criteria were met. The results of the 2R15 Operational Assessment show that all performance criteria are being met over the proposed operating period.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change will not alter any plant design basis or postulated accidents resulting from potential SG tube degradation. The scope of inspections performed during the 2R15 outage, the first refueling outage following steam generator replacement, exceeded the TS requirements.

The proposed change does not affect the design of the SGs, the method of operation, or reactor coolant chemistry controls. No new equipment is being introduced and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant systems or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Steam generator tube integrity is a function of design, environment, and current physical condition. Extending the steam generator tube inservice inspection frequence by one operating cycle will not alter their function or design. Inspections conducted prior to placing the SGs into service and inspection during the first refueling outage following SG replacement demonstrate that the SGs do not have fabrication damage or an active damage mechanism. The scope of those inspections significantly exceeded those required by the TS. These inspection results were comparable to similar inspection results for the same model of RSGs (replacement steam generators) installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida*

*Date of amendment request:* August 16, 2002.

*Description of amendment request:* The proposed amendments would modify Technical Specification (TS) Surveillance section 4.0.3 to extend the delay time for completion of a missed surveillance to 24 hours or up to the surveillance frequency, whichever is greater. Additionally the proposed change would add a TS Bases Control Program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*Criterion 1*—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of two sentences from one specification to another in TS section 4.0, and the addition of a TS Bases Control Program in TS section 6.0, consistent with STS (Standard TS), is administrative in nature, does not affect the interpretation or execution of the TS, and has no effect on the probability or consequences of an accident previously evaluated.

*Criterion 2*—The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of two sentences from one specification to another in TS section 4.0, and the addition of a TS Bases Control Program in TS section 6.0, consistent with STS, is administrative in nature, does not affect the interpretation or execution of the TS, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

*Criterion 3*—The proposed change does not involve a significant reduction in the margin of safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [limiting condition for operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function and this change does not involve a significant reduction in a margin of safety.

The relocation of two sentences from one specification to another in TS section 4.0, and the addition of a TS Bases Control Program in TS section 6.0, consistent with STS, is administrative in nature, does not affect the interpretation or execution of the TS, and does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Allen G. Howe.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* November 15, 2002.

*Description of amendment request:* The proposed changes would revise the Safety Limit Minimum Critical Power Ratio (SLMCPR) for both two recirculation (dual) loop operation and single recirculation loop operation in Technical Specification (TS) 2.1.1.2 to reflect results of a cycle specific calculation performed for Cycle 22.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Cooper Nuclear Station Cycle 22 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits (MCPR) are established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Based on the above NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase

in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for Cycle 22.

Based on the above NPPD concludes that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limits is violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.*, that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Based on the above, NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

From the above discussions, NPPD concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Section Chief:* Robert A. Gramm.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California*

*Date of amendment requests:* September 24, 2002.

*Description of amendment requests:* The proposed license amendments would revise Technical Specifications (TS) 3.4.11, ''Pressurizer Power Operated Relief Valves (PORVs),'' and the licensing basis to credit automatic actuation of the Class 1 power operated relief valves (PORVs), instead of the pressurizer safety valves (PSVs), to limit reactor coolant system pressure changes for the spurious operation of the safety injection system at power event, and other design basis accidents. Also, TS 3.4.10, ''Pressurizer Safety Valves,'' would be revised to allow PSV loop seal temperatures to be less than the lower design temperature during plant heatup and cooldown in Mode 3 and in Mode 4 when any reactor coolant system cold leg temperature is greater than the low temperature overpressure protection arming temperature specified in the pressure temperature limits report, provided at least one Class I PORV is available and capable of providing automatic pressure relief. This would allow gradual stabilization of the loop seal temperatures, and avoid having to partially drain the loop seals to establish the proper PSV inlet temperature.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part of the instrumentation for automatic control of the Class 1 power operated relief valves (PORVs) during power operation is Instrument Class II. The automatic actuation circuitry will be upgraded to eliminate the Class II actuation circuitry, by providing output from the reactor protection system directly to the Class 1 PORVs. This upgrade does not adversely affect the ability of the Class 1 PORVs to function to mitigate a reactor coolant system (RCS) overpressure condition, and would not increase the probability of a spurious opening of a PORV.

The spurious operation of the safety injection (SI) system at power event is analyzed to assure that the RCS pressure limits are not exceeded, and that the departure from nucleate boiling ratio (DNBR) limits are met. The event is discussed in Final Safety Analysis Report (FSAR) Update Section 15.2.15. The current pressurizer overfill analysis takes credit for operation of the pressurizer safety valves (PSVs) to relieve a RCS overpressure condition. No credit is taken in the current analysis for automatic operation of the PORVs, which function to limit undesirable opening of the PSVs, since part of the automatic actuation circuitry is currently Instrument Class II. The current analysis that verifies that the DNBR limits are met remains bounding and was not reanalyzed.

The spurious operation of the SI system at power event was reanalyzed for pressurizer overfill using a RETRAN02/Mod005.2 computer code model of Diablo Canyon Power Plant. The analysis credits for automatic actuation of upgraded Class 1 PORVs to prevent water relief from the PSVs. Use of the Class 1 PORVs to perform any new safety related function would be evaluated in accordance with 10 CFR 50.59.

The RETRAN analysis demonstrates that the Class 1 PORVs can be expected to mitigate the consequences of a spurious operation of the SI system at power event, and that there is sufficient time for the operators to take action and open a PORV block valve(s) if closed.

Crediting the PORVs in the pressurizer overfill case for the spurious operation of the SI system at power event does not increase the probability of the occurrence of the transient since the automatic opening of the PORVs for RCS pressure control is not an initiator for the event. This change allows for the acceptance criteria to be met for the spurious operation of the SI system at power event, ensuring that the consequences of this event remain within acceptable levels.

The probability of a spurious operation of the SI system at power event is not affected by this proposed change and the above analysis demonstrates that the PORVs will adequately function in the automatic mode to mitigate the consequences of the transient. As such, there are no changes in the type or amount of any effluent released offsite as a result of this change.

The proposed change would allow the PSV loop seal temperatures to be less than the lower design temperature during plant heatup and cooldown in Mode 3, and in Mode 4 when any RCS cold leg temperature is greater than the low temperature overpressure protection (LTOP) arming temperature specified in the pressure temperature limits report (PTLR), provided at least one Class 1 PORV is available and capable of providing automatic pressure relief. An evaluation of the applicable events in these modes indicates one Class 1 PORV is capable of preventing water relief from the PSVs and maintaining the reactor coolant pressure below 110 percent of its design value.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would allow for automatic actuation of the Class 1 PORVs to be credited instead of the PSVs for the spurious operation of the SI system at power event. The proposed changes also allow the PSV loop seal temperatures to be less than the lower design temperature during plant heatup and cooldown in Mode 3, and in Mode 4 when any RCS cold leg temperature is greater than the LTOP arming temperature specified in the PTLR, provided at least one Class 1 PORV is available and capable of providing automatic pressure relief. Operation of the PORVs would prevent water relief from the PSVs, reducing the potential for a PSV not to properly reseat, and keep reactor coolant pressure below 110 percent of its design value. No new system interactions have been created, such that there is no increase in the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different

kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes would allow for automatic actuation of the Class 1 PORVs to be credited instead of the PSVs for the spurious operation of the SI system at power event. The proposed changes allow the PSV loop seal temperatures to be less than the lower design temperature during plant heatup and cooldown in Mode 3, and in Mode 4 when any RCS cold leg temperature is greater than the LTOP arming temperature specified in the PTLR, provided at least one Class 1 PORV is available and capable of providing automatic pressure relief.

The spurious operation of the SI system at power event is analyzed to assure that the RCS pressure limits are not exceeded, and that the DNBR limits are met. The current pressurizer overfill analysis takes credit for operation of the PSVs to relief a RCS overpressure condition. No credit is taken in the current analysis for automatic operation of the PORVs, since part of the PORV automatic actuation circuitry is currently Instrument Class II. Since the PORV function would limit undesirable opening of the PSVs, the automatic actuation circuitry will be upgraded so that the PORVs can be credited for accident mitigation. This change would specifically allow for automatic actuation of the upgraded Class 1 PORVs to be credited instead of the PSVs in the accident analysis for the pressurizer overfill case.

A reanalysis for pressurizer overfill takes credit for the upgraded PORVs and shows that they can be expected to mitigate the consequences of a spurious operation of the SI system at power event, and that there is sufficient time for the operators to take action and open a PORV block valve(s) if closed. The current DNBR analysis remains bounding and was not reanalyzed.

The Class 1 PORVs will actuate to prevent water relief from the PSVs and keep reactor coolant pressure below 110 percent of its design value for a spurious operation of the SI system at power event. The conservative acceptance criteria for the current FSAR Update design analysis will continue to be met, and the margins of safety established in previous accident and transient analysis are not altered. The Class 1 PORVs will also provide overpressure protection during the period when the PSV loop seal temperature is less than the design limit.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Section Chief:* Stephen Dembek.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* October 30, 2002.

*Description of amendment request:* The proposed amendments would decrease the Control Room Emergency Outside Air Supply System (CREOASS) maximum allowed filter train pressure drop from <9.1 inches water gage (wg), to <7.3 inches wg in Technical Specification (TS) 5.5.7.d to correct an error in the maximum allowed value. The proposed maximum allowed pressure drop across a filter train is consistent with current design analyses and test acceptance criteria.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change decreases the maximum acceptable pressure loss through the Control Room Emergency Outside Air Supply System (CREOASS) filter train. A limit is placed on the filter train pressure loss to assure that the CREOASS can deliver the design flowrate assumed in the control room radiological consequence analysis presented in the SSES Final Safety Analysis Report (FSAR). The proposed change assures the system design flowrate will be met. Thus, the consequences of any accident previously evaluated are not increased. [The proposed change does not involve a physical difference or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change does not change the design function or operation of the CREOASS.] The maximum allowable pressure drop through the CREOASS filter train is not an accident initiator thus, the probability of an accident previously evaluated is not increased. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change does not change the design function or operation of the CREOASS. Thus this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed action does not involve a significant reduction in a margin of safety. For the CREOASS, a lower maximum allowed pressure drop in TS does not adversely impact theoperation of any safety-related component or equipment. The proposed TS value is consistent with the design analysis and test acceptance criteria. Engineering evaluations concluded that there are no impacts on safety-related systems or accident analyses associated with the proposed change.

The margin of safety is established through the design of plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not impact the condition or performance of structures, systems, and components relied upon for accident mitigation.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Section Chief:* Richard J. Laufer.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* October 31, 2002.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs) to incorporate generic change (Technical Specification Task Force) TSTF–306, Revision 2 to NUREG 1433, ''Standard Technical Specifications for General Electric Plants (BWR/4),'' Revision 1, which has been approved by the NRC for adoption by licensees. Limiting Condition for Operation (LCO) 3.3.6.1, ''Primary Containment Isolation Instrumentation,'' would be revised to add an ACTIONS Note allowing intermittent opening, under administrative control, of penetration flow paths that are isolated to comply with ACTIONS, and to breakout Traversing Incore Probe (TIP) System isolation as a separate isolation function with an associated Required Action to

isolate the penetration within 24 hours rather than immediately initiate a unit shutdown. The associated Bases would also be revised in accordance with TS 5.5.10, ''TS Bases Control Program,'' to be consistent with TSTF–306, Revision 2, and to document the proposed changes and provide supporting information.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability * * * or consequences of an accident previously evaluated?

The proposed change relaxes Required Actions. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated. Further, the Required Actions in this change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition considering the operability status of the redundant systems of required features, [and] the capacity and capability of remaining features, while minimizing the risk associated with continued operation. Therefore, the relaxed Required Actions do not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The Required Actions and associated Completion Times in this change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in a margin of safety. As provided in the justification, this change has been evaluated to minimize the risk of continued operation under the specified Condition, considering the operability status off the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repair or replacement of required features, and the low probability of a design basis accident occuring during the repair period. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Section Chief:* Richard J. Laufer.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* October 31, 2002.

*Description of amendment request:* The proposed amendment would revise the SSES Technical Specification (TS) requirements for OPERABILITY of the Main Turbine Bypass System (MTBS) bypass valves. Specifically, Surveillance Requirement (SR) 3.7.6.1 would be revised to verify one complete cycle of only each required turbine bypass valve every 31 days. Currently this TS assumes all five main turbine bypass valves are required to be operable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability * * * or consequences of an accident previously evaluated?

The proposed change provides LCO [Limiting Condition for Operation] requirements for operation of the facility that are consistent with the safety analyses. Since the safety analyses do not take credit for any margin provided by the fifth main turbine bypass valve, these LCO requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the current safety analyses and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change does impose different requirements. However, the change is consistent with the assumptions in the current safety analyses and licensing basis, and has been evaluated to ensure that no new accident initiators are introduced. Thus this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The imposition of less restrictive LCO requirements does not involve a significant reduction in a margin of safety. As provided in the justification, this change has been evaluated to ensure that the current safety analyses and licensing basis requirements are maintained. This change does not involve a significant reduction in a margin of safety since the required number of main turbine bypass valves will be the number assumed in the safety analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Section Chief:* Richard J. Laufer.

*TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somerville County, Texas*

*Date of amendment request:* November 19, 2002.

*Brief description of amendments:* The proposed amendments would revise Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Operating Licenses, Appendix B, ''Environmental Protection Plan,'' to revise and replace references to the U.S. Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) permit. The EPA delegated the provisions of the NPDES permit for CPSES to the State of Texas, Texas Natural Resource Conservation Commission (currently the Texas Commission on Environmental Quality), in accordance with the rules and regulations of both agencies. In addition, minor administrative changes to the Environmental Protection Plan's description are also proposed to be consistent with provisions of the current Texas Pollutant Discharge Elmination System (TPDES) permit and the Final Environmental Statement for the Operating License.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No

The requested changes involve an administrative correction to the Comanche Peak Steam Electric Station (CPSES) Operating Licenses, Appendix B ''Environmental Protection Plan'' to replace references to the U.S. Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) permit with references to the current Texas Pollutant Discharge Elimination System (TPDES) permit. The continuing environmental regulatory provisions of the NPDES permit are incorporated and renewed in the current State of Texas TPDES permit. The change in permit issuing authority was achieved in a manner consistent with the rules and regulations of both the EPA and the Texas Natural Resource Conservation Commission (TNRCC) (currently the Texas Commission on Environmental Quality).

Other minor changes proposed in the Environmental Protection Plan's description are administrative in nature and provide consistency with the provisions of the current TPDES permit and the NRC's [U.S. Nuclear Regulatory Commission] Final Environmental Statement—Operating License Stage.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves administrative changes only.

No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* Robert A. Gramm.

*Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia*

*Date of amendment request:* November 5, 2002.

*Description of amendment request:* The proposed changes would revise the secondary coolant surveillance test requirements in table 4–2B, item 6, of the Technical Specifications (TS).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to Technical Specifications deletes the secondary coolant sampling requirements for the fifteen minute degassed beta and gamma activity test required once per 72 hours and for the semiannual dose equivalent I–131 analysis in TS Table 4.1–2B. The requirement for a dose equivalent I–131 analysis to be performed on a monthly basis remains in Table 4.1–2B. In accordance with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based upon the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the sampling surveillance test requirements for the secondary coolant. Analyzed events are initiated by the failure of plant structures, systems, or components. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that could initiate an analyzed event. The proposed change will not alter the design and operation of, or otherwise increase the likelihood of failure of, any plant equipment that could initiate an analyzed accident.

The deletion of the 15 minute degassed beta and gamma activity test once every 72 hours is a less restrictive change, while the deletion of the semiannual equivalent dose I–131 analysis is more restrictive. In view of the higher sensitivity of the liquid gamma isotopic test used in calculating the dose equivalent I–131, the proposed deletion of the 15 minute degassed beta and gamma activity test and the proposed monthly performance of the dose equivalent I–131 analysis is appropriate. The dose equivalent I–131 analysis serves to confirm the validity of the safety analysis assumptions.

As a result, the probability or consequences of any accident previously evaluated are not significantly affected by the proposed change in surveillance frequencies.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the method of plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

A limit on the specific activity of the secondary coolant is required in order to limit the radiological consequences of a main steam line break to a small fraction of the 10 CFR 100 criteria. The proposed sampling surveillance test requirements for the secondary coolant will verify that the TS-required specific activity limit is satisfied and will serve to confirm the validity of the safety analysis assumptions. Hence, the proposed change in sampling surveillance test requirements does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

*NRC Section Chief:* John A. Nakoski.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in

connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* September 6, 2002.

*Brief description of amendments:* The amendments replace the peak linear heat rate safety limit, in TS 2.1.1.2, ''Reactor Core SLs [Safety Limits],'' by a peak fuel centerline temperature safety limit.

*Date of issuance:* December 2, 2002.

*Effective date:* December 2, 2002, and shall be implemented within 90 days of the date of issuance.

*Amendment Nos.:* Unit 1–145, Unit 2–145, Unit 3–145.

*Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* October 29, 2002 (67 FR 66007). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 2002.

*No significant hazards consideration comments received:* No.

*Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut*

*Date of amendment request:* July 7, 2000, as supplemented by letters dated June 14, July 31, August 15, August 22, September 6, September 7, 2001, and May 9, June 26, August 15, August 20, and October 10, 2002.

*Brief description of amendment:* The amendment adds a license condition which approves the License Termination Plan (LTP) for the Haddam Neck Plant, and provides the criteria by which the licensee may make changes to the LTP without prior NRC approval.

*Date of issuance:* November 25, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 197.

*Facility Operating License No. DPR–61:* The amendment adds a condition to the Facility Operating License.

*Date of initial notice in **Federal Register:*** December 13, 2000 (65 FR 77915).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 2002.

No significant hazards consideration comments received: No.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* July 10, 2002.

*Brief description of amendment:* This amendment revises Technical Specifications Surveillance Requirement 3.1.4.2 to extend the control rod scram time testing interval from 120 days to 200 days of full power operation.

*Date of issuance:* December 12, 2002.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 126.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 17, 2002 (67 FR 58641).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2002.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket No. 50–10, Dresden Nuclear Power Station (DNPS), Unit 1, Grundy County, IL*

*Date of amendment request:* August 1, 2002.

*Brief description of amendments:* The amendment revises the Operating License to update references to plant documents, deletes Technical Specification (TS) limiting conditions for required equipment and surveillance requirements that no longer apply or are being relocated to the Dresden Technical Requirements Manual, and deletes or revises TS administrative control and staffing requirements that either no longer apply or have changed due to the Unit 1 Fuel Storage Pool no longer containing spent fuel.

*Date of issuance:* December 3, 2002.

*Effective date:* December 3, 2002.

*Amendment No.:* 41.

*Facility Operating License No. DPR–2:* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 17, 2002 (67 FR 58642).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 2002.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of application for amendments:* July 19, 2002, as supplemented by letters dated October 21 and November 8, 2002.

*Brief description of amendments:* The amendments would extend the use of the current pressure and temperature (P/T) limit curves in Technical Specification (TS) 3.4.11, ''RCS Pressure and Temperature (P/T) Limits,'' until December 15, 2004. The change will allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P, ''General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation,'' methodology into the P/T curves in TS 3.4.11.

*Date of issuance:* December 3, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 156 & 142.

*Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 30, 2002 (67 FR 66170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 2002.

No significant hazards consideration comments received: No.

*Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York*

*Date of application for amendment:* July 12, 2002.

*Brief description of amendment:* The amendment revised Technical Specifications sections 3.1.1 and 4.1.1, ''Control Rod System,'' by reducing the power level below which the rod worth minimizer or a second independent verification of rod position must be used from 20% to 10% rated thermal power.

*Date of issuance:* December 9, 2002.

*Effective date:* As of the date of issuance to be implemented before startup from Refueling Outage 17.

*Amendment No.:* 178.

*Facility Operating License No. DPR–63:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 6, 2002 (67 FR 50957).

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 2002.

No significant hazards consideration comments received: No.

*Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan*

*Date of application for amendment:* August 26, 2002.

*Brief description of amendment:* The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

*Date of issuance:* December 12, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment No.:* 210.

*Facility Operating License No. DPR–20.* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 1, 2002 (67 FR 61683).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2002.

No significant hazards consideration comments received: No.

*Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* April 30, 2002, as supplemented June 26, August 29, October 3, October 23, and November 11, 2002.

*Brief description of amendments:* These amendments increase the licensed reactor core power level by 1.4 percent from 1518.5 megawatts thermal (MWt) to 1540 MWt.

*Date of issuance:* November 29, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment Nos.:* 207 and 212.

*Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** September 11, 2002 (67 FR 57630). The June 26, August 29, October 3, October 23, and November 11, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2002.

No significant hazards consideration comments received: No.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* July 23, 2002, as supplemented by letters dated October 8 and 28, 2002.

*Brief description of amendment:* The amendment revises TS 2.5(1), ''Steam and Feedwater Systems'' to: (1) remove the requirement to demonstrate operability of redundant auxiliary feedwater system components, and (2) provide an allowed outage time to restore operability of the emergency feedwater storage tank. In addition to these revisions, TS 2.5 has been revised to be more consistent with NUREG–1432, ''Improved Standard Technical Specification (ISTS) for Combustion Engineering Plants, Revision 2.''

*Date of issuance:* November 26, 2002.

*Effective date:* November 26, 2002, and shall be implemented within 120 days from the date of issuance.

*Amendment No.:* 212.

*Facility Operating License No. DPR–40:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 3, 2002 (67 FR 56327). The October 8 and 28, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendments request:* November 7, 2001, as supplemented by letter dated October 18, 2002.

*Brief Description of amendments:* The amendments revise the operating licenses by replacing the license conditions concerning spent fuel cask lifting devices with a commitment to the requirements in American National Standards Institute N14.6–1978, ''Standard for Special Lifting Devices for Shipping Containers Weighing 10,000 lbs (4500 kg) or More for Nuclear Materials,'' in the Updated Final Safety Analysis Report.

*Date of issuance:* December 2, 2002.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 158 and 149.

*Facility Operating License Nos. NPF–2 and NPF–8:* Amendments revise the Operating License.

*Date of initial notice in **Federal Register:*** October 29, 2002 (67 FR 66013). The supplement dated October 18, 2002, provided clarifying information that did not change the scope of the November 7, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 2002.

No significant hazards consideration comments received: No.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendments request:* May 23, 2002, as supplemented by letter dated October 31, 2002. The supplemental information provided clarification that did not change the scope or the initial no significant hazards consideration determination.

*Brief description of amendments:* The amendments revise the technical specifications for the end-of-life moderator temperature coefficient surveillance requirements.

*Date of issuance:* November 26, 2002.

*Effective date:* Amendments are effective on the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* Unit 1–144; Unit 2–132.

*Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 9, 2002 (67 FR 45572). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

*Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia*

*Date of application for amendments:* May 14, 2002, as supplemented July 22, 2002.

*Brief Description of amendments:* These amendments revise Technical Specifications section 4.5 and the associated Bases to change the surveillance frequency of the containment spray and recirculation spray header nozzles from a periodic surveillance of once every 10 years to a performance-based surveillance following maintenance that could cause nozzle blockage.

*Date of issuance:* December 10, 2002.

*Effective date:* December 10, 2002.

*Amendment Nos.:* 232 and 232.

*Facility Operating License Nos. DPR–32 and DPR–37:* Amendments change the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 25, 2002 (67 FR 42831). The July 22, 2002, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 2002.

No significant hazards consideration comments received: No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* September 27, 2001, as supplemented by letters dated June 27 and September 19, 2002.

*Brief description of amendment:* The amendment revises section 5.3.1.1, ''Unit Staff Qualifications,'' of the technical specifications to state new education and experience eligibility requirements for operator license applicants. As stated in the letter dated September 19, 2002, the new requirements are outlined by the National Academy for Nuclear Training in its ''Guidelines for Initial Training and Qualification of Licensed Operators,'' which were issued January 2000.

*Date of issuance:* November 26, 2002.

*Effective date:* November 26, 2002, and shall be implemented within 30 days of the date of issuance.

*Amendment No.:* 150.

*Facility Operating License No. NPF–42.* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 23, 2002 (67 FR 48223).

The September 19, 2002, supplemental letter provided additional information that clarified the application, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 16th day of December 2002.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–32081 Filed 12–23–02; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–14206]**

## Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the American Stock Exchange LLC (El Paso Electric Company, Common Stock, No Par Value)

December 18, 2002.

El Paso Electric Company Inc., a Texas corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex rule 18 by complying with all applicable laws in State of Texas, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on July 18, 2002, to withdraw the Issuer's Security from listing on the Amex. The Issuer states that trading in the Security on the New York Stock Exchange, Inc. (''NYSE'') began on December 4, 2002. The Issuer's decision to delist from the Amex and to list on the NYSE stems from dissatisfaction with the level of liquidity that has dominated trading on the Amex. The Board therefore believes that delisting its Security from the Amex and listing on the NYSE is in the best interest of the shareholders.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its listing on the NYSE or its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before January 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–32310 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application to Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Scania Aktiebolag, American Depository Shares (Each Representing One A and B Share, Nominal Value SEK 10 Each)) File No. 1–14240

December 18, 2002.

Scania Aktiebolag, a Kingdom of Sweden corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder,[2] to withdraw its American Depository Shares (each representing one A or B share, nominal value SEK 10 each) (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has complied with the rules of the NYSE by complying with all applicable laws in effect in the Kingdom of Sweden, the place in which the Company is incorporated, and with the rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on December 5, 2002, to withdraw the Issuer's Securities from listing on the NYSE. The Board stated that the following reasons factored into its decision to withdraw the Issuer's Securities from the NYSE: (i) The low number of outstanding Securities (at the end of October 2002, fewer than 51,000 Series A and fewer than 60,000 Series B Securities were outstanding, compared to a total of 200,000,000 Scania shares equally split between the A and B Securities); (ii) trading in the Securities on the NYSE is very low and the Securities are not widely held (as of the end of November there were fewer than 200 total holders of Series A and B Securities combined); (iii) the globalization of investments and the possibility of trading stocks internationally has increased substantially over the past few years and; (iv) the costs of maintaining the listing of the Securities on the NYSE is no longer justified given the factors listed above.

The Issuer's application relates solely to the Securities' withdrawal from listing on the NYSE and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02–32311 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47007; File No. SR–Amex–2002–103]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Minimum Size of Listing Qualifications Panels

December 16, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 1204 (a) of the Amex *Company Guide* to provide that listing and delisting hearings may be conducted before a Listing Qualifications Panel comprised of a minimum of two rather than three members of the Amex Committee on Securities. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Section 1204. The Listing Qualifications Panel

(a) All hearings will be conducted before a Listing Qualifications Panel (''Panel'') comprised of at least [three] *two* members of the Committee on Securities. No person shall serve as a Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter. *In the event of a tie vote among the panel members, the matter will be forwarded to the full Committee on Securities for review pursuant to Section 1205.*

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In May 2002, the Exchange implemented significant changes to the appeal process applicable to the review of initial and continued listing determinations.[3] The revised procedures, which are contained in Part 12 of the Amex *Company Guide,* provide issuers with the right to appeal a staff determination to a Listing Qualifications Panel (''Panel'') comprised of at least three members of the Amex Committee on Securities (the ''Committee''). The issuer also has the right to appeal an adverse Panel decision to the full Committee.

The new procedures have operated relatively smoothly, and provided increased transparency and efficiency to the process. However, the Amex believes that the requirement that each Panel be comprised of at least three-members of the Committee is potentially problematic, in that on occasion last-minute scheduling conflicts have developed for Panel members who had agreed to participate on a particular hearing date. Although in each case that has arisen so far, the Panel member was ultimately able to participate, the Exchange is concerned that unanticipated conflicts or illness could potentially force the rescheduling of a hearing date under circumstances that could be disruptive to issuers and to the appeal process. While the Exchange's hearings staff does contact additional Committee members to serve as ''alternates,'' typically these members are released from this obligation two or three days prior to the hearing date in order to avoid the burden on such members of reviewing the written materials if their services will not be needed. The Amex believes it is also not optimal to increase the size of Panels to more than three members, in that larger Panel sizes would result in appeals to the full Committee being decreasingly meaningful.

Accordingly, the Exchange is proposing that the minimum Panel size be reduced from three members of the Committee to two. Because the Amex continues to believe that a three-member Panel size is optimal—in order to avoid a ''tie'' vote and to provide a broader range of views—the Exchange's hearings staff will continue to schedule three Committee members for each hearing date. Prior to holding a hearing with only two Panel members, the hearings staff will consult with the two members, and if such Panel members feel that the particular facts and circumstances of the appeal in question are such that a two-member Panel is not appropriate, then the hearings staff will postpone the hearing to a later date.

While the Amex anticipates that two-member Panels will be used infrequently (if ever), the reduction in the minimum Panel size will permit hearings to be held in the event of a last-minute scheduling conflict or illness. In the event that a two-member Panel was unable to agree on a decision, the matter would be forwarded to the full Committee for review. The Amex contends that Nasdaq listing qualifications panels consist of only two panel members and their process appears to operate relatively smoothly.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6). At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–103 and should be submitted by January 14, 2003.

[3] *See* Securities Exchange Act Release No. 45898, (May 8, 2002), 67 GT 34502 (May 14, 2002) (approving File No. SR–Amex–2001–47).

[4] *See* NASD Rule 4830(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32313 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47015; File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Relating to the Merger of MBS Clearing Corporation Into the Government Securities Clearing Corporation to Form the Fixed Income Clearing Corporation

December 17, 2002.

### I. Introduction

On October 7, 2002, the Government Securities Clearing Corporation (''GSCC'') and MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes SR–GSCC–2002–09 and SR–MBSCC–2002–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On October 31, 2002, and on November 5, 2002, GSCC and MBSCC amended the proposed rule changes. Notice of the proposals was published in the **Federal Register** on November 15, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

### II. Description

GSCC and MBSCC became wholly-owned, indirect subsidiaries of The Depository Trust and Clearing Corporation (''DTCC'') as a result of merger and exchange offer transactions that took place in late 2001 (''DTCC Integration'').[3] GSCC and MBSCC provide clearing and certain ancillary services for government securities and mortgage-backed securities, respectively. The clearing and other services for these different types of fixed-income products have many common elements. The handling of such products by different clearing corporations hinders development of uniform standards for the fixed-income services industry. The combination of GSCC and MBSCC will lead to development of uniform standards for messaging, reporting, netting and settlement mechanisms, standardized settlement practices, and coordinated cash and mark-to-market flows for fixed-income products. Moreover, combining GSCC and MBSCC will help the clearing corporations achieve important membership and risk management goals, such as building a consolidated risk management platform, optimizing cross-margining among various fixed-income products, and establishing uniform membership standards. Furthermore, redundant facilities, services, and operational aspects will be eliminated as a result of the merger thereby reducing the costs of processing transactions in fixed-income products over time.[4]

To effect the merger, MBSCC will be merged into GSCC under New York law. At the time of the merger, GSCC Acquisition Company LLC (''GSCC Parent''), the sole shareholder of GSCC, will pay MBSCC Holding Company, Inc. (''MBSCC Parent''), the sole shareholder of MBSCC, a nominal amount of money in consideration of MBSCC Parent canceling its shares of capital stock of MBSCC. After MBSCC Parent cancels its shares of capital stock of MBSCC, GSCC will be the surviving corporation of the merger and will be renamed FICC, and GSCC Parent will be the sole direct shareholder of FICC. The current Certificate of Incorporation and Bylaws of GSCC will be amended to be the Certificate of Incorporation and Bylaws of FICC. FICC will form the Government Securities Division as the vehicle for delivering the services now provided by GSCC to GSCC members. FICC will form the Mortgage-Backed Securities Division as the vehicle for delivering the services now provided by MBSCC to MBSCC participants, limited purpose participants, and EPN users of MBSCC.

The members and participants receiving services from the Divisions will retain their shareholdings in DTCC and their rights to be shareholders in DTCC that they received during the DTCC Integration. The structure implemented during the DTCC Integration to assure fair representation for, among others, the members of GSCC and participants of MBSCC will also remain in place. After the DTCC shareholders that were members of GSCC begin receiving services from the Government Securities Division and after the DTCC shareholders that were participants of MBSCC begin receiving services from the Mortgage-Backed Securities Division, they will continue to elect persons to serve on the DTCC Board of Directors as they did prior to the creation of FICC. The individuals elected to serve on the DTCC Board will, in turn, be selected by DTCC to serve as directors of FICC just as those individuals previously were selected by DTCC to serve as directors of GSCC and MBSCC. On a periodic basis to be determined by DTCC pursuant to the DTCC shareholders agreement, DTCC common stock will be reallocated to the shareholders using the services of The Depository Trust Company (''DTC''), Emerging Markets Clearing Corporation (''EMCC''), National Securities Clearing Corporation (''NSCC''), and now the Divisions of FICC based upon their usage if those services. The members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division will continue to have the right but not the obligation to purchase some or all of the DTCC common stock to which they are entitled.

The charters of the two committees formed during the DTCC Integration, the DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee of DTCC, which includes representatives of members of GSCC and participants of MBSCC, and the GSCC/MBSCC Membership and Risk Management Committee, which is comprised of the representatives of members of GSCC and participants of MBSCC, will be amended to refer to members receiving services from the Government Securities Division and participants receiving services from the Mortgage-Backed Securities Division.

The DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee will be renamed the DTCC/DTC/FICC/NSCC Fixed Income Operations and Planning Committee. It will continue to advise the DTCC Board and management with respect to the services provided by and the fixed-income products processed by DTC, EMCC, NSCC, and FICC. The GSCC/MBSCC Membership and Risk Management Committee will be renamed the FICC Membership and Risk Management Committee. It will advise the Board of Directors of FICC with respect to membership, credit, and risk matters. Other functions may be assigned to the committees as they are today.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46790 (November 7, 2002), 67 FR 69277.

[3] Securities Exchange Act Release Nos. 44988 (October 25, 2001), 66 FR 55222 [SR–MBSCC–2001–01] and 44989 (October 25, 2001), 66 FR 55220 [SR–GSCC–2001–11].

[4] Operational aspects include such things as separate annual reports, regulatory reports, audits, financial statements, and regulatory examinations.

After the merger, FICC will satisfy the fair representation requirement of Section 17A of the Act[5] by (i) continuing to give the members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division, the right to purchase shares of DTCC common stock on a basis that reflects their usage of the services of the Divisions, DTC, EMCC, and NSCC; (ii) continuing to allow members and participants receiving services from the Divisions to take part in the selection of individuals to be directors of DTCC (who will also be directors of FICC, DTC, EMCC, and NSCC) to ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of these companies; and (iii) utilizing the committee structure described above to ensure that the members and the participants receiving services from the Divisions will have a voice in the operations and affairs of the Divisions.

As a result of the merger, GSCC's Certificate of Incorporation and Bylaws will be amended to reflect the change of GSCC's name to FICC. The Rules of MBSCC will be adopted by FICC as the rules of the Mortgage-Backed Securities Division. The Rules of GSCC and MBSCC will be amended to reflect that (i) the Government Securities Division and the Mortgage-Backed Securities Division will be separate Divisions of FICC; (ii) neither Division of FICC will be liable for the obligations of the other Division; and (iii) the clearing fund and other assets of each Division will not be available to satisfy the obligations of the other Division.

## III. Discussion

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions.[6] The purpose of the proposed merger of MBSCC into GSCC to form FICC is to eliminate the inefficiencies and inconsistencies that result from operating two fixed-income clearing corporations as separate entities. Accordingly, the Commission finds that FICC will be organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions first by ensuring the continued availability to GSCC members and MBSCC participants of safe and efficient clearing services which were previously provided by GSCC and MBSCC and second by providing a means whereby uniform standards and clearance and settlement practices for various types of fixed-income products can be developed and implemented.

In the DTCC Integration, the Commission found that GSCC and MBSCC satisfied the requirements of section 17A(b)(3)(C) of the Act.[7] Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.[8] The merger of MBSCC into GSCC to create FICC will not affect the structure established by the DTCC Integration to assure fair representation of those who were GSCC members and MBSCC participants and are now Government Securities Division members and Mortgage-Backed Securities Division participants. Accordingly, the Commission finds that the proposed rule changes are also consistent with section 17A(b)(3)(C).

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32314 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] *Supra* note 3.

[8] 15 U.S.C. 78q–1(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47011; File No. SR–NASD–2002–179]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify the Reserve Size Refresh Functional in Nasdaq's SuperMontage System

December 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the way shares are refreshed from reserve size into displayed Quotes/Orders in Nasdaq's SuperMontage system. New text is italicized.

* * * * *

### 4710. Participant Obligations in NNMS

(a) No Change.

(b) Non Directed Orders.

(1) No Change.

(2) Refresh Functionality.

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

refresh display size shall be added to any shares remaining in the Displayed Quote/Order *and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and 4710 as appropriate.* To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) No Change.

(3) Through (8) No Change.

(c) Through (e) No Change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, SuperMontage allows Nasdaq Quoting Market Participants [5] to use reserve size and select a round-lot refresh amount that the market participant wishes its quote/order to be refreshed to once its displayed size is reduced to less than a round-lot. Thus, once a quote or an order is decremented by executions to less than 100 shares, the system will refresh that quote/order from reserve size by the round-lot amount designated by the market participant and combine it with any odd-lot share amount still remaining. For example, market maker A (''MMA'') is displaying a 1000 share bid quote/order. MMA has 5000 shares in reserve and has selected a 400-share refresh size. Under current processing, Nasdaq states that if SuperMontage executed 925 shares against MMA's quote/order, the system would automatically take 400 shares from the 5000 in reserve and add it to the 75 shares remaining in MMA's quote/order for a total of 475 shares.[6]

Recently, Nasdaq states that some SuperMontage participants have raised concerns about the impact the above processing can have on their ability to manage quotes/orders so as to trade as often as possible in round-lot amounts. Because the combination of the odd-lot remainder trigger and the round-lot refresh amount almost always results in a new mixed-lot quote/order, these market participants generally can only return to displaying and having their quote represent an actual round-lot amount by either: (a) Having their mixed-lot quote/order interact with an odd or mixed-lot quote/order containing an odd-lot portion equal to that of their new displayed quote/order (*e.g.*, a 475 share quote/order interacting with 375 or 75 share quote/order) or, (b) immediately canceling the mixed-lot quote/order and replacing it with a new round-lot thereby losing time priority for any previous odd-lot remainder.

In response to these concerns, Nasdaq proposes to modify SuperMontage's reserve size refresh function. Under the proposal, once a displayed quote/order has been reduced by executions to less than 100 shares, the system will automatically refresh that market participant's quote/order to the round-lot amount selected by the firm as its reserve size refresh amount. Using the previous example, once MMA's displayed size was reduced to 75 shares by the 925 share execution, SuperMontage would refresh MMA's quote/order by automatically adding 325 shares to create a 400 share round-lot—an amount exactly equal to MMA's selected reserve refresh amount.[7] If the amount of shares in reserve for a particular quote/order is insufficient to produce a displayable quote, the system will nonetheless combine and retain the reserve size and odd-lot remainders at the price level for potential execution in the system. If the amount of shares in reserve for a particular Nasdaq Quoting Market Participant's quote/order is insufficient to produce a displayable quote, the quote (including any reserve size share amounts) would be refreshed or updated pursuant to current SuperMontage programming and rules.[8]

Nasdaq believes that this approach will provide market participants with greater flexibility in managing their quotes/orders while continuing to ensure that small odd-lot and mixed-lot orders will be able to execute.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general and with section 15A(b)(6) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of rule 19b–4 [12] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on

[5] Nasdaq Quoting Market Participants consist of Nasdaq National Market System (''NNMS'') Market Makers and NNMS Electronic Communication Systems (''ECNs'').

[6] While these 475 shares would be treated as displayed trading interest for purposes of SuperMontage's execution algorithms, SuperMontage, which only displays round-lots, would show 400 shares next to MMA's firm identifier in the montage.

[7] While displayed as a single round-lot quote, SuperMontage will continue to maintain separate time-stamps for the odd-lot remainders of the quote/order and the additional share amounts from reserve that together comprise the new updated round-lot displayed quote/order.

[8] *See* Securities Exchange Act Release No. 46141 (June 28, 2002), 67 FR 44906 (July 5, 2002); 46369 (August 16, 2002), 67 FR 54515 (August 22, 2002) (Approving File No. SR–NASD–2002–42).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. Under Rule 19–4(f)(6) of the Act, a proposed rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to respond quickly to the concerns of SuperMontage users and allow users to display actual round-lots as their quotes. For this reason, the Commission waives the 30-day operative delay and designates the proposal to be immediately effective and operative upon filing with the Commission.[13]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–179 and should be submitted by January 14, 2003.

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C.78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32312 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46999; File No. SR–NASD–98–26 Amendment No. 13]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extension of Short Sale Rule and Continued Suspension of Primary Market Maker Standards Set Forth in NASD Rule 4612

December 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to extend the pilot program of the NASD short sale rule from December 15, 2002 until June 15, 2003. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker (''PMM'') standards currently set forth in NASD Rule 4162 also from December 15, 2002 until June 15, 2003. Finally, Nasdaq is proposing to modify the method used to calculate the bid tick indicator used by members to determine whether a short sale is permitted. The text of the proposed rule change is as follows. Additions are in italics; deletions are bracketed.

### NASD Rule 3350

(a)

(b)(1) *With respect to trades executed on or reported to the ADF,* [N]o member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security.

(2) *With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq National Market Execution System when the current best (inside) bid is below the preceding best (inside) bid in the security.*

(b)–(k) No Change.

(l) This section shall be in effect until *June 15, 2003* [December 15, 2002].

### IM–3350. Short Sale Rule

(a) No Change.

(b) *(1) With respect to trades executed on or reported to the ADF,* Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) is below the proceeding national best (inside) bid in the security. NASD has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

*(2) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq National Market Execution System when the current best (inside) bid is below the proceeding best (inside) bid in the security. Nasdaq has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.*

(c) No Change.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Background and Description of the NASD's Short Sale Rule

Section 10(a) of the Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by SEC Rule 10a–1. On June 29, 1994, the SEC approved the NASD's short sale rule (the ''Rule'') applicable to short sales [3] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[4] The NASD and the Commission have extended Rule 3350 numerous times, most recently, until December 15, 2002.

The Rule employs a ''bid'' test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. The Rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids for exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up-bid'' or a ''down-bid.'' To effect a ''legal'' short sale on a down-bid, the short sale must be executed at a price at least $.01 above the current inside bid. The Rule is in effect from 9:30 a.m. until 4 p.m. each trading day.

To reduce the compliance burdens on its members, the Rule also incorporates seven exemptions contained in SEC Rule 10a–1 that are relevant to trading on Nasdaq.[5] For example, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule also contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

2. Background of the Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, Rule 3350 provides an exemption for ''qualified'' market makers (*i.e.*, market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since the Rule has been in effect, Nasdaq has used three methods to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity (''the 20-day'' test). From February 1, 1996 until the February 14, 1997, the ''20-day'' test was replaced with a four-part quantitative test known as the PMM standards.[6]

On February 14, 1997, the PMM standards were waived for all NNM securities due to the impacts of the SEC's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[7] For example, among other impacts, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the ''102% Average Spread Standard.'' Since that time all Nasdaq Market Makers have been deemed to be PMMs.

In March 1998, Nasdaq proposed PMM standards that received substantially negative comments.[8] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards (''Subcommittee'') in August 1998. The Subcommittee met nine times and formulated new PMM standards. NASD/Nasdaq staff requested to meet with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. This meeting occurred on December 9, 1998. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff requested that Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's recommended revisions and concluded that the Commission's modified standards

[3] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the reason of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''sort sale'' contained in SEC Rule 3b–3, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[4] *See* Securities Exchange Act Release No. 34277 (June 29, 199) (''Short Sale Rule Approval Order'').

[5] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bone fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to SEC Rule 10a–1 dealing with the liquidation of index arbitrage positions and an ''international equalizing exemption'' are equally applicable to the NASD's short sale rule.

[6] Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread not greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volumn in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.,* the ''P'' next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[7] *See* Securities Exchange Act Release No. 34–38294 (February 17, 1997), 62 FR 8289 (February 24, 1997).

[8] *See* Securities Exchange Act Release 39189 (March 30, 1998), 63 FR 16841 (April 6, 1998).

produced unfavorable results. Nasdaq requested that the Commission comment on the outcome of this test ''as we intend to communicate your comments to the Subcommittee in an effort to resume the process of developing new standards.''[9]

Nasdaq suspended development of PMM standards in late-1999 after the Commission signaled to the securities industry that it is considering fundamental changes to Rule 10a–1, changes that could impact the manner in which Nasdaq and the other markets regulate short sales. In October 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of a short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether. Nasdaq believed that it would be inappropriate for Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1. At the request of the staff of the Division of Market Regulation, Nasdaq has resumed development of PMM standards and has been working with the Commission staff towards that goal.

3. Proposal To Extend the Short Sale Rule and Suspend the PMM Standards

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. When the Commission approved the NASD's short sale rule on a pilot basis, it made specific findings that the Rule was consistent with Sections 11A,[10] 15A(b)(6),[11] 15A(b)(9),[12] and 15A(b)(11)[13] of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.''[14] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.''[15] The benefits that the Commission recognized when it first approved Rule 3350 apply with equal force today.

Similarly, the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards for three reasons that were discovered only after the Order Handling Rules were implemented.[16] Through late-1999, Nasdaq worked diligently to address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq were unable to establish satisfactory PMM standards. At the request of Commission staff, Nasdaq has begun developing PMM standards suitable to today's rapidly changing marketplace. Re-instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

4. Proposal To Modify Bid Tick Indicator

Nasdaq would like to modify the method it uses to calculate the last bid by having it refer to the ''Nasdaq Inside'' which is comprised of quotations from all participants in Nasdaq execution systems (*e.g.*, SuperMontage), rather than referring to the National Best Bid and Offer (''NBBO''). As explained in more detail below, this change is necessary to maintain a fair and orderly market within Nasdaq.

Historically, the NBBO only included Nasdaq market makers. In 1996, when the Chicago Stock Exchange began trading Nasdaq-listed issues, the NBBO and thus the Nasdaq bid-tick indicator became inclusive of other exchanges even though those exchanges are not subject to NASD Rule 3350. Due to Chicago's participation in Nasdaq systems and their willingness to be linked into Nasdaq execution systems, the NBBO and the best bid and offer in Nasdaq were identical and there was no need to calculate a separate best bid for Nasdaq.

Recently, several markets have begun trading Nasdaq securities pursuant to unlisted trading privileges. As a result, the NBBO is regularly different from the best bid that is accessible to Nasdaq market participants using Nasdaq execution systems. It is possible for a market without a short sale rule to affect the direction of the short sale arrow and accordingly have an impact on NASD members' short sale rule obligation in Nasdaq. This is inequitable since those markets currently impose no short selling obligations on their own members. Nasdaq has a compelling interest in resolving this issue in order to maintain a fair and orderly market within Nasdaq.

The separation of Nasdaq's market systems from the systems it operates as the exclusive securities information processor for Nasdaq securities has enabled Nasdaq to calculate an independent Nasdaq Inside Price (''Nasdaq Inside'') and a last bid change based upon that Nasdaq Inside. The Nasdaq Inside is comprised of the best bid and offer quote from among all participants in the Nasdaq National Market Execution System (commonly known as ''SuperMontage'')—including all Nasdaq market participants as well as UTP exchanges that choose to participate in SuperMontage.

Given this new capability and the presence of markets with no short sale rules, Nasdaq proposes to modify the short sale rule to refer to the Nasdaq Inside rather than the NBBO. It is damaging to the Nasdaq market and its participants to restrict the short sales of Nasdaq firms based upon the quotations of markets with no short sale rule. Additionally, this approach is similar to the approach that the SEC has adopted under the short sale rule that applies to the listed markets where a primary exchange (*e.g.*, NYSE) is permitted to look only to transactions occurring on the primary exchange in determining its members' short sale rule obligations.

Nasdaq currently has the ability to calculate and apply the Nasdaq-based bid tick indicator to SuperMontage, and it will implement the proposed rule change immediately with respect to SuperMontage. With respect to trades executed outside Nasdaq execution systems and reported to Nasdaq, Nasdaq anticipates that it will have the ability to display the Nasdaq-based bid tick indicator to market participants on

[9] *See* Letter, dated September 27, 1999 from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC.

[10] 15 U.S.C. 78k–1.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(9).

[13] 15 U.S.C. 78*o*–3(b)(11).

[14] *See* Short Sale Rule Approval Order, *supra* note 4.

[15] *Id.*

[16] Implementation of the Order Handling Rules created the following three issues: (1) Many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B).

January 13, 2003.[17] Nasdaq participants will then have up to 90 calendar days to transition from the NBBO-based bid tick to the Nasdaq-based bid tick for trades executed outside Nasdaq execution systems and reported to Nasdaq. In the event that Nasdaq is unable to display the Nasdaq-based bid tick indicator at that time, Nasdaq will inform the Commission and delay implementation of this transition period. In addition, Nasdaq is working with the NASD to ensure a continued high level of short sale compliance during that transition period.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 14, 2003.

[17] At that time, Nasdaq anticipates that the quotations of exchanges that lack a hard-wired linkage to Nasdaq will be removed from the Nasdaq Quotation Data Service (''NQDS'') data feed. Nasdaq is currently analyzing alternative methods for calculating the Nasdaq-based bid tick indicator in the event the removal from NQDS of quotations of exchanges that lack hard-wired linkages is delayed.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Amendment**

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule Pilot until June 15, 2003, the suspension of the existing PMM standards until June 15, 2003 and the modification of the method used to calculate the bid tick indicator used by members to determine the permissibility of a short sale are consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposal is consistent with Section 15A(b)(6)[18] of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that the continuation of the Short Sale Rule Pilot, the continued suspension of the PMM standards, and the modification of the method used to calculate the bid tick indicator will maintain the status quo while the Commission is considering amending Rule 10a–1 under the Act. This extension of the pilot, continued suspension of the PMM standards, and modification of the bid tick test is subject to modification or revocation should the Commission amend Rule 10a–1 under the Act in a manner as to deem the extension, suspension, or modification unnecessary or in conflict with any adopted amendments.[19]

The Commission finds good cause for approving the extension of the Short Sale Rule Pilot, the suspension of existing PMM standards, and the modification of the method used to calculate the bid tick indicator prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could disrupt the Nasdaq market and confuse market participants to reintroduce the previous PMM standards while new PMM standards are being developed and while the Commission considers amending Rule 10a–1 under the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that Amendment No. 13 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule Pilot through June 15, 2003, suspends the PMM standards through June 15, 2003, and modifies the method used to calculate the bid tick indicator is approved on an accelerated basis.[21]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32315 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] Absent an exemption, Rule 10a–1 under the Act would apply to Nasdaq on Commission approval of its exchange registration.

[20] 15 U.S.C. 78s(b)(2).

[21] In approving Amendment No. 13, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47003; File No. SR–NASD–2002–59]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a New Trade Report Modifier To Be Attached to Trades Whose Prices Exceed Certain Parameters

December 16, 2002.

**I. Introduction**

On April 29, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a new trade report modifier to be attached to trades whose prices exceed certain parameters. The proposed rule change was published for comment in the **Federal Register** on June 14, 2002.[3] The Commission received two comment letters regarding the proposal.[4] Nasdaq responded to the commenters on November 30, 2002.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46056 (June 10, 2002), 67 FR 40975.

[4] *See* letter from Michael T. Dorsey, Senior Vice President, Director of Legislative and Regulatory Affairs, Knight Trading Group, to Commission, dated July 19, 2002 (''Knight Letter'') and letter from Cindy D. Foster, Vice President, Compliance, SunGard Trading Systems, to Jonathan G. Katz, Secretary, Commission, dated July 5, 2002 (''SunGard Letter'').

[5] *See* letter from Edward S. Knight, Executive Vice President, General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated November 20, 2002 (responding to the comment letters received regarding the proposed rule change) (''Nasdaq Response Letter'').

This order approves the proposed rule change.

## II. Background

Trades reported to Nasdaq using the Automated Confirmation Transaction (''ACT'') Service are subject to procedures that identify trades executed at prices away from the current market. This process helps to ensure a fair and orderly market by preventing such trades from being disseminated to the public as last sale reports and/or by detecting trades that are reported at erroneous prices.

The process differs slightly depending on whether a trade is executed using a Nasdaq system, which then automatically reports the trade to ACT (*e.g.*, SelectNet), or the trade is submitted to ACT directly by a member. ACT rejects a trade that is submitted directly by a member if the price reported is outside established parameters. The member has an opportunity to resubmit the trade, which then will be subject to a different set of parameters. If the price is rejected after this second process, the member must call Nasdaq's MarketWatch Department to explain why the execution price was so far away from the current market. If the MarketWatch staff determines, on the basis of its conversation with the member, that there is an adequate rationale for such price, the staff would submit the trade to ACT.[6] In such circumstances, the trade is normally being reported more than 90 seconds after the trade was executed, and so the MarketWatch staff would report the trade with the .SLD modifier attached, which indicates a late trade report.[7] Trades reported with a .SLD modifier are not included in the last sale calculation, but are included in the calculation of the high and low price for the security.

Trades executed using Nasdaq systems, however, are subject to a different process due to the manner in which such trades are transmitted to ACT. The information passed to ACT from a Nasdaq system does not include the exact location, or terminal, within a member from which an order/execution emanates. Therefore, such trades are not subject to the second validation process which allows members to resubmit a trade report after it is rejected initially, since the exact location within a member to which a reject message can be sent is unknown. To compensate for this difference and to prevent such trades from being included in the last sale calculation, Nasdaq automatically attaches the .SLD modifier to any trades executed using a Nasdaq system whose prices exceed the initial parameters. Nasdaq also includes another modifier with these trade reports to indicate that the .SLD modifier has been attached by a Nasdaq system. This other modifier ensures that members would not be cited for late trade reporting on the basis of these trades.

Nasdaq believes that the process described above has worked well in promoting a fair and orderly market because it has prevented certain anomalous prices from being included in the last sale calculation, which is used for many purposes including as a measure of the current market for a security; a determinant of the execution price of certain types of orders (*e.g.*, market on close orders); and in determining index values. Nasdaq believes this process has helped provide more accurate information about the prices at which individual securities are trading, and for that matter, the market, or a segment of the market, if such securities are components of indices designed to measure the entire market or a particular segment.

## III. Description of the Proposed Rule Change

Under the proposed rule change, Nasdaq has identified a means of further improving the current process. Presently, the .SLD modifier prevents a trade report from being included in the last sale calculation, but it does not prevent such a report from being included in the calculation of the high and low price of a security. As such, a trade that has been excluded from the last sale calculation because its price exceeds the parameters, nevertheless, may set the high or low price for a security. Nasdaq believes that these trades should not establish the high or low price for a security because the high and low prices are also used as a measure of a security's performance, or could trigger certain actions.

Therefore, Nasdaq proposed to create a new modifier that would exclude such trades from the high/low calculations, as well as the last sale calculation.[8] This new modifier tentatively would be known as the ''Out of Range,'' or .OR , modifier and would be used instead of the .SLD modifier in the circumstances described above. Under the proposed rule change, members would not have the ability to append this modifier to trade reports. Nasdaq proposed that only Nasdaq staff and Nasdaq systems would append this modifier, and only for transactions in Nasdaq National Market System, SmallCap Market, and OTC Bulletin Board securities. For example, if a trade executed using SelectNet exceeds the price parameters, ACT automatically would append the .OR modifier to the trade report instead of the .SLD modifier. Similarly, the Nasdaq MarketWatch staff would append the .OR modifier to reports they submit. Nasdaq believes that the number of trade reports that contain the .SLD modifier either attached by ACT or the Nasdaq MarketWatch staff because the price is outside the parameters is very small.[9] Nasdaq believes that the current proposal to create a new modifier would not affect this number since all that is being changed is the modifier that is being attached, and Nasdaq is not proposing to modify the price parameters.

Nasdaq recognized that, in certain circumstances, members may believe that they have executed a trade at a price that provides valuable information to the market, even though the price is outside the parameters. To ensure that such trades are not inappropriately withheld from the last sale and high/low calculations, members would be able to contact the Nasdaq MarketWatch staff to request that the .OR modifier be removed from the trade report. The member must explain the facts and circumstances surrounding the trade and why the price was reasonable, as measured against the market at the time of execution. If the MarketWatch staff agrees with the explanation, it can remove the .OR modifier from the trade report.

The process for developing and implementing the modifier, which will include testing with market data vendors, will take several months. Nasdaq would continue to utilize the .SLD modifier in the manner described until the new modifier can be implemented.

[6] If the MarketWatch staff believes the price would be misleading to the market, the trade report would be submitted for clearing purposes only. Nasdaq believes that the number of instances in which the staff submits the report only for clearing purposes is very limited. The staff estimates that this occurs less than 10 times a year. In addition, the staff can refer the transaction to NASD Regulation for further investigation.

[7] NASD rules require that trades be marked late, using the .SLD modifier, if they are reported more than 90 seconds after execution. *See e.g.,* NASD Rule 4632.

[8] Nasdaq recognizes that trades whose prices exceed the price parameters nevertheless may be valid transactions that the parties want to settle. As such, these trades are transmitted to The Depository Trust and Clearing Corporation for clearing and settlement.

[9] Nasdaq estimates that, on a daily average, less than .002% of trades executed on Nasdaq are reported with the .SLD modifier due to the trade being executed at a price that exceeds the price parameters.

## IV. Summary of Comments and Nasdaq's Response

As noted above, the Commission received two comment letters regarding the proposal.[10] Nasdaq filed a response letter to address concerns raised by the commenters.[11]

One commenter commended Nasdaq for its proposal as promoting a fair and orderly market for Nasdaq stocks through improved transparency.[12] This commenter supported the new modifier as a better indication of the trading activity then occurring in the marketplace. This commenter also suggested that Nasdaq create additional modifiers to address other unique execution scenarios, such as ''market on close'' orders. Nasdaq has indicated that it is presently examining several additional modifiers to address some of this commenter's concerns.[13]

The other commenter supported Nasdaq's proposal, but believed that the proposal should not be approved absent providing the same relief to members effecting transactions and transaction reports outside Nasdaq systems who experience similar problems with rejected trades.[14] This commenter believed that the process of having a member telephone Nasdaq MarketWatch, after ACT has rejected a trade for the second time, in order to enter the transaction and then append the .SLD, delays a trader's operations and could harm the execution of pending customer orders, especially in today's highly automated marketplace.

This commenter offered two methods that it believed would result in better use of member, market, and regulatory resources and further prevent any degrading of the execution of customer orders. First, the commenter suggested that Nasdaq adopt a new modifier that would be appended to transaction reports that followed the second rejection of ACT. Under this method, Nasdaq and NASD surveillance could then monitor the proper use of such modifier and, on a post-report review process during the day, contact members about those transactions that appear problematic. Alternatively, this commenter suggested that Nasdaq systems be programmed to automatically append a .SLD modifier and a .OR as it would with transactions executed and reported by Nasdaq systems. Transaction reports which evidence a delay between the execution and transaction report or a delay of the re-submission could still be rejected, and Nasdaq could then review these transactions on post-review basis.

In response, Nasdaq stated that its proposal complies with Section 15A(b)(6) of the Act[15] to protect investors and the public interest because it would result in the public dissemination of information that reflects more accurately the current trading in a particular security.[16] Furthermore, to the extent a security is a component of an index, the index would reflect more accurately the value of the market, or segment of market the index is designed to measure. Nasdaq also stated that this commenter offered no statutory analysis that would contradict Nasdaq's compliance with the Act and support the commenter's request to delay approval of the proposed rule change.

Furthermore, with respect to the commenter's suggestions, Nasdaq does not believe that it would be feasible to permit members to use the .OR modifier. Under the proposal, trades reported with a .OR modifier would not be included in the calculation of last sale, high price and low price of the security. Nasdaq notes that these calculations provide investors and market participants with important information about the prices at which a security is trading, and generally promote transparency and accurate price discovery. Therefore, Nasdaq believes that this ability to append the .OR modifier and thus prevent it from being included in these calculations must be strictly controlled. If members were permitted to append the .OR modifier, Nasdaq notes that the potential for mistake or purposely misusing the .OR modifier to withhold certain trade prices would have to be considered. Moreover, there is presently no automated, real-time means to surveil members for the proper use of the .OR modifier. Nasdaq believes this surveillance would be necessary to ensure that mistakenly marked trades are identified and then publicly disseminated at, or near, the time of the trade, which is when the information is useful. This risk of error, misuse, and surveillance complications also would limit the usefulness of any other modifier Nasdaq would create for use by members that would operate in the same manner as the .OR modifier.

Finally, Nasdaq states that it recognizes the challenges faced by members reporting trades in a fast-moving market and would continue to examine how it can address some of the concerns raised by this commenter. However, Nasdaq believes that the proposed solution should not create additional surveillance burdens for members and Nasdaq that outweigh the benefits of the proposal, or worse, that the benefits are exceeded by the potential for new areas of abuse. Nasdaq believes that developing a solution that strikes a balance among these factors is a lengthy process, and that delaying approval of its current proposal until a broader solution can be implemented would unnecessarily delay the benefits the .OR modifier currently can provide to investors and market participants.

## V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[17] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that Nasdaq's proposal appears to be a reasonable effort to improve the information disseminated to investors. The Commission believes that the proposed modifier may be a practical method in identifying with specificity trades that fail price validation and may prevent these trades from impacting the last sale calculation and the high and low price for the security. The Commission also believes that the corresponding result of the proposal may be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index. Furthermore, the Commission believes that the proposal and Nasdaq's Response Letter appears to reasonably address the concerns raised by the commenters. Nasdaq has noted that it

[10] *See* Knight Letter and SunGard Letter, *supra* note 4.

[11] *See* Nasdaq Response Letter, *supra* note 5.

[12] *See* Knight Letter, *supra* note 4.

[13] *See* Nasdaq Response Letter, *supra* note 5.

[14] *See* SunGard Letter, *supra* note 4.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] *See* Nasdaq Response Letter, *supra* notes.

[17] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78*o*–3(b)(6).

would continue examining several additional modifiers and solutions to address other unique scenarios, such as ''market on close'' orders, and issues raised by the commenters.[19]

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2002–59) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32316 Filed 12–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

[19] *See* Nasdaq Response Letter, *supra* notes.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47009; File No. SR–NASD–2002–175]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Market Recovery Notes Linked to the Nasdaq-100 Index

December 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, and II, below, which Items have been prepared by Nasdaq. On December 13, 2002, the NASD filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Market Recovery Notes Linked to the Nasdaq-100 Index (the ''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis, for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under NASD Rule 4420(f), the Nasdaq may approve for listing and trading innovative securities which cannot be readily categorized under traditional listing guidelines.[4] Nasdaq proposes to list for trading the Notes, as described below, under NASD Rule 4420(f).

*Description of the Notes*

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will have a term of not less than two and not more than four years. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity in 2005.[5]

At maturity, if the value of the Nasdaq-100 Index[6] has increased, a beneficial owner will be entitled to receive a payment on the Notes based on triple the amount of that percentage increase, not to exceed a maximum payment per Unit (the ''Capped Value'') that is expected to be between $11 and $16.[7] Thus, the Notes provide investors the opportunity to obtain leveraged returns based on the Nasdaq-100 Index.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter John D. Nachmann, Senior Attorney, Nasdaq to Kathleen A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 12, 2002 (''Amendment No. 1''). Amendment No. 1 provides for certain technical changes and clarification to the original proposal.

[4] *See* Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993) (order approving File No. SR–NASD–93–15), (''1993 Order'').

[5] The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

[6] The Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest non-financial companies listed on The Nasdaq National Market tier of Nasdaq. The Index constitutes a broadly diversified segment of the largest securities listed on The Nasdaq Stock Market and includes companies across a variety of major industry groups. The securities in the Index must, among other things, have an average daily trading volume on Nasdaq of at least National Market. In order to initially be included in the Nasdaq National Market, an issuer must meet a number of financial criteria, including a minimum of: (1) 1.1 million publicly held shares; (2) $8 million in market value of publicly held shares; (3) shareholder's equity of 15 million, or market value of listetd securities of $75 million or total assets and total revenue of $75 million; and (4) a bid price of $1. An issuer may be required to meet higher listing standards depending on the Entry or maintenance Standard under which it qualifies for inclusion in The Nasdaq National Market. *See* Amendment No. 1, *supra* note 3.

No one particular stock or group of stocks dominates the Nasdaq-100 Index. *Id.* As of December 9, 2002, the largest component security presented 13.13% of the Index and the five largest component securities represented 31.9% of the Index. *Id.* In order to limit domination of the Index by a few large stock stocks, the Index is calculated under a ''modified capitalization-weighted'' methodology, which is a hybrid between equal weighting and conventional capitalization weighting. Under the methodology employed, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures, the Index Securities are categorized as either ''Large Stocks'' or ''Small Stocks'' depending on whether their current percentage weights (after taking into acocunt such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (*i.e.,* as a 100-stock index, the average percentage weight in the Index is 1.0%). Such quarterly examination will result in an Index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization Index component security must be less than or equal to 24.0%, and (2) the ''collective weight'' of those Index component securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%. Index securities are ranked by market value and are evaluated annually to determine which securities will be included in th e Index. Moreover, if at any time during the yeaer an Index security is no longer trading on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index that meets the Index eligibility criteria. For a detailed description of the Nasdaq-100 Index, see the prospectus supplement that will be filed by Merrill Lynch with the Commission prior to the issuance of the Notes.

[7] The actual Capped Value will be determined at the time of issuance of the Notes.

Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Nasdaq-100 Index has declined at maturity, a beneficial owner will receive less, and possibly significantly less, than the original public offering price of $10 per Unit.

The payment that a beneficial owner will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Nasdaq-100 Index at the close of the market on five business days shortly before the maturity of the Notes (the ''Ending Value'') and the closing value of the Nasdaq-100 Index on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 \times \left( \frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 + \left( \$30 \times \left( \frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right)$$

provided, however, the Redemption Amount cannot exceed the Capped Value.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Nasdaq-100 Index. The Notes are designed for investors who want to participate or gain exposure to the Nasdaq-100 Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the Nasdaq-100 Index.[8]

As of November 30, 2002, the adjusted market capitalization of the securities included in the Nasdaq-100 Index ranged from a high of $200.6 billion to a low of $1.2 billion. The average daily trading volume for these same securities for the last eleven months, as of the same date, ranged from a high of 79.9 million shares to a low of 634,118 shares.[9]

The Nasdaq-100 Index is determined, composed, and calculated by Nasdaq. The value of the Nasdaq-100 Index is disseminated every 15 seconds over the Nasdaq Trade Dissemination System.[10]

*Criteria for Initial and Continued Listing*

The Notes will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Nasdaq notes that Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[11] Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criteria for other securities pursuant to NASD Rule 4450(c), which requires that the aggregate market value or principal amount of publicly-held units must be at least $1 million. Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.[12] The Notes also must have at least two registered and active market makers as required by NASD Rule 4450(a)(6).

The Notes will be registered under Section 12 of the Act.

*Rules Applicable to the Trading of the Notes*

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310, ''Recommendations to Customers (Suitability),'' and NASD–IM–2310–2, ''Fair Dealing with Customers,'' NASD members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[13] In addition, as previously mentioned, Nasdaq will distribute a circular to advise members and employees thereof

[8] *See* Securities Exchange Act Release Nos. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (approving the listing and trading of options on the Nasday-100 Index); 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approving the listing and trading of options based upon one-tenth of the value of the Nasdaqq-100 Index); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approving the listing and trading of Portfolio Depositary Receipts based on the Nasdaq-100 Index).

[9] *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] NASD Rule 4420(f)(2) generally requires that issuers of securities designated pursuant to NASD Rule 4420(e) be listed on Nasdaq or the New York Stock Exchange (''NYSE'') or be an affiliate of a company listed on Nasqad or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

[12] *See* Amendment No. 1, *supra* note 3.

[13] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, a customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

recommending a transaction in the Notes to, among other things, have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction. Second, the Notes will be subject to the equity margin rules. Third, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates. In addition, Nasdaq has a general policy that prohibits the distribution of material, non-public information by its employees.

*Disclosure and Dissemination of Information*

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings. In addition, Nasdaq will issue a circular to NASD members explaining the unique characteristics and risks of the Notes.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[14] in general, and with Section 15A(b)(6) of the Act,[15] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(6).

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–175 and should be submitted by January 14, 2003.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

Nasdaq has asked the Commission to approve the proposal, as amended, on an accelerated basis to accommodate the timetable for listing the Notes. The Commission notes that it has previously approved the listing and trading of similar Enhanced Return Notes linked to the Nasdaq-100 Index.[16]

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities association, and, in particular, with the requirements of Section 15A(b)(6) of the Act [17] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[18] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exist at the maturity of the Notes, subject to the Capped Value. Specifically, as described more fully above, if the value of the Nasdaq-100 Index has increased, a beneficial owner will be entitled to receive at maturity a payment on the Notes based on triple the amount of any percentage increase in the Index, not to exceed the Capped Value.

The Notes are leveraged debts instruments whose price will be derived from and based upon the value of the Index. In addition, as discussed more fully above, the Notes do not guarantee any return of principal at maturity. Thus, if the Index has declined at maturity, a beneficial owner may receive significantly less than the original public offering price of the Notes. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return on the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Value, there are several issues regarding trading of this type of product. For the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes.[19] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations,[20] and compliance requirements, noted above, the Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee any return of principal

[16] *See* Securities Act Release Nos. 45024 (November 5, 2001), 66 FR 56872 (November 13, 2001); 45429 (February 11, 2002), 67 FR 7438 (February 19, 2002).

[17] 15 U.S.C 78*o*–3(b)(6).

[18] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] *See* 1993 Order, *supra* note 4.

[20] As discussed above, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that the transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the transaction.

at maturity, that the maximum return on the Notes is limited to $11 and $16 per unit,[21] that the Notes will not pay interest, and that the Notes will provide full exposure to any downside movement in the Index. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least $4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.[22]

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers, [23] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. In approving the product, the Commission recognizes that the Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest, non-financial companies listed on The Nasdaq National Market tier of Nasdaq. The Commission notes that the Index is determined, composed, and calculated by Nasdaq. As of November 30, 2002, the adjusted market capitalization of the securities included in the Nasdaq-100 Index ranged in capitalization from a high of $200.6 billion to a low of $1.2 billion. In addition, the average daily trading volume for the component stocks for the last eleven months, as of the same date, ranged from a high of 79.9 million shares to a low of 634, 118 shares. Given the large capitalizations, liquid markets, and relative weightings of the Index's component stocks, the Commission continues to believe, as it has concluded previously, that the listing and trading of the Notes that are linked to the Nasdaq-100 Index, should not unduly impact the market for the underlying securities comprising the Nasdaq-100 Index or raise manipulative concerns.[24] As discussed more fully above, the Commission also believes that the weighting and potential quarterly rebalancing of the Nasdaq-100 Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. Moreover, the issuers of the underlying securities comprising the Nasdaq-100 Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed on Nasdaq or the NYSE or be an affiliate of a company listed on Nasdaq or the NYSE. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation. The Commission also notes that the value of the Nasdaq-100 Index is disseminated every 15 seconds over the Nasdaq Trade Dissemination System.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Nasdaq-100.[25] Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,[26] to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NASD–2002–175), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32317 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

---

[21] The actual Capped Value will be determined at the time of issuance of the Notes.

[22] The companies comprising the Index are reporting companies under the Act.

[23] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving File No. SR–NASD–2001–73) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving File No. SR–Amex–2001–40) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving File No. SR–Amex–96–27) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of healthcare/biotechnology industry securities).

[24] *See* note 8, *supra.*

[25] *See* supra note 16.

[26] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46995; File No. SR–NASD–2002–166]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Margin Rule Amendments for Security Futures Contracts

December 13, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On November 22, 2002, NASD filed an amendment to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD is proposing to amend NASD Rule 2520 (''Margin Requirements'') to establish margin requirements for security futures contracts. The proposed rule change is being made to make NASD's margin rule consistent with the margin rules already adopted by the SEC, the Commodity Futures Trading Commission (''CFTC''), and other self-regulatory organizations (''SROs'') regarding security futures contracts. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**2520. Margin Requirements**

(a) Definitions

For the purposes of this paragraph, the following term shall have the meanings specified below:

(1) The term ''basket'' shall mean a group of stocks that NASD or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

(2) The term ''current market value'' means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see paragraph (f)(11)(C)(ii)).* If there is no closing price, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(3) The term ''customer'' means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include the following: (a) A broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an ''exempted borrower'' as defined by Regulation T of the Board of Governors of the Federal Reserve System (''Regulation T''), except for the proprietary account of a broker/dealer carried by a member organization pursuant to Section (e)(6) of this Rule.

(4) The term ''designated account'' means the account of a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or a political subdivision thereof.

(5) The term ''equity'' means the customer's ownership interest in the account, computed by adding the current market value of all securities ''long'' and the amount of any credit balance and subtracting the current market value of all securities ''short'' and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(6) The term ''exempted security'' or ''exempted securities'' has the meaning as in Section 3(a)(12) of the Act.

(7) The term ''margin'' means the amount of equity to be maintained on a security position held or carried in an account.

(8) The term ''person'' has the meaning as in Section 3(a)(9) of the Act.

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) the amount specified in Regulation T, *or Rules 400 through 406 under the Act or Rules 41.42 through 41.48 under the Commodity Exchange Act (''CEA'');* or

(2) the amount specified in Section (c)(3) of this Rule; or

(3) such greater amount as NASD may from time to time require for specific securities; or

(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to ''when distributed'' securities in a cash account). The minimum equity requirement for a ''pattern day trader'' is $25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this Rule.[4]

Withdrawals of cash or securities may be made from any account which has a debit balance, ''short'' position or commitments, provided it is in compliance with Regulation T *and Rules 400 through 406 under the Act and Rules 41.42 through 41.48 under the CEA,* and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of a ''pattern day trader '')[5] or an amount sufficient to meet the maintenance margin requirements of this paragraph.

(c) Maintenance Margin

The margin that must be maintained in all accounts of customers, except for cash accounts subject to other provisions of this rule, shall be as follows:

(1) 25 percent of the current market value of all securities, *except for security futures contracts,* ''long'' in the account; plus

(2) $2.50 per share or 100 percent of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30 percent of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at $5.00 per share or above; plus

(4) 5 percent of the principal amount or 30 percent of the current market value, whichever amount is greater, of each bond ''short'' in the account.

*(5) The minimum maintenance margin levels for security futures contracts, long and short, shall be 20 percent of the current market value of such contract. (See paragraph (f) of this Rule for other provisions pertaining to security futures contracts.)*

* * * * *

(e)(6) Broker/Dealer Accounts

(A) A member may carry the proprietary account of another broker/dealer, which is registered with the Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T *and Rules 400 through 406 under the Act and Rules 41.42 through 41.48 under the CEA* are adhered to and the account is not carried in a deficit equity condition. The amount of any

[3] *See* letter from Gary L. Goldsholle, Associate General Counsel, NASD to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 22, 2002 (''Amendment No. 1''). Amendment No. 1 makes technical changes to the proposed rule text.

[4] *See* Amendment No. 1, *supra* note 3.

[5] *Id.*

deficiency between the equity maintained in the account and the haircut requirements pursuant to SEC Rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.

(e)(7) Nonpurpose Credit

In a nonsecurities credit account, a member may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) the account is recorded separately and confined to the transactions and relations specifically authorized by Regulation T;

(B) the account is not used in any way for the purpose of evading or circumventing any regulation of NASD or of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 under the Act and Rules 41.42 through 41.48 under the CEA;* and

(C) the amount of any deficiency between the equity in the account and the margin required by the other provisions of this paragraph shall be charged against the member's net capital as provided in SEC Rule 15c3–1.

The term ''nonpurpose credit'' means an extension of credit other than ''purpose credit,'' as defined in Section 220.2 of Regulation T.

* * * * *

*(f)(11) Customer Margin Rules Relating to Security Futures*

*(A) Applicability. No member may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section.*

*(B) Amount of customer margin.*

*(i) General Rule. As set forth in paragraphs (b) and (c) of this rule, the minimum initial and maintenance margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.*

*(ii) Excluded from the rule's requirements are arrangements between a member and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's good faith determination that the customer is an ''Exempted Person,'' as defined in Rule 401(a)(9) under the Act, and Rule 41.43(a)(9) under the CEA, except for the proprietary account of a broker/dealer carried by a member pursuant to paragraph (e)(6)(A) of this Rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an ''Exempted Person,'' it shall notify the member of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this paragraph.*

*(iii) Permissible Offsets. Notwithstanding the minimum margin levels specified in paragraph (f)(11)(B)(i) of this Rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(11)(B)(i) of this Rule.*

| Description of offset | Security underlying the security future | Initial margin requirement | Maintenance margin requirement |
|---|---|---|---|
| (1) Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* long put option on the same underlying security (or index). | Individual stock or narrow-based security index. | 20 percent of the current market value of the long security future, plus pay for the long put in full. | The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long security future. |
| (2) Short security future (or basket of security futures representing each component of a narrow-based securities index) *and* short put option on the same underlying security (or index). | Individual stock or narrow-based security index. | 20 percent of of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied. | 20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. |
| (3) Long security future *and* short position in the same security (or securities basket) underlying the security future. | Individual stock or narrow-based security index. | The initial margin required under Regulation T for the short stock or stocks. | 5 percent of the current market value as defined in Regulation T of the stock or stocks underlying the security future |
| (4) Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* short call option on the same underlying security (or index). | Individual stock or narrow-based security index. | 20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied. | 20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. |
| (5) Long a basket of narrow-based security futures that together tracks a broad based index *and* short a broad-based security index call option contract on the same index. | Narrow-based security index ..... | 20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied. | 20 percent of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. |
| (6) Short a basket of narrow-based security futures that together tracks a broad-based security index *and* short a broad-based security index put option contract on the same index. | Narrow-based security index ..... | 20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied. | 20 percent of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. |

| Description of offset | Security underlying the security future | Initial margin requirement | Maintenance margin requirement |
|---|---|---|---|
| (7) Long a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index put option contract on the same index. | Narrow-based security index ..... | 20 percent of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full. | The lower of: (1) 10 percent of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20 percent of the current market value of the long basket of security futures. |
| (8) Short a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index call option contract on the same index. | Narrow-based security index ..... | 20 percent of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full. | The lower of: (1) 10 percent of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20 percent of the current market value of the short security futures. |
| (9) Long security future *and* short security future on the same underlying security (or index). | Individual stock or narrow-based security index. | The greater of: (1) 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future. | The greater of: (1) 5 percent of the current market value of the long security future; or (2) 5 percent of the current market value of the short security future. |
| (10) Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price (conversion). | Individual stock or narrow-based security index. | 20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied. | 10 percent of the aggregate exercise price, plus the aggregate call in-the-money amount, if any. |
| (11) Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price (Collar). | Individual stock or narrow-based security index. | 20 percent of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied. | The lower of: (1) 10 percent of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any, or (2) 20 percent of the aggregate exercise price of the call, plus aggregate call in-the-money amount, if any. |
| (12) Short security future *and* long position in the same security (or securities basket) underlying the security future. | Individual stock or narrow-based security index. | The initial margin required under Regulation T for the long security or securities. | 5 percent of the current market value, as defined in Regulation T, of the long stock or stocks. |
| (13) Short security future *and* long position in a security immediately convertible into the same security future, without restriction, including the payment of money. | Individual stock or narrow-based security index. | The initial margin required under Regulation T for the long security or securities. | 10 percent of the current market value, as defined in Regulation T, of the long stock or stocks. |
| (14) Short security future (*or* basket of security futures representing each component of a narrow-based securities index) *and* long call option or warrant on the same underlying security (or index). | Individual stock or narrow-based securities index. | 20 percent of the current market value of the short security future, plus pay for the call in full. | The lower of: (1) 10 percent of the aggregate price of the call, plus the aggregate call out-of-money amount, if any; or (2) 20 current of the market value of the short security security future. |
| (15) Short security future, short put option long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion). | Individual stock or narrow-based security index. | 20 percent of the current market value of the short security future, plus the aggregate put in-the-money amount amount, if any, plus pay for the call in full. Proceeds from put sale may be applied. | 10 percent of the aggregate exercise price, plus the aggregate put in-the-money amount, if any. |
| (16) Long (short) a security future *and* short (long) an identical[6] security future traded on a different market. | Individual stock and narrow-based security index. | The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s). | The greater of: (1) 3 percent of the current market value of the long security future(s); or (2) 3 percent of the current market value of the short security future(s). |
| (17) Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow-based index future. | Individual stock and narrow-based security index. | The greater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s). | The greater of: (1) 5 percent of the current market value of the long security future(s); or (2) 5 percent of the current market value of the short security future(s). |

**Note:** [6] Two security futures contract will be considered ''identical'' for this purpose if they are issued by the same clearing agency of cleared and guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level. *See* Amendment No.1, *Supra* note 3.

*(C) Definitions. For the purposes of paragraph (f)(11) of this Rule and the offset table noted above, with respect to the term ''security futures contracts,'' the following terms shall have the meanings specified below:*

*(i) The term ''security futures contract'' means a ''security future'' as defined in Section 3(a)(55) of the Act.*

*(ii) The term ''current market-value'' has the same meaning as defined in Rule 401(a)(4) under the Act and Rule 41.43(a)(4) under the CEA.*

*(iii) The term ''underlying security'' means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.*

*(iv) The term ''underlying basket'' means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in subparagraph (iii) above include each of the component securities of the applicable index and that meets the following conditions: (1) the quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.*

*(v) The term ''underlying stock basket'' means a group of securities that includes each of the component securities of the applicable index and that meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.*

*(vi) The term ''variation settlement'' has the same meaning as defined in Rule 401(a) under the Act and Rule 41.43(a)(32) under the CEA.*

*(D) Security Futures Dealers' Accounts.*

*(i) Notwithstanding the other provisions of this paragraph (f)(11), a member may carry and clear the market maker permitted offset positions (as defined below) of one or more security futures dealers in an account that is limited to bona fide market maker transactions, upon a ''Good Faith'' margin basis that is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to Rule 15c3–1 under the Act. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required.*

*For the purpose of this paragraph (f)(11)(D), the term ''security futures dealer'' means a security futures dealer as defined in Rule 400 (c)(2)(v) under the Act and Rule 41.42(c)(2)(v) under the CEA.*

*(ii) For purposes of this paragraph (f)(11)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets if the account holds the following permitted offset positions:*

*a. A long position in the security futures contract or underlying asset offset by a short option position that is ''in or at the money'';*

*b. A short position in the security futures contract or underlying asset offset by a long option position that is ''in or at the money'';*

*c. A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;*

*d. A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;*

*e. A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;*

*f. A net short position in a security futures contract in which a security futures dealer makes a market or the underlying asset; or*

*g. An offset position as defined in Rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.*

*(E) Approved Options Specialists' or Market Maker Accounts.*

*(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry and clear the market-maker permitted offset positions (as defined below) of one or more approved options specialists or market-makers in an account that is limited to bona fide approved options specialist or market maker transactions, upon a ''Good Faith'' margin basis that is satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less than the Net Capital haircut deduction of the member carrying the transaction pursuant to Rule 15c3–1 under the Act. In lieu of collecting the ''Good Faith'' margin requirement, a carrying member may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required. For the purpose of this paragraph (f)(11)(E), the term ''approved options specialist or market-maker'' means a specialist, market-maker, or registered trader in options as referenced in paragraph (f)(2)(J) of this Rule, who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.*

*(ii) For purposes of this paragraph (f)(11)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or marker maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:*

*a. A long position in the underlying instrument or security futures contract offset by a short option position that is ''in or at the money'';*

*b. A short position in the underlying instrument or security futures contract*

*offset by a long option position that is ''in or at the money'';*

*c. A stock position resulting from the assignment of a market-maker short option position or delivery in respect of a short security futures contract;*

*d. A stock position resulting from the exercise of a market-maker long option position or taking delivery in respect of a long security futures contract;*

*e. A net long position in a security (other than an option) in which the market maker makes a market;*

*f. A net short position in a security (other than an option) in which the market maker makes a market; or*

*g. An offset position as defined in Rule 15c3–1 under the Act, including its appendices, or any applicable SEC staff interpretation or no-action position.*

*(iii) For purposes of paragraphs (f)(11)(D) and (E), the term ''in or at the money'' means that the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term ''in the money'' means that the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term ''overlying option'' means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased, or a put option written against a short position in an underlying asset.*

*(iv) Securities, including options and security futures contracts, in such accounts shall be valued conservatively in light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (a) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures contracts, (b) do not have an active market, or (c) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member's Net Capital and its overall exposure to material loss.*

*(F) Approved Specialists' Accounts—others.*

*(i) Notwithstanding the other provisions of (f)(11) and (f)(2)(J), a member may carry the account of an ''approved specialist,'' which account is limited to bona fide specialist transactions including hedge transactions with security futures contracts upon a margin basis that is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirement pursuant to Rule 15c3–1 shall be charged against the member's net capital when computing net capital under SEC Rule 15c3–1.*[7]

*(ii) For purposes of this paragraph (f)(11)(F), the term ''approved specialist'' means a specialist who is deemed a specialist for all purposes under the Act and who is registered pursuant to the rules of a national securities exchange.*

*(G) Additional Requirements.*

*(i) Money market mutual funds, as defined in Rule 2a–7 under the Investment Company Act of 1940, can be used for satisfying margin requirements under this paragraph (f)(11), provided that the requirements of Rule 404(b) under the Act and Rule 46(b)(2) under the CEA are satisfied.*

*(ii) Day trading of security futures is subject to the minimum requirements of this Rule. If deemed a pattern day-trader, the customer must maintain equity of $25,000. The 20 percent requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NASD excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in Rule 2520(f)(8)(B).*

(iii) The use of the ''time and tick'' method is based on the member's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

(iv) Security futures contracts transacted or held in a futures account[8] shall not be subject to any provision of this Rule.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[7] *See* Amendment No. 1, *supra* note 3.

[8] *Id.*

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

**Background**

In December 2000, the Commodity Futures Modernization Act of 2000[9] (the ''CFMA'') was signed into law. The CFMA, among other things, repealed the Shad-Johnson Accord, and now permits, for the first time, the trading of futures on narrow-based indices and single stocks (collectively referred to as ''security futures contracts'' or ''SFCs''). SFCs are hybrid products in that they have characteristics traditionally associated with both securities and futures. Accordingly, the CFMA requires that these products be treated as both ''securities'' and ''futures,'' and thus they are subject to regulation by the SEC and the CFTC. The enactment of the CFMA surfaced a number of regulatory issues, including determining the appropriate margin treatment for SFCs.

The CFTC and SEC have adopted customer margin requirements for SFCs (''SEC/CFTC Margin Regulations'')[10] pursuant to authority delegated to them by the Federal Reserve Board (''FRB'') under Section 7(c)(2)(B) of the Act.[11] As noted in the adopting release,[12] Section 7(c)(2) of the Act provides that the customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading security futures contracts; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to Section 6(a) of the Act,[13] and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.[14] These margin regulations became effective on September 13, 2002. The amendments discussed below are being proposed to conform NASD margin rules to these

[9] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[10] 17 CFR 242.400 through 406.

[11] 15 U.S.C. 78g(c)(2)(B).

[12] Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[13] 15 U.S.C. 78f.

[14] 12 CFR 220.

new requirements, and to be comparable to those of the NYSE.

**Proposed Rule Change**

NASD Rule 2520 prescribes specific margin requirements for members of NASD that must be maintained in all accounts of their customers, based on the type of securities product held in such accounts.

As proposed, NASD Rule 2520(b) and (c) would be amended to provide that the amount of initial and maintenance margin required for long and short SFCs held in a securities account shall be 20 percent of the current market value of such SFC. In doing so, NASD believes this would essentially make margin requirements for SFCs consistent with the margin requirements for comparable exchange-traded options contracts, which are premium plus 20 percent of the underlying securities.

NASD Rule 2520(e)(6) (''Broker/Dealer Accounts'') is being amended to permit introducing broker/dealers trading SFCs to deduct from their proprietary accounts the amount of any deficiency between the equity in the account and the haircut requirements pursuant to Rule 15c3–1 under the Act (''Net Capital Rule'') [15] in computing the net capital of the member, in lieu of collecting margin.

NASD Rule 2520(f)(11) (''Customer Margin Rules Relating to Security Futures'') is a new provision that will provide that transactions in SFCs in a securities account be subject to all other provisions of NASD Rule 2520, including Rule 2520(f)(8)(B) (''Day Trading''). Excluded from the margin requirements of the Rule are arrangements between a creditor and a borrower, whereby the borrower is defined as an ''Exempted Person'' under Rule 401(a)(9) [16] of the Act, and Rule 41.43(a)(9) [17] under the Commodity Exchange Act. SFCs transacted in a futures account would not be subject to the requirements of NASD Rule 2520.

NASD Rule 2520(f)(11)(B)(iii) (''Permissible Offsets'') is a new provision that will permit margin lower than the 20 percent general requirement, and thereby recognize the hedged nature of certain offsetting positions involving SFCs and related positions. In doing so, margin levels for offsetting positions involving SFCs and related positions would be lower than would be required if those positions were margined separately. Further, the proposed rule change makes NASD's Rule consistent with the table of offsets included in the recently adopted SEC/CFTC margin regulations noted above.

NASD Rule 2520(f)(11)(C) is a new provision that would provide certain definitions that apply specifically to SFCs including, among other things, the definitions of ''security futures contract,'' ''current market value,'' and ''underlying security.''

NASD Rule 2520(f)(11)(D) (''Security Futures Dealers' Accounts''), NASD Rule 2520(f)(11)(E) (''Approved Options Specialists' or Market Maker's Accounts''), and NASD Rule 2520(f)(11)(F) (''Approved Specialists' Accounts—others'') are new rule provisions. As proposed, the rule would permit ''good faith'' margin treatment for specified hedged offset positions carried in the accounts noted above. However, unlike the amendments proposed by other SROs [18] on security futures, NASD believes that its proposal will permit members to accord offset treatment in accounts carried for such specialists, market makers and security futures dealers only when their activity is limited to bona fide specialist or market making transactions. According to NASD, the limitations imposed are consistent with NASD's belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace. Were a revenue or other test substituted for the affirmative obligation standard here proposed, NASD believes that entities other than qualified market makers would be permitted to receive the more favorable market maker margin treatment. NASD believes that such was not the Commission's or CFTC's intent when adopting these rules.

NASD Rule 2520(f)(11)(G)(i) is a new proposed provision that would permit money market mutual funds as defined in Rule 2a–7 under the Investment Company Act of 1940 to be used for satisfying margin requirements for securities transactions, provided that the requirements of Rule 404(b) [19] under the Act and Rule 41.46(b)(2) [20] under the CEA are satisfied. Presently, money market mutual funds may be used as collateral to satisfy margin requirements under Regulation T in a securities margin account. The amendments to NASD Rule 2520 would now permit the use of such funds as collateral for SFCs as is required by the new SEC/CFTC Margin Regulations described above.

Except as otherwise intended, NASD believes that these proposed amendments are consistent with other SRO rule amendments addressing margin requirements for SFCs (*i.e.*, Nasdaq-Liffe Markets, OneChicago, LLC).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by establishing margin rules for security futures that are comparable with those developed by the SEC and CFTC and proposed by other SROs.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**II. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities

[15] 17 CFR 240.15c3–1.

[16] 17 CFR 242.401(a)(9).

[17] 17 CFR 41.43(a)(9).

[18] *See e.g.*, Securities Exchange Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002).

[19] 12 CFR 242.404(b).

[20] 12 CFR 41.46(b)(2).

[21] 15 U.S.C. 78*o*–3(b)(6).

and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the File No. SR–NASD–2002–166 and in the caption above and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32318 Filed 12–23–02; 8:45 am]

**BILLING CODE 8010–01–P**

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47008; File No. SR–NASD–2002–153]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Extend Manning Protection to Customer Limit Orders in All Securities Quoted on the Over-the-Counter Bulletin Board on a Permanent Basis

December 16, 2002.

### I. Introduction

On October 25, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent NASD Rule 6541, which currently is operating on a pilot basis. NASD Rule 6541 provides Manning protection to customer limit orders in approximately 325 securities quoted on the Over-the-Counter Bulletin Board (''OTCBB''). The proposal was published for comment in the **Federal Register** on November 15, 2002.[3] The Commission received no comments on the proposal. On December 16, 2002, the NASD (through Nasdaq) filed Amendment No. 1 to the proposal.[4] This notice and order solicits comment on the proposed rule change, as revised by Amendment No. 1, and approves the amended proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Description of Proposed Rule Change and Amendment No. 1

NASD Rule 6541 is an investor protection tool based on NASD Interpretive Material (''IM'') 2110–2 (commonly known as the ''Manning Rule''). In the original *Manning* case, the NASD found, and the Commission affirmed, that a member firm that accepts a customer limit order has a fiduciary duty to refrain from trading for its own account at a price more favorable than the customer's order.[5] NASD Rule 6541 currently extends customer limit order protection to approximately 325 securities quoted on the OTCBB on a pilot basis.[6] NASD Rule 6541(a) prohibits an NASD member that accepts a customer limit order in these securities from ''trading ahead'' of the limit order for its own account at prices equal or superior to the limit order, without first executing the limit order. NASD Rule 6541(b) permits a member to avoid the obligation in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, the price improvement must be for a minimum of the lesser of $0.01 or one-half of the current inside spread.[7]

NASD Rule 6541(c) provides that, notwithstanding the obligation in paragraph (a), a member may negotiate specific terms and conditions applicable to the acceptance of the limit orders of institutional accounts and of orders greater than 10,000 shares and $20,000 in value. NASD Rule 6541(d) provides that a member that trades through a held limit order must execute such limit order contemporaneously, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price. NASD Rule 6541(e) provides that the rule applies from 9:30 a.m. until 4 p.m. Eastern Time, and that the rule applies regardless of whether the subject security is also quoted in another quotation medium.

During the pilot period, Nasdaq's Department of Economic Research analyzed the impact of the pilot on relevant aspects of the OTCBB's operation. Nasdaq reported that the Department's study found no material impact on market quality (as measured by trading activity, market maker quoting activity, and spread behavior) for the securities subject to the pilot.

Nasdaq now seeks to establish NASD Rule 6541 on a permanent basis and to extend Manning protection to customer limit orders in all securities quoted on the OTCBB. In addition, consistent with this proposal, Nasdaq in Amendment No. 1 proposed to eliminate two existing provisions of NASD Rule 6541(e), which provide that the current pilot applies only to certain securities for a specified time period. As revised by Amendment No. 1, NASD Rule 6541 would appear as follows:

**Rule 6541 Limit Order Protection**

(a)–(d) No change.

(e) Application

[(1) This rule shall apply only to OTCBB securities specifically identified as such through the Nasdaq Workstation service.]

(*1*[2]) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.

(*2*[3]) This rule shall apply from 9:30 a.m. to 4 p.m. Eastern Time.

[(4) This rule shall be in effect until December 15, 2002.]

* * * * *

[3] *See* Securities Exchange Act Release No. 46783 (November 7, 2002), 67 FR 69279.

[4] *See* letter from Jeffrey S. Davis, Nasdaq, to Nancy J. Sanow, Division of Market Regulation, Commission, dated December 13, 2002 (''Amendment No. 1''). Amendment No. 1 would revise paragraph (e) of NASD Rule 6541 to remove: (1) A provision specifying the date of the rule's expiration; and (2) a provision limiting the rule only to OTCBB securities that are expressly identified as being subject to the rule. These provisions are no longer necessary in light of the NASD's proposal to extend limit order protection to all OTCBB securities on a permanent basis.

[5] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988) (''*Manning*'').

[6] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22). *See also* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001) (SR–NASD–2001–39) (amending the price improvement provisions of NASD Rule 6541); Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78) (further amending the price improvement provisions); Securities Exchange Act Release No. 45276 (January 14, 2002), 67 FR 2936 (January 22, 2002) (SR–NASD–2002–06) (extending pilot period for NASD Rule 6541 for an additional six months); Securities Exchange Act Release No. 46248 (July 24, 2002), 67 FR 49727 (July 31, 2002) (SR–NASD–2002–95) (extending pilot period for NASD Rule 6541 for an additional six months).

[7] For purposes of NASD Rule 6541(b), the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[8] Specifically, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[9] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

When the Commission approved the original proposal that instituted limit order protection for Nasdaq securities, it stated:

> The Commission believes that the rule change [which instituted NASD IM–2110–2] will enhance investor confidence by improving the quality of executions for customers. By giving a customer's limit order priority over the market maker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers.
>
> The NASD's proposal will also improve the price discovery process in NASDAQ securities. Limit orders aid price discovery by adding liquidity to the market and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution at a price between the spread. The new rule will encourage dealers to execute customer limit orders in a timely fashion so that they may resume their proprietary trading activities. The practice of delaying executions until the inside price reaches the customer's limit order also impedes price discovery by shielding those orders from the rest of the investing public. More expeditious handling of customer limit orders * * * will provide investors with a more accurate indication of the buy and sell interest at a given moment.[10]

The Commission cited this provision in approving the OTCBB Manning pilot in February 2001.[11] In the February 2001 approval order, the Commission also stated its view that a Manning pilot on the OTCBB was an appropriate first step in bringing limit order protection to the OTCBB, and that the pilot program would afford Nasdaq the opportunity to study the application of the rule and to consider further refinements.[12]

The Commission believes that it is appropriate at this time to approve limit order protection for all OTCBB securities on a permanent basis. In making this determination, the Commission notes that Nasdaq did not observe any material impact on market quality for the OTCBB securities subject to the pilot.[13] The rationale for approving limit order protection for Nasdaq securities and the pilot for OTCBB securities applies equally to approving the OTCBB Manning rule on a permanent basis: Limit order protection ensures that a market maker considers the limit orders of customers when executing its own orders and thus prevents the isolation of customer limit orders that might otherwise occur if a market maker were freely able to trade ahead of them. The Commission believes that the liquidity and transparency of the market in OTCBB securities should improve as a result of applying Manning protection to them on a permanent basis.

Under Section 19(b)(2) of the Act,[14] the Commission may not approve a proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposal, as revised by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The revisions to the proposed rule text made by Amendment No. 1 are technical in nature and consistent with Nasdaq's proposal to extend Manning protection to all OTCBB securities on a permanent basis. Accordingly, the Commission believes it is appropriate to approve the amended proposal at this time.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–153 and should be submitted by January 14, 2003.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act[15] that the proposed rule change (SR–NASD–2002–153), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32320 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o(b)(6).

[10] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[11] *See supra* note 6, 66 FR at 10543.

[12] *See id.*

[13] *See supra* note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47012; File No. SR–NASD–2002–269]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Maximum Execution Fees and Credits for SuperMontage Transactions in Low-Priced Securities

December 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(a)(ii) of the Act[3] and Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the caps on the SuperMontage order execution charges and liquidity provider credits applicable to Non-Directed and Preferenced Orders for securities that are priced at $1.00 or less per share. Nasdaq will implement the rule change on December 1, 2002. Because the transition from the SuperSOES, SOES, and SelectNet environment to SuperMontage will still be in progress at that time, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have not transitioned, while charging the SuperMontage prices established through SR–NASD–2002–44,[5] SR–NASD–2002–91,[6] SR–NASD–2002–135,[7] SR–NASD–2002–151,[8] and SR–NASD–2002–169 for stocks that have transitioned.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**Rule 7010. System Services**

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

| | |
|---|---|
| Order Entry: | |
| Non-Directed orders (excluding Preferenced Orders) | No charge. |
| Preferenced Orders: | |
| Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order). | No charge. |
| Other Preferenced Orders | $0.02 per order entry. |
| Directed Orders | $0.10 per order entry. |
| Order Execution: | |
| Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS: | |
| Charge to member entering order | $0.003 per share executed (but no more than [$75] *$120* per trade for trades in securities executed at $1.00 or less per share). |
| Credit to member providing liquidity | $0.002 per share executed (but no more than [$50] *$80* per trade for trades in securities executed at $1.00 or less per share). |
| Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS. | $0.001 per share executed (but no more than [$25] *$40* per trade for trades in securities executed at $1.00 or less per share). |
| Directed Order | $0.003 per share executed. |
| Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member. | No charge. |
| Order Cancellation: | |
| Non-Directed Orders (excluding Preferenced Orders) | $0.01 per order cancelled. |
| Preferenced Orders | $0.01 per order cancelled. |
| Directed Orders | $0.10 per order cancelled. |
| Entry and Maintenance of Quotes/Orders by Nasdaq Quoting market Participants: | |
| Initial entry of Quote/Order | No charge. |
| Change of Quote/Order due to order execution through Super Montage. | No charge. |
| Cancel/replace of Quote/Order to increase size | No charge. |
| Cancel/replace of Quote/Order to change price | $0.01. |
| Cancel/replace of Quote/Order to decrease size manually | $0.01. |
| Cancellation of Quote/Order | $0.01. |
| Cancellation of Quote/Order due to order purge or timeout | $0.0075. |

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] 17 CFR 240.19–4(F)(2).

[5] Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44). SR–NASD–2002–44 established a fee scheduled for members' use of SuperMontage.

[6] Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR–NASD–2002–91). SR–NASD–2002–91 provides that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis (a ''UTP Exchange'') may be established by means of an agreement between Nasdaq and the UTP Exchange.

[7] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135). SR–NASD–2002–135 established the maximum execution fees and credits for transactions in low-priced securities that are being modified by SR–NASD–2002–169.

[8] Securities Exchange Act Release No. 46917 (November 26, 2002), 67 FR 72254 (December 4, 2002) (SR–NASD–2002–151). SR–NASD–2002–151 increased the fees and credits applicable to execution of non-directed, directed, and preferenced orders.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Earlier this year, Nasdaq filed proposed rule changes to control trading costs for low-priced securities traded through its SuperSOES and SuperMontage transaction execution systems.[9] These proposed rule changes were filed in response to market activity that caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the price of a security declines, market participants generally need to purchase or sell an increasing number of total shares to participate actively in the market for the issue. This increase in the size of individual transactions, when combined with an unlimited per share fee and credit structure, had the potential to raise execution costs to market participants and result in disproportionate credits to liquidity providers. Accordingly, Nasdaq established caps on the order execution fees and liquidity provider credits for Non-Directed and Preferenced Orders that execute at prices of $1.00 or less.

Under the original fee schedule for SuperMontage, as established by SR–NASD–2002–44,[10] a member that entered a Non-Directed or Preferenced Order paid $0.002 per share executed for an order executed against the Quote/Order of a market participant that does not charge an access fee, and the liquidity provider received a $0.001 credit. Members paid $0.001 per share for an order executed against the Quote/Order of a market participant that charges an access fee, with the liquidity provider receiving no credit. Under SR–NASD–2002–135,[11] for trades in securities priced at $1.00 or less, these fees were capped $75 if the order executed against the Quote/Order of a market participant that did not charge an access fee, and $37.50 if the order executed against the Quote/Order of a market participant that charged an access fee. Similarly, the maximum credit to a liquidity provider for a transaction in a low-priced security was $37.50. Thus, the caps applied to the execution of orders for more than 37,500 shares.[12] To the extent that an executed order contained more shares, the excess shares were free.

In SR–NASD–2002–151,[13] Nasdaq increased the order execution charges and credits applicable to Non-Directed and Preferenced Orders: $0.003 for orders that access the Quote/Order of a market participant that does not charge an access fee, with a $0.002 credit to the liquidity provider.[14] The fee change, which was effective November 1, 2002, was not intended to change the per share revenue that Nasdaq receives from transactions, however, because the execution fee increase is offset by the increase in the credit. Nasdaq's revenue remains $0.001 per share for all trades that are not subject to the caps.

The fee change has had an indirect and adverse effect on Nasdaq's revenues, however, because the fee caps were not adjusted to the extent necessary to avoid allowing a higher number of shares to trade without charge. Specifically, the caps currently apply to the execution of low-priced orders with more than 25,000 (rather than 37,500) shares.[15]

Nasdaq introduced the caps because of a concern that the cost of transactions in low-priced stocks could become unreasonably high, and recognized that the caps would result in some lost revenue. It has concluded, however, that the current level of the caps must be increased to reflect the higher fees and credits instituted under SR–NASD–2002–151.[16] Without this change, Nasdaq will be allowing a far greater number of shares to trade without charge (*i.e.,* because they are part of a trade for more than 25,000 shares) than it had originally intended when it introduced the fee caps at the 37,500 share level.

Accordingly, Nasdaq is proposing to increase the cap to $120 for orders that access the Quote/Order of a market participant that does not charge an access fee, $40 for orders that access the Quote/Order of a fee-charging market participant, and $80 for the liquidity provider credit. These caps reflect a 40,000 share level, above which additional shares are free (slightly higher than the original 37,500 share level).[17]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[18] in general, and with section 15A(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[20] and Rule 19b–4(f)(2) thereunder, because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization.[21] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissons should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[9] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135) (SuperMontage); Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR–NASD–2002–106) (SuperSOES). SR–NASD–2002–135 and SR–NASD–2002–106 were effective upon filing. Nasdaq has also filed with the Commission a proposed rule change to apply the fee and rebate limits established by SR–NASD–2002–106 retroactively, as of July 1, 2002. *See* SR–NASD–2002–107 (August 5, 2002).

[10] *See* note 5, *supra.*

[11] *See* note 7, *supra.*

[12] 37,500 shares × $0.002 = $75.00.

37,500 shares × $0.001 = $37.50.

[13] *See* note 8, *supra.*

[14] The fee to access the Quote/Order of a market participant that charges an access fee remained $0.001.

[15] 25,000 shares × $0.003 = $75.

25,000 shares × $0.002 = $50.

25,000 shares × $0.001 = $25.

[16] *See* note 8, *supra.*

[17] 40,000 shares × $0.003 = $120.

40,000 shares × $0.002 = $80.

40,000 shares × $0.001 = $40.

[18] 15 U.S.C. 78*o*–3.

[19] 15 U.S.C. 78*o*–3(b)(5).

[20] 15 U.S.C. 78s(b)(3)(a)(ii).

[21] 17 CFR 240.19b–4(f)(2).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–169 and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32321 Filed 12–23–02; 8:45 am]

**BILLING CODE 8010–01–M**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47010; File No. SR–PCX–2002–74]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to New Order Types Called ''IOC Cross Orders'' and ''PNP Cross Orders'' and Amending PCXE Rule 7.37

December 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, by: (1) Adopting two new order types, an Immediate-or-Cancel (''IOC'') Cross Order and a Post No Preference (''PNP'') Cross Order; and (2) amending PCXE Rule 7.37 to provide for a limited exemption from the trade-through restrictions for these new order types. The text of the proposed rule change is below. Proposed new text is italicized and proposed deleted text is bracketed.

**PCX Equities, Inc.—Rule 7: Equities Trading**

Orders and Modifiers

Rule 7.31(a)–(x)—No change.

*(y)–(z)—Reserved.*

*(aa) Immediate-or-Cancel (''IOC'') Cross Order. An IOC Cross Order is an order that is to be executed in its entirety as a cross transaction as soon as such order is received; provided, however, the Corporation will cancel an IOC Cross Order at the time of order entry if:*

*(1) the cross price locks or crosses the BBO; or*

*(2) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37; or*

*(3) the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.*

*(bb) PNP (Post No Preference) Cross Order. A Cross Order that is to be executed in whole or in part on the Corporation and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order will be matched first against displayed orders with priority in the Arca Book, and then the remainder of the PNP Cross Order will be matched. Any unexecuted portion of the PNP Cross will be canceled. The Corporation will cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order at any time during the order execution process, whichever is applicable, if:*

*(1) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37;*

*(2) the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.*

* * * * *

**Order Execution**

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). This rule will not apply to *designated order types including IOC, NOW, PNP, IOC Cross and PNP Cross orders in* securities that are subject to an exemption from the Commission under SEC Rule 11Aa3–2(f) to the trade-through provisions of the ITS Plan (''*ITS* Trade-Through Exempt Securities''). Orders in *ITS* Trade-Through Exempt Securities [designated as IOC, NOW and PNP orders] will be effected at a price no more than three cents ($0.03) away from the best bid and offer quoted in CQS.

(a)–(e)—No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to adopt two new order types called an ''IOC Cross Order'' and a ''PNP Cross Order.'' The PCX believes that these new order types will provide ETP Holders[3] and Sponsored Participants[4] (collectively ''Users'') with more flexibility to facilitate cross transactions. The PCX is also proposing to amend PCXE Rule 7.37 so that these new order types will be subject to the SEC's *de minimis* exemption from the trade-through restrictions of the Intermarket Trading

---

[22] 27 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* PCXE Rule 1.1(n).

[4] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).

System (''ITS'') Plan in certain exchange-traded funds (''ETFs'').[5]

The PCX proposes to add PCXE Rule 7.31(aa) to define an IOC Cross Order. An IOC Cross Order is an order that is to be executed in its entirety as a cross transaction as soon as the order is received; provided, however, the ArcaEx trading system would cancel an IOC Cross Order at the time of order entry if: (i) The cross price locks or crosses the BBO; (ii) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37 described below; or (iii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment (''MPII'') pursuant to Rule 7.6(a), Commentary .06.[6] The PCX believes that IOC Cross Orders will help replicate the dynamic of a traditional floor-based auction market by which brokers may represent orders with a cross-only contingency. Furthermore, the PCX believes that this order type responds to the needs of market participants that use indexation strategies.

The PCX also proposes to add PCXE Rule 7.31(bb) to define a PNP Cross Order. A PNP Cross Order is a Cross Order[7] that is to be executed in whole or in part on ArcaEx and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order would be matched first against displayed orders with priority in the ArcaEx Book,[8] and then the remainder of the PNP Cross Order would be matched. Any unexecuted portion of the PNP Cross Order would be canceled. The ArcaEx trading system would cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order at any time during the order execution process, whichever is applicable, if: (i) The cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37; or (ii) the cross price is between the BBO and does not improve the BBO by the MPII.

The PCX's current rules governing the order execution processes for orders in the ArcaEx Book are set forth in PCXE Rule 7.37. Currently, Rule 7.37 provides, in part, that for an execution to occur in any Order Process, the price must be equal to or better than the NBBO. The requirements of this Rule do not apply to orders designated as IOC, NOW, and Post No Preference (''PNP'') in securities that are subject to an exemption from the trade-through provisions of the ITS Plan pursuant to Rule 11Aa3–2(f) under the Act;[9] provided, however, that any resulting executions will be at a price no more than three cents ($0.03) away from the NBBO displayed in the Consolidated Quote. Accordingly, the PCX proposes to amend PCXE Rule 7.37 so that IOC Cross and PNP Cross Orders will be subject to the SEC's exemption.

The PCX believes that the implementation of the aforementioned order types will facilitate enhanced order interaction and foster price competition. The proposal also promotes a more efficient and effective market operation, and enhances the investment choices available to investors over a broad range of trading scenarios. Finally, the PCX believes that the proposed rule changes will permit the execution of cross transactions in a manner consistent with PCXE rules applicable to price-time priority, price improvement requirements, and NBBO price protection.

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and further the objectives of section 6(b)(5),[11] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change is consistent with provisions of section 11A(a)(1)(B) of the Act,[12] which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The PCX neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the PCX. All submissions should refer to File No. SR–PCX–2002–74 and should be submitted by January 8, 2003.

[5] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002).

[6] The minimum price improvement increment (''MPII'') on ArcaEx is equal to $0.01 or 10% of the NBBO spread, whichever is greater. *See* PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in the execution of Cross Orders. *See* PCXE Rule 7.31(s).

[7] See PCXE Rule 7.31(s) (definition of a ''Cross Order'').

[8] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE Rule 7.37 for a detailed description of these order execution processes.

[9] 17 CFR 240.11Aa3–2(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(B).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32322 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47016; File No. SR–SCCP–2001–12]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Extending Approval of Restructured and Limited Clearing Services

December 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 17, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') and on November 26, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal through December 31, 2002.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to extend for a one year period ending December 31, 2003, the Commission's approval of its providing limited clearance and settlement services. Specifically, SCCP seeks to continue to provide trade confirmation and recording services for members of the Philadelphia Stock Exchange, Inc. (''Phlx'') effecting transactions through Regional Interface Operations (''RIO'') and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants whose transactions are cleared through an account established by SCCP at the National Securities Clearing Corporation (''NSCC'').[2]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to obtain Commission approval of SCCP's restructured and limited clearance and settlement business for an additional one year period ending December 31, 2003. In an agreement dated as of June 18, 1997, (''Agreement'') by and among the SCCP, Phlx, Philadelphia Depository Trust Company (''Philadep''), NSCC and The Depository Trust Company (''DTC''), SCCP and Philadep agreed to certain provisions, including that: (i) Philadep would cease providing securities depository services; (ii) SCCP would make available to its participants access to the facilities of one or more other organizations providing depository services; (iii) SCCP would make available to SCCP participants access to the facilities of one or more other organizations providing securities clearing services; and (iv) SCCP would transfer to the books of such other organizations the CNS system open positions of SCCP participants on the books of SCCP.

In December 1997, the Commission approved proposed rule changes which gave effect to this Agreement and which reflected Philadep's withdrawal from the depository business and SCCP's restructured and limited clearance and settlement business.[4] In that approval order, the Commission stated, ''However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules, and Procedures through December 31, 1998.'' Subsequent to that approval, one-year extensions of such approval have been granted by the Commission to continue SCCP's restructured and limited clearance and settlement services.[5]

SCCP is hereby requesting an additional one year extension of such approval noting that such extension is appropriate in order that SCCP may continue to provide services to its participants. SCCP believes that its restructured operations have functioned consistent with the original proposed rule change, and SCCP will continue to evaluate whether any adjustments are necessary.

In the original proposed rule change and order temporarily approving SCCP's restructured business, many SCCP rules were amended and discussed at length. No new rule changes are proposed at this time. Thus, the purpose of the proposed rule change is to extend the effectiveness of SCCP's restructured business.

SCCP believes that the extension of the Commission's temporary approval to permit SCCP's continued operation of its restructured and limited clearance and settlement services is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with section 17A(b)(3)(F) which requires that a clearing agency be organized and its rules be designed, among other things, to promote the prompt and accurate clearance and settlement of securities transactions. SCCP believes that the extension of SCCP's restructured business should promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See SCCP rule 1.

[3] The Commission has modified the text of the summaries prepared by SCCP.

[4] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 (December 19, 1997) (SR–SCCP–97–04).

[5] Securities Exchange Act Release Nos. 40872 (December 31, 1998), 64 FR 1264 (January 8, 1999) (SR–SCCP–98–05); 42320 (January 6, 2000), 65 FR 2218 (January 13, 2000) (SR–SCCP–99–04); 43781 (December 28, 2000), 66 FR 1167 (January 5, 2001) (SR–SCCP–00–05), and 45227 (January 3, 2002), 67 FR 1259 (January 9, 2002) (SR–SCCP–2001–11).

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that this extension should impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the information the Commission has to date, the Commission believes that SCCP's restructured operations have functioned satisfactorily to provide prompt and accurate clearance and settlement. During the upcoming temporary approval period, the Commission expects to review with SCCP in detail the functioning of SCCP's restructured operations in order to determine whether permanent approval of SCCP's restructured business is warranted.

SCCP has requested that the Commission approve the proposed rule change prior to the 30th day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the 30th day after publication because such approval will allow SCCP to continue to offer its restructured clearing operations for another year without interruption.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–SCCP–2001–12. This file number should be included on the subject line if e-mail is used. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–2001–12 and should be submitted by January 14, 2003.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–SCCP–2001–12) be and hereby is approved on an accelerated basis through December 31, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–32319 Filed 12–23–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3452]**

### State of Louisiana (Amendment # 5)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 13, 2002, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 17, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–32278 Filed 12–23–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3459]**

### State of Texas; (Amendment #5)

In accordance with a notice received from the Federal Emergency Management Agency, dated December 16, 2002, the above numbered declaration is hereby amended to include Walker County in the State of Texas as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Houston and Madison Counties in the State of Texas may be filed until the specified date at the previously designated location. 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 January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 18, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–32402 Filed 12–23–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice: Small Business Administration Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the January–March quarter of FY 2003.

**James E. Rivera,**

*Associate Administrator for Financial Assistance.*

[FR Doc. 02–32401 Filed 12–23–02; 8:45 am]

BILLING CODE 8025–01–U

## DEPARTMENT OF STATE

**[Public Notice 4237]**

### Culturally Significant Objects Imported for Exhibition

*Determinations:* ''Frida Kahlo, Diego Rivera, and Twentieth-Century Mexican Art: The Jacques and Natasha Gelman Collection''

**AGENCY:** Department of State.

**ACTION:** Correction.

**SUMMARY:** This is a correction to previously-published Public Notice 3972 regarding culturally significant objects imported for exhibition in the show entitled ''Frida Kahlo, Diego Rivera, and Twentieth-Century Mexican Art: The Jacques and Natasha Gelman Collection.'' This is to correct **Federal Register** Doc. 02–8716, 67 FR 17478–02 (April 10, 2002) by adding the following language after the words ''to on or about January 5, 2003,'': ''the Mexican Fine Arts Center Museum, Chicago, Illinois, from on or about January 20, 2003, to on or about April 27, 2003, the Nevada Museum of Art, Reno, Nevada, from on or about May 18, 2003, to on or about September 21, 2003,''

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 18, 2002

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 02–32425 Filed 12–23–02; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket OST–2002–14107]**

### Disadvantaged Business Enterprise

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension for a currently approved information collection.

**DATES:** Comments on this notice must be received by February 24, 2003.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (*SVC–124*), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. [It is important to note that because of current security procedures affecting the U.S. Mail, other means (*e.g.*, FedEx, UPS) may be faster];

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329;

(3) By fax to the Docket Management Facility at 202–493–2251; or

(4) By electronic means through the Web site for the Docket Management System at: *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. Ashby, Office of the Secretary, Office of Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590 (202) 366–9310 (voice) 202–366–9313 (fax) or at *bob.ashby@ost.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of DBE Awards and Commitments.

*OMB Control Number:* 2105–0510.

*Type of Request:* Extension to a currently approved information collection.

*Abstract:* 49 CFR part 26 establishes requirements for the Department of Transportation (DOT) so as to comply with the mandate by statute including 1103(b) of the Transportation Equity Act for the 21st Century (TEA–21) of 1998 (Pub. L. 105–178) and 49 U.S.C. 47113, PL 105–178 retains the annual survey and listing from each state of small business concerns and the location of such concerns, and notification to the Secretary of Transportation of the percentage of such concerns controlled by women and by socially and economically disadvantaged individuals other than women. If these reporting requirements were not available, firms controlled by minorities would not achieve the fullest possible participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The informational request consists of 17 data items on one page and one attachment, to be completed on an annual, semi-annual or quarterly basis. It is the overall long range objective of DOT to permit all DOT recipients to report on a yearly basis depending upon their past experience in meeting their goals.

*Respondents:* DOT financially-assisted state and local transportation agencies.

*Estimated Number of Respondents:* 1,057.

*Estimated Total Burden on Respondents:* 1,456,683.

The information collection is available for inspection in the DOT Dockets Management System (DMS), 400 Seventh St., SW., Washington, DC 20590 (202) 366–9310.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on December 18, 2002.

**Robert C. Ashby,**

*Deputy Assistant General Counsel for Regulation and Enforcement.*

[FR Doc. 02–32407 Filed 12–23–02; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Docket: RSPA–98–4957

### Notice: Request for Extension of Existing Information Collection

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice and request for public comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) published its intention to request extension of an information collection in support of the Office of Pipeline Safety (OPS) for Response Plans for Onshore Oil Pipelines. This notice was published on October 2, 2002 (67 FR 61951–2). No comments were received. The public is being given an additional opportunity to comment.

**DATES:** Comments on this notice must be received by January 23, 2003 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell, OPS, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950, (202) 366–6205 or by electronic mail at *Marvin.fell@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Response Plans for Onshore Oil Pipelines.

*OMB Number:* 2137–0589.

*Type of Request:* Extension of an existing information collection.

*Abstract:* The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response plan to minimize the impact of an oil discharge in the case of an accident. These response plans enhance the spill response capability of pipeline operators.

*Respondents:* Oil Pipeline operators.

*Estimated Number of Respondents:* 233.

*Estimated Total Annual Burden on Respondents:* 29,780 hours annually.

*Frequency:* Every five years.

*Use:* To enhance response capability in the event of an oil spill.

*Regulation:* 49 CFR 194.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590 Monday through Friday from 10 a.m. to 4 p.m., excluding Federal holidays. Comments can be reviewed electronically on the World Wide Web at *dms.dot.gov.*

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send written comments directly to Office of Management and Budget, Office of Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 726 Jackson Place, NW., Washington, DC 20503.

Issued in Washington, DC, on December 10, 2002.

**Richard D. Huriaux,**

*Manager, Regulations, Office of Pipeline Safety.*

[FR Doc. 02–32268 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings; Agreements Filed

Aviation Proceedings, Agreements filed the week ending December 13, 2002.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2002–14035.

*Date Filed:* December 9, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC COMP 0987 dated 10 December 2002, Mail Vote 258—Resolution 024d, Amendment to rounding units for the Jamaican Dollar, Intended effective date: 1 January 2003.

*Docket Number:* OST–2002–14074.

*Date Filed:* December 13, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PSC/Reso/117 dated December 6, 2002, Finally Adopted

Resolutions r1–r32, Intended effective date: 1 June 2003.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02–32272 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 13, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (*see* 14 CFR 301.201 et. seq.).

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1998–3477.

*Date Filed:* December 9, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 30, 2002.

*Description:* Application of United Parcel Service Co., pursuant to 49 U.S.C. 41101 and subpart B, requesting renewal of its certificate authorizing UPS to engage in the scheduled foreign air transportation of property and mail between any point or points in the United States and two points in Japan, and beyond each of those points to two points.

*Docket Number:* OST–1998–3491.

*Date Filed:* December 9, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 30, 2002.

*Description:* Application of Polar Air Cargo, Inc., pursuant to 49 U.S.C 41102 and subpart B, requesting renewal of its certificate of public convenience and necessity for route 727, authorizing it to provide scheduled foreign air transportation of property and mail between any point or points in the United States and two points in Japan, and beyond each of those points to one point.

*Docket Number:* OST–2002–14071.

*Date Filed:* December 13, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 3, 2003.

*Description:* Application of Westward Airways, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing interstate

scheduled air transportation of persons, property, and mail within the State of Nebraska between Scottsbluff, North Platte, Lincoln, and Omaha.

*Docket Number:* OST–2002–14073.

*Date Filed:* December 13, 2002.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 3, 2003.

*Description:* Application of Kuwait Airways Corporation, pursuant to 49 U.S.C. 41302, 14 CFR part 211 and subpart B, requesting an amendment to its foreign air carrier permit to include authority to provide additional operations between Kuwait and New York, NY.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02–32271 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 159: Global Positioning System (GPS)

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

**ACTION:** Notice of RTCA special committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

**DATES:** The meeting will be held January 13–17, 2003, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting.

**Note:** Specific working group sessions will be held January 13–16.

The plenary agenda will include:

- January 17
- Open Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting).
- Review Working Group Progress and Identify Issues for Resolution.
  - Global Positioning System (GPS)/3rd Civil Frequency (WG–1).
  - GPS/Wide Area Augmentation System (WAAS) (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Dnertial (WG–2C).
  - GPS/Precision Landing Guidance (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - SC–159 Ad Hoc.
- Review of EUROCAE activities.
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2002.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–32409 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

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

**ACTION:** Notice of RTCA special committee 186 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

**DATES:** The meeting will be held January 17–31, 2003 starting at 9 am (unless stated otherwise).

**ADDRESS:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http//www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting.

**Note:** Specific working group sessions will held on January 27–29.

The plenary agenda will include:

January 30–31

The planary agenda

- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary).
- SC–186 Activity Reports.
  - WG–1, Operations & Implementation.
  - WG–2, Traffic Information Service—Broadcast (TIS–B).
  - WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS).
  - WG–4, Application Technical Requirements.
  - WG–5, Universal Access Transceiver (UAT) MOPS.
  - WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS).
- EUROCAE WG–51 Activity Report.
- Review and Approve Proposed Final Draft TIS–B MASPS.
- Review and Approve Proposed Final Draft revised DO–260, 1090 MHz MOPS.
- Preliminary ASA MASPS Review.
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2003.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–32410 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

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

**ACTION:** Notice of RTCA special committee 189/EUROCAE working group 53 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

**DATES:** The meeting will be held January 13–17, 2003 starting at 9 a.m.

**ADDRESSES:** The meeting will be held at STNA Headquarters, Room A06 and A209, 1 avenue du Dr Maurice Grynfogel, F–31035 Toulouse, France.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) STNA—Anne Marie Charron; (Phone) +33 5 62 14 58 81; (Fax) +33 5 62 14 58 53

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting.

**Note:** To expedite entry into the STNA facility, a registration form must be completed. All foreign visitors must be registered. The registration form is available from RTCA. For other useful information, visit the STNA Web Site at *http://www.stna.dgac.fr/gb/pratique_gb/frpratique_gb.html.*

The plenary agenda will include:

- January 13
- Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes).
- Sub-group and related reports.
- Position papers planned for plenary agreement.
- SC–189/WG–53 co-chair progress report.
- January 14–16
- Subgroup Meetings—Review of PU–26 V2.0.
- January 17
- Closing Plenary Session (Introductory Remarks, Review/Approval of Meeting Agenda).
- Sub-group and related reports.
- Position papers planned for plenary agreement.
- SC–189/WG–53 co-chair progress report and wrap-up.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2002.

**Janice L. Peters,**

*FAA Special Assistant, RTCA Advisory Committee.*

[FR Doc. 02–32411 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Imperial County Airport, Imperial, CA

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Imperial County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before January 23, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Conn, Airport Manager, Imperial County, at the following address: 1099 Airport Road, Imperial CA 92251.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Imperial County under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Eric Vermeeren, Airports Program Engineer, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, Telephone: (310) 725–3631. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Imperial County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 8, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Imperial County was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 7, 2003.

The following is a brief overview of the impose and use application No. 03–01–C–00–IPL:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* January 1, 2003.

*Proposed charge expiration date:* October 1, 2011.

*Total estimated PFC revenue:* $892,742.

*Brief description of the proposed projected:* Rehabilitation Runway 14–32, Rehabilitate Runway 8–26, Rehabilitate an Construct Aprons, Rehabilitate Access and Parking Areas, Update Airport Master Plan, Rehabilitate Passenger Terminal Building, ARFF Vehicle Rehabilitation, Acquire Airport Sweeper, Acquire ADA Passenger Lift Device, Install Two (2) Gate Actuators, Airport Maintenance Building, and Airport Drainage and Erosion Protection.

*Class of classes of air carriers which the public agency has requested not be required to collect PFCs:* nonscheduled/ on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any

person may, upon request, inspect the application, notice and other documents germane to the application in person at Imperial County, Department of Airports, Administration office.

Issued in Lawndale, California, on November 14, 2002.

**Mia Paredes Ratcliff,**

*Acting Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–32413 Filed 12–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 03–05–C–00–RIC to, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Richmond International Airport, Richmond, VA

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to, impose and use the revenue from a PFC at Richmond International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before January 23, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Va, 22016.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jon E. Mathiasen, Executive Director of the Capital Region Airport Commission at the following address: Capital Region Airport Commission, 1 Richard E. Byrd Terminal Drive, Richmond International Airport, Virginia 23250–2400.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Region Airport Commission under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Arthur Winder, Program Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Va. 22016, (703) 661–1363. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Richmond International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 12, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Capital Region Airport Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 12, 2003.

The following is a brief overview of the application.

*Proposed charge effective date:* November 1, 2016.

*Proposed charge expiration date:* July 1, 2005.

*Level of the proposed PFC:* $3.00.

*Total estimated PFC revenue:*

Impose $35,812,079.

Use $69,367,774.

*Brief description of proposed project(s):*

Extend Taxiway ''A'' (Impose & Use).

Renovate Existing Concourses ''A'', ''B'' and ''C'' (Impose & Use).

Terminal Drive Flyover and Access Roads (Impose and Use).

Terminal Building Addition and Modification (Use only).

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* FAR part 135 On-demand air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Richmond International Airport.

Issued in Dulles, Va. 22016, December 10, 2002.

**Arthur Winder,**

*Program Manager, Washington Airports District Office.*

[FR Doc. 02–32418 Filed 12–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Technical Standard Order (TSO)–C151b, Terrain Awareness and Warning System

**AGENCY:** Federal Aviation Administration (DOT).

**ACTION:** Availability of final TSO document.

**SUMMARY:** This notice announces the availability of TSO–C151b. The final TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standard (MPS) their Terrain Awareness and Warning System must meet to obtain and be identified with TSO–C151b Class A, B, or C markings.

**DATES:** This TSO is effective on December 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Program Support Specialist, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs & Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

**SUPPLEMENTARY INFORMATION:** This TSO is effective for new applications submitted after the effective date of this TSO. All prior revisions to this TSO are no longer effective and, in general, applications will not be accepted after the effective date of this TSO. However, applications submitted against the previous versions of this TSO may be accepted up to six months after the effective date of this TSO, in cases where we know the applicant was working against the earlier MPS before the new change became effective. Terrain Awareness and Warning Systems approved under a previous TSO authorization may continue to be manufactured under the provisions of their original approval, as specified in title 14 of the Code of Federal Regulations (14 CFR) 21.603(b). However, major design changes to TAWS equipment approved under previous versions of this TSO requires a new authorization under this TSO, per 14 CFR 21.611(b).

This is a revised TSO that sets forth minimum operational performance standards that a Terrain Awareness and Warning System (TAWS) equipment must meet to be identified with the TSO–C151b Class A, B, or C marking. This revision adds the requirements for a Class C designation.

The standards of this TSO apply to equipment intended to provide pilots and flight crews with both aural and visual alerts to aid in preventing an inadvertent controlled flight into terrain (CFIT) accident. Class A and B TAWS equipment are required by 14 CFR parts 91, 135, and 121. Class C equipment is intended for voluntary installations on aircraft not covered by the TAWS requirements in 14 CFR parts 91, 135, and 121.

### How To Obtain Copies

A copy of the final TSO may be obtained via the internet at, *http://www.faa.gov/certification/aircraft/TSOA.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 19, 2002.

**David W. Hempe,**

*Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 02–32417 Filed 12–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: La Plata County, CO

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this Notice of Intent to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project to improve the safety, capacity, and efficiency of US Highway 160 from Durango to Bayfield in La Plata County, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Joseph P. Duran, FHWA Colorado Division, 555 Zang Street, Suite 250, Lakewood, Colorado 80228. Telephone (303) 969–6730 Extension 385, or the Colorado Department of Transportation, Kerrie E. Neet, Right of Way/Environmental/Planning Manager, CDOT Region 5, 3803 North Main Ave, Suite 300, Durango, Colorado 81301, 970–385–1430 or (e-mail: *kerrie.neet@dot.state.co.us*).

**SUPPLEMENTARY INFORMATION:** The FHWA, cooperation with the Colorado Department of Transportation Region 5, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the safety, capacity, and efficiency of US 160 from the US 160/US 550-east intersection, easterly through Bayfield in La Plata County. The proposal is to widen what is primarily a two-lane roadway into a four-lane highway, with shifts and realignments in some locations. The project will also correct substandard roadway design, intersection deficiencies and consider the need to relocate the existing US 160/US 550-east intersection.

US 160 is a principal arterial on the National Highway System, providing the only major east-west corridor for the transport of people, goods, and services across southwestern Colorado. This highway serves as the major route for local and regional traffic into Durango and Bayfield. The existing US 160 highway improvements were constructed in the 1950s and 1960s, and the typical design life for a highway is 20 years. Based on projected traffic volumes, the function of this highway will continue to deteriorate, causing increased safety hazards and maintenance costs. Some sections of this highway currently exhibit an above average traffic accident rate.

The scoping process to develop alternatives along the US 160 corridor began in September 1996 and a Final US 550 and US 160 Feasibility Study was completed and signed by the FHWA in February 1999. The Feasibility Study identified the improvements needed to achieve the goals of increasing the highway's efficiency, capacity, and improving safety with concern for important public values. Public and agency input on alternatives was sought through a series of public meetings.

A draft Environmental Assessment (EA) was prepared to determine the potential for significant impacts due to the proposed highway widening and shifts in alignment. As a result of this analysis and issues raised during the public process, the FHWA has determined that preparation of an EIS is appropriate. Identified impacts warranting this determination include wetlands, threatened/endangered species, environmental justice, wildlife, and private property owner concerns.

Changes in the anticipated land use and jurisdiction are in progress for the western portion of the project corridor known as ''Grandview.'' this area is being studied for urban services and is likely to be annexed to the City of Durango. This warrants the consideration of a new ''urban'' type of four-lane improvement. Consideration of all reasonable alternatives will be performed to determine how to best meet the project purpose and need. Alternative alignments developed in the EA process will be reevaluated for potential inclusion in the EIS. As required by NEPA, the EIS will also evaluate a ''No Action'' alternative as a baseline for comparing impacts of all the alternatives. Multimodal facilities, including park-n-ride lots and shared use (bicycle/pedestrian) paths, will be considered as part of the alternatives analysis.

A public scoping meeting will be held during February or March 2003 to present alternatives. Notices of this public meeting will be mailed to citizens, property owners, agencies, and posted in local news media. Draft and Final Environmental Impact Statements will be prepared and made available for public and agency review prior to public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 4, 2002.

**Joseph P. Duran,**

*Operations Engineer, Colorado Division FHWA, 555 Zang Street Suite 250, Lakewood, CO 80228.*

[FR Doc. 02–32301 Filed 12–23–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Guidance on Traffic Control Devices at Highway-Rail Grade Crossings

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; issuance of guidance.

**SUMMARY:** This notice announces that the FHWA has issued guidance to assist engineers in selection of traffic control devices or other measures at highway-rail crossings. The report, ''Guidance on Traffic Control Devices at Highway-Rail Grade Crossings'' is available at the following URL: *http://safety.fhwa.dot.gov/media/twgreport.htm.* This guidance is designed to assist in decisions to install traffic control devices or otherwise improve highway-rail grade crossings.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Winans, Office of Safety Design, HSA–10, 202–366–4656 or Mr. Raymond Cuprill, Office of the Chief

Counsel (HCC–30), 202–366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's web site at *http://www.access.gpo.gov.* An electronic version of the guidance document may be downloaded by accessing the FHWA web site at: *http://safety.fhwa.dot.gov/media/twgreport.htm.*

## Background

According to the National Transportation Safety Board (NTSB),[1] more than 4000 accidents have occurred at the Nation's active and passive grade crossings[2] each year from 1991 through 1996. The large number of passive grade crossings, the high percentage of fatalities that occur as passive grade crossings, and the cost to eliminate or upgrade passive grade crossings prompted the NTSB to conduct a study to identify some of the common causes for accidents at passive grade crossings, and to make recommendations to improve safety at passive grade crossings.[3] As a part of this study, the NTSB convened a two-day public forum in Jacksonville, Florida, to gather information about issues affecting safety at passive grade crossings.

The data from the NTSB's study, the testimony at the public forum, and additional research conducted by the NTSB led the NTSB to conclude that the current set of traffic signs used at passive grade crossings is not adequate. Therefore, the NTSB made several safety recommendations to the U.S. DOT, the States, and several other transportation related professional organizations.[4]

As a result of the safety recommendations to the U.S. DOT, then Secretary of Transportation, Rodney Slater, in December 1998, convened a U.S. DOT working group to respond to all the issues encompassed by the recommendations. The working group was comprised of representatives from the Federal Railroad Administration (FRA), the FHWA, the National Highway Traffic Safety Administration (NHTSA), and the Federal Transit Administration (FTA).

Because the NTSB study also concluded that the safety of passive grade crossings is enhanced when their design adheres to the applicable standards and guidelines such as the FHWA's ''Railroad-Highway Grade Crossing Handbook'' and the American Association of State Highway and Transportation Officials' (AASHTO) ''A Policy on Geometric Design of Highways and Streets'' (the Green Book), this working group formulated a project plan for developing guidance for State and local traffic engineers regarding highway-rail grade crossing traffic control devices and grade separation. The plan required that the U.S. DOT establish and assemble a Technical Working Group (TWG) to develop this guidance for the State and local jurisdictions. Representative from the same agencies that made up the U.S. DOT working group also served on the TWG along with individuals from the Intelligent Transportation Systems (ITS) Joint Program Office, the Research and Special Projects Administration (RSPA), the NTSB, transportation/safety associations and professional organizations, State and local transportation agencies, railroads, public safety organizations, universities, private sector consultants and product vendors.

A contractor provided research, report preparation and administrative support to the TWG. The first phase of the effort was a literature review of existing guidance. In the second phase, the TWG developed the guidance document. The TWG met as a group three times and provided comments on draft guidance at other times.

The result of the TWG's efforts is the report, ''Guidance on Traffic Control Devices at Highway-Rail Grade Crossings'' available at the following URL: *http://safety.fhwa.dot.gov/media/twgreport.htm.* This guidance is designed to assist in decisions to install traffic control devices or otherwise improve highway-rail grade crossings.

In addition to providing quantitative guidance for State and local engineers to select traffic control devices or other measures for use at highway-rail crossings, the FHWA expects the document to lead to improved communications between highway agencies, railroad companies, and government authorities involved in developing and implementing policies, rules and regulations.

## Guidance

The FHWA guidance report, dated November 2002, is not to be interpreted as policy or standards. Any requirements that may be noted in this guidance are taken from the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)[5] or other documents identified by footnotes in the report. The goal is to provide a document for users to understand general engineering and operational concepts of highway-rail grade crossings and provide guidance in the selection of traffic control devices or other measures at highway-rail grade crossings. It discusses a number of existing laws, regulations and policies of the FHWA and the FRA concerning highway-rail grade crossings and railroad operations, driver needs concerning various sight distances, and highway and rail system operational requirements and functional classification. It includes a description of passive and active traffic control devices, including supplemental devices used in conjunction with active controls. An appendix provides limited discussion on the topic of interconnection and preemption of traffic signals near highway-rail grade crossings.

[1] The National Transportation Safety Board is an independent Federal agency dedicated to promoting aviation, railroad, highway, marine, pipeline, and hazardous materials safety. Established in 1967, the agency is mandated by Congress through the Independent Safety Board Act of 1974 to investigate transportation accidents, determine the probable causes of the accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The NTSB makes public its actions and decisions through accident reports, safety studies, special investigation reports, safety recommendations, and statistical reviews.

[2] An active grade crossing is a highway-rail grade crossing when active warning devices such as flashing lights, bells, or gates are triggered by the approach of a train along the tracks, providing advance warning to the oncoming motorist that a train is approaching the crossing. A passive grade crossing is a highway-rail grade crossing that has only traffic control devices such as crossbuck, stop signs, or pavement markings that do not change to give the highway vehicle driver active visual or auditory warning of an approaching train.

[3] The National Transportation Safety Board (NTSB) Safety Study, adopted on July 21, 1998, is available at the following URL: *http://www.ntsb.gov/publictn/1998/SS9802.pdf.*

[4] The NTSB made safety recommendations to the U.S. DOT, the FHWA, the National Highway Traffic Safety Administration (NHTSA), the Federal Railroad Administration (FRA); the States; Operation Lifesaver, Inc.; the American Association of Motor Vehicle Administrators; the American Automobile Association; the American Association of State Highway and Transportation Officials; the Professional Truck Drivers Institute of American; the Advertising Council, Inc.; the Association of American Railroads; the American Short Line and Regional Railroad Association; and the American Public Transit Association.

[5] The MUTCD is incorporated by reference in 23 CFR 655.601.

There is also discussion concerning crossing closure, grade separation, and consideration for installing new grade crossings. Finally, a glossary defines the technical terms.

**Conclusion**

The FHWA provides this guidance as another tool to highway engineers and transportation officials as a reference aid in decisions to install traffic control devices or otherwise improve highway-rail grade crossings, as well as provide information on additional references. The guidance is available electronically at the following URL: *http://safety.fhwa.dot.gov/media/twgreport.htm* and is available for copying and inspection at U.S. Department of Transportation Library, Room 2200, 400 Seventh Street, SW., Washington, DC 20590.

**Authority:** 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; 49 CFR 1.48(b).

Issued on: December 18, 2002.

**Mary E. Peters,**

*Federal Highway Administrator.*

[FR Doc. 02–32406 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF THE TREASURY

### President's Commission on the United States Postal Service

**AGENCY:** Department of the Treasury, Departmental Offices.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is given of a meeting of the President's Commission on the United States Postal Service.

**DATES:** The meeting will be held on Wednesday, January 8, 2003, from 8:30 a.m. to 12 noon.

**ADDRESSES:** The meeting will be held at The Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Roger Kodat, Designated Federal Official, 202–622–7073.

**SUPPLEMENTARY INFORMATION:** The Commission has invited representatives of the Department of the Treasury and the United States Postal Service to testify. Seating is limited to 300 people.

Dated: December 19, 2002.

**Roger Kodat,**

*Designated Federal Official.*

[FR Doc. 02–32465 Filed 12–23–02; 8:45 am]

BILLING CODE 4811–16–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 02–70]**

### Recordation of Trade Name: ''Revolutionary Products, Inc.''

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''REVOLUTIONARY PRODUCTS, INC''. The trade name is owned by Revolutionary Products, Inc., a California corporation, organized and created in the State of California, 12910 Culver Boulevard, Suite G, Los Angeles, California 90066.

The application states applicant manufactures, advertises, distributes and sells an electrically driven rotating mechanical hairbrush in packaging and boxes labeled with the REVO STYLER trademark and REVOLUTIONARY PRODUCTS, INC., tradename. Additionally, the trade name appears on a label affixed to the handle of the REVO STYLER hairbrush, and is molded into the plastic of the electrical power plug.

The merchandise is manufactured in China and Hong Kong.

Before final action is taken on the application, consideration will be give to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

**DATES:** Comments must be received or on before February 24, 2003.

**ADDRESSES:** Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn Savoy, Intellectual Property Rights Branch, 1300, Pennsylvania Avenue, NW., Washington, DC 20229, (202) 572–8710).

Dated: December 18, 2002.

**Joanne Roman Stump,**

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 02–32296 Filed 12–23–02; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service; Proposed Collection of Information: Trace Request for Electronic Funds Transfer Payment

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 150 ''Trace Request for Electronic Funds Transfer Payment.''

**DATES:** Written comments should be received on or before February 24, 2003.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Wilson, Administrative Services Branch, Room 357D, 401 14th St., SW., Washington, DC 20227, (202) 874–7157.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Trace Request for Electronic Funds Transfer Payment.

*OMB Number:* 1510–0045.

*Form Number:* FMS 150.

*Abstract:* This form is used to modify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The form is designed to help the financial organization locate any problem and to keep the customer (beneficiary) informed of any action taken.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 138,427.

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 18,457.

*Comments:* Comments submitted in response to this notice will be

summarized and/or included in the request for Office of Management and Budget 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.

Dated: December 18, 2002.

**Anthony Torrice,**

*Assistant Commissioner, Regional Operations.*

[FR Doc. 02–32426 Filed 12–23–02; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service; Proposed Collection of Information: Notice of Reclamation, Electronic Funds Transfer, Federal Recurring Payments; Request for Debit, Electronic Funds Transfer, Federal Recurring Payments

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning forms FMS 133, ''Notice of Reclamation, Electronic Funds Transfer, Federal Recurring Payments'' and FMS 135 ''Request for Debit, Electronic Funds Transfer, Federal Recurring Payments.''

**DATES:** Written comments should be received on or before February 24, 2003.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Wilson, Administrative Services Branch, Room 357D, 401–14th St., SW., Washington, DC 20227, (202) 874–7157.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Notice of Reclamation, Electronic Funds, Transfer, Federal Recurring Payments; Request for Debit, Electronic Funds Transfer, Federal Recurring Payments.

*OMB Number:* 1510–0043.

*Form Number:* FMS 133, FMS 135.

*Abstract:* Program agencies authorize Treasury to recover payments that have been issued after the death of the beneficiary. The FMS 133 is used by Treasury to notify financial organizations (FO) of the FO's accountability concerning the funds. When an FO does not respond to the FMS 133, Treasury then prepares the FMS 135 and sends it to the Federal Reserve Bank (FRB) to request that the FRB debit the FO's account.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 55,000.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 50,930.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: December 18, 2002.

**Anthony Torrice,**

*Assistant Commissioner, Regional Operations.*

[FR Doc. 02–32427 Filed 12–23–02; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** For the period beginning January 1, 2003 and ending on June 30, 2003 the prompt payment interest rate is 4.250 per centum per annum.

**ADDRESSES:** Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov.*

**DATES:** This notice announces the applicable interest rate for the January 1, 2003 to June 30, 2003 period.

**FOR FURTHER INFORMATION CONTACT:** Frank Dunn, Manager, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5170; Eleanor Farrar, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166; Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692; or Mary C. Schaffer, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692.

**SUPPLEMENTARY INFORMATION:** Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Public Law 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Public Law 95–563, 92 Stat. 2389 and, indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Public Law 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest

applicable, for the period beginning January 1, 2003 and ending on June 30, 2003, is 4.250 per centum per annum.

This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: November 19, 2002.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 02–32379 Filed 12–19–02; 1:33 pm]

BILLING CODE 4810–39–P

Federal Register

Tuesday,
December 24, 2002

# Part II

# Department of the Interior

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AI27**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for five plants endemic (restricted) primarily to carbonate-derived soils in the San Bernardino Mountains of southern California. Four of the plants, *Astragalus albens* (Cushenbury milk-vetch), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) are federally listed as endangered and one plant, *Erigeron parishii* (Parish's daisy), is federally listed as threatened. The following total area is designated as critical habitat for each of the following plants in San Bernardino County, California: *A. albens,* approximately 1,765 hectares (ha) (4,365 acres (ac)); *Erigeron parishii,* approximately 1,790 ha (4,420 ac); *Eriogonum ovalifolium* var. *vineum,* approximately 2,815 ha (6,955 ac); *L. kingii* ssp. *bernardina,* approximately 415 ha (1,025 ac); and *O. parishii* var. *goodmaniana,* approximately 1,275 ha (3,150 ac). Because of the considerable overlap of the areas designated as critical habitat for each of the five carbonate plants, the total area being designated as critical habitat is approximately 5,335 ha (13,180 ac).

Federal agencies proposing, authorizing, or funding actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions pursuant to section 7(a)(2) of the Act.

**DATES:** The effective date of this rule is January 23, 2003.

**ADDRESSES:** You may inspect the supporting record for this rule at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009, by appointment during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** The Carlsbad Fish and Wildlife Office, at the above address; telephone 760/431–9440, facsimile 760/431–5902. Information regarding this designation is available in alternate formats upon request.

**SUPPLEMENTARY INFORMATION:**

### Background

The five plants addressed in this designation of critical habitat, *Astragalus albens* (Cushenbury milk-vetch), *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) (collectively called ''carbonate plants'' in this document), are restricted primarily to carbonate-derived soils in the San Bernardino Mountains of San Bernardino County, California (USFWS 1994). Collectively, these five species are found along a 56-kilometer (km) (35-mile (mi)) portion of the San Bernardino Mountains between 1,171 and 2,682 meters (m) (3,842 and 8,800 feet (ft)) in elevation. This area contains outcrops of carbonate substrates (*e.g.,* parent rock), primarily limestone and dolomite, in several bands running on an east-west axis along the desert-facing slopes of the San Bernardino Mountains; it is generally known as the ''carbonate belt.'' Carbonate endemics are most uncommon in California, though well known worldwide (Kruckeberg 2002). With the exception of one northern California carbonate endemic species, the carbonate endemics of the San Bernardino Mountains of southern California, including the species addressed in this rulemaking, are the only ones in California.

Limestone mining was cited as the primary threat to the five carbonate plants in the final rule listing these species as endangered or threatened (USFWS 1994). The threats to these plants continue to be population reduction and habitat loss, degradation, and fragmentation from surface mining activities. The carbonate plants occur mainly on public lands with unpatented mining claims or on private lands that have been patented (converted from public to private). At the time of listing, a significant number of carbonate plant occurrences and carbonate plant habitats had been negatively affected (USFWS 1994). Carbonate plant losses and habitat destruction/degradation are expected to continue under ongoing and expanded limestone mining operations.

The U.S. Forest Service (USFS), the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (Service), and a number of private stakeholders (*e.g.*, mining interests) are in the process of developing the Carbonate Habitat Management Strategy (draft CHMS) to conserve four of the five subject carbonate plants while accommodating other land uses. The USFS is the lead agency for this action. The goals of the CHMS are: (1) To protect the listed plants and the habitat components they require; (2) to guide impact minimization and compensation for unavoidable impacts; (3) to streamline reviews of mining activities in carbonate plant habitat; (4) to guide habitat restoration; and (5) to plan and provide for long-term needs of both the mining industry and listed species conservation. One of the primary tasks of the CHMS is to identify and establish conservation areas for carbonate plant species. Other local or regional habitat conservation planning efforts within areas of carbonate plant habitat include the California Desert Conservation Area Plan (CDCA) and the West Mojave Plan. BLM is the lead agency for both plans.

There are approximately 13,200 ha (32,600 ac) of carbonate substrates in the northeastern portion of the San Bernardino Mountains that may provide suitable habitat for, and may be associated with most of, the carbonate plants (USFWS 1994, Neel 2000, San Bernardino National Forest (SBNF) geographic information system (GIS) data 2001). This area of carbonate substrates is contained within the 64,900 ha (160,300 ac) draft CHMS planning area. According to the most current model being used in the CHMS process, the SBNF Carbonate Species Suitable Habitat Model (Redar and Eliason, *in litt.* 2001), there is a combined total of approximately 19,700 ha (48,669 ac) of suitable carbonate plant habitat for the carbonate plants, based on a combination of plant associations, carbonate substrate and soils derived from carbonate substrate (the modeled suitable habitat area is not equal to the sum of modeled suitable habitat area for each species because there is some overlap in the distribution of the species). Based on this model, the estimated suitable habitat for each species is: *Astragalus albens,* approximately 6,868 ha (16,964 ac); *Erigeron parishii,* approximately 8,428 ha (20,818 ac); *Eriogonum ovalifolium* var. *vineum,* approximately 8,949 ha (22,103 ac); *Lesquerella kingii* ssp. *bernardina,* approximately 6,753 ha (16,679 ac); and *Oxytheca parishii* var. *goodmaniana,* approximately 7,518 ha (18,570 ac). It should be noted that the SBNF habitat model is limited by mapping resolution, and therefore, may

contain some unsuitable habitat areas and may leave out some areas that may contain suitable habitat. The majority of known occurrences of the carbonate plants addressed by the draft CHMS are in the modeled habitat area.

The California Native Plant Society's Inventory of Rare and Endangered Plants of California (CNPS Inventory) (CNPS 2001) classifies each of the five carbonate plants as List 1B; which they define as rare, threatened, or endangered in California and elsewhere. The CNPS Inventory further describes the rarity of all but one of the carbonate plants as ''one to several highly restricted occurrences'' (with *Erigeron parishii* ''distributed in a limited number of occurrences''). The CNPS Inventory also classifies each of the carbonate plants as ''endangered throughout its range.''

The five carbonate plant species in this rulemaking are treated as a group because they are generally restricted to soils that are ultimately derived from limestone, dolomite, or other substrates rich in calcium carbonate in the San Bernardino Mountains, California, and face similar threats. However, each of the five carbonate plants represents a distinct evolutionary lineage, and each has a unique set of ecological requirements and tolerances (Neel 2000).

**Species Descriptions**

*Astragalus Albens (Cushenbury Milk-Vetch)*

*Astragalus albens* was described by Edward L. Greene (1885) based on a collection made by Samuel B. Parish and William F. Parish in 1882. Rydberg (1927) placed this species in the genus *Hamosa.* Rupert Barneby (1964) includes *Hamosa* in the genus *Astragalus.* Barneby (1959), Munz (1974), and Spellenberg (1993), all recognize this species as *Astragalus albens.*

*Astragalus albens* is a small plant in the pea family (Fabaceae). Spellenburg (1993) describes the species as follows. Individual plants are annual to sometimes perennial. The slender silvery-white-haired stems are prostrate (lie flat on the ground), up to 30 centimeters (cm) (1 ft) long, with compound leaves consisting of 5 to 9 small leaflets. The plant's pink-purple flowers occur in 5 to 14 flowered terminal racemes (flower clusters). The upper petal of each flower is up to 1 cm (0.4 inch (in)) long. The fruits are 10 to 18 millimeters (mm) (0.4 to 0.7 in) long and up to 3.5 mm (0.1 in) wide. The crescent shaped fruits are three sided, have two chambers, and become papery in maturity. The plants generally flower from March to May.

Occurrences of *Astragalus albens* are scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from Dry Canyon southeastward to the head of Lone Valley, a range of 24 km (15 mi) (Barrows 1988a; California Natural Diversity Data Base (CNDDB), CDFG 2002; CNPS 2001; USFWS 1994). In the final rule to list *Astragalus albens,* we indicated that there were fewer than 20 known occurrences (USFWS 1994). The CNDDB (CDFG 2002) identifies 17 extant ''element occurrences'' (*e.g.*, species occurrences). The SBNF mapped 103 site-specific localities of this species for their detailed draft CHMS maps (SBNF, Unpublished GIS data, 2001).

*Astragalus albens* is typically found within singleleaf pinyon-Utah juniper, blackbush scrub, singleleaf pinyon, pinyon woodland, pinyon-juniper woodland, and Joshua tree woodland vegetation communities (Gonella 1994, Gonella and Neel 1995, Neel 2000). Plants closely associated with *A. albens* include *Fremontodendron californicum* (flannelbush), *Coleogyne ramosissima* (blackbush), *Echinocereus triglochidiatus* var. *mojavensis* (Mound cactus), *Prunus fasciculatus* (desert almond), and *Yucca schidigera* (Mojave yucca) (Gonella 1994, Gonella and Neel 1995).

*Astragalus albens* is typically found on carbonate soils derived directly from decomposing limestone bedrock along dry flats and slopes, and occasionally rocky washes (Eliason 2002). The species may also be associated with disturbed sites since there have been a few localized occurrences of the species observed on long-disused roads and recently deposited slide materials (White 2002). Plants are generally found in areas with an open canopy cover, little accumulation of organic material, rock cover exceeding 75 percent, and gentle to moderate slopes (5 to 30 percent) (Neel 2000). Most *Astragalus albens* occurrences are found at elevations between 1,524 and 2,012 m (5,000 and 6,600 ft) (USFWS 1994), but Neel (2000) documented the elevation range between 1,171 and 2,013 m (3,864 and 6,604 ft). This range is at the lowest elevational limit of the five carbonate plant species discussed in this rule (Gonella and Neel 1995). Known occupied habitat for this species is mostly correlated with the Bird Spring Formation, Permian and Pennsylvanian age carbonate rock (Redar and Eliason, *in litt.* 2001). Soils at sites associated with *Astragalus albens* have a higher percentage of calcium than soils not associated with this species (Gonella and Neel 1995).

*Erigeron Parishii (Parish's Daisy)*

*Erigeron parishii* was described by Asa Gray (1884) based on specimens collected by Samuel B. Parish at Cushenbury Spring in 1882. *Erigeron parishii* is a perennial herb of the aster family (Asteraceae). Plants grow 10 to 35 cm (4 to 14 in) high (Nesom 1993). The simple, linear leaves are 3 to 6 cm (1 to 2 in) long and soft, silvery-hairy (Nesom 1993, Keck 1959). Flower heads are solitary borne at the tips of leafy stems, with bluish to pink or white ray flowers and yellow disk flowers (Nesom 1993, Keck 1959). Grayish-green, glandular bracts surround each flower head (Nesom 1993, USFWS 1994). The plants generally flower from May through June (CNPS 2001).

*Erigeron parishii* has the widest geographic distribution of the five carbonate plants, with a range that spans approximately 56 km (35 mi) along the carbonate belt in the northeastern San Bernardino Mountains, extending from Pioneertown in the east to the northern flanks of White Mountain in the west (USFWS 1994, Eliason 2002). Its range of occurrence includes Tip Top Mountain and in Arctic, Cushenbury, Arrastre, and Rattlesnake Canyons (Krantz 1979a, Barrows 1988b, USFWS 1994, CDFG 2002). Recent surveys in Long Canyon (the historical eastern-most occurrence) did not locate any *Erigeron parishii* plants (Neel 2000). We identified 25 occurrences of *Erigeron parishii* in the final listing rule (USFWS 1994). The CNDDB (CDFG 2002) identifies 34 extant element occurrences. The SBNF has mapped 87 localized occurrences of this species for their detailed draft CHMS maps (SBNF, Unpublished GIS data, 2001).

*Erigeron parishii* is typically associated with singleleaf pinyon-Utah juniper, singleleaf pinyon, pinyon-juniper woodlands, blackbush scrub, and creosote bush-bursage scrub vegetation communities (USFWS 1994, Neel 2000, Neel and Ellstrand 2001). Plants closely associated with *Erigeron parishii* include *Pinus monophylla* (singleleaf pinyon), *Juniperus californica* (California juniper), *Yucca brevifolia* (Joshua tree), *Coleogyne ramosissima,* and *Astragalus albens* (Gonella 1994, Gonella and Neel 1995, CDFG 2002).

*Erigeron parishii* typically grows on limestone or dolomite soils occurring on dry, rocky slopes, active washes and outwash plains on carbonate derived alluvium (USFWS 1994, White 2002). Some *E. parishii* occurrences grow on a

granite/limestone interface, usually when granitic parent material has been overlaid with limestone materials washed down from upslope (USFWS 1994). Occurrences at the Burns Pinyon Ridge Reserve/Pioneertown area grows on quartz monzonite soils where there is no apparent limestone alluvium (Neel 2000). *Erigeron parishii* is generally found at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft), which is at the lower elevations of the carbonate belt (USFWS 1994, Neel 2000). It is most commonly found in areas with slopes less than 10 degrees (Neel 2000).

*Eriogonum Ovalifolium var. Vineum (Cushenbury Buckwheat)*

*Eriogonum ovalifolium* var. *vineum* was originally described as *Eriogonum vineum* by John Kunkel Small (1898) based on an 1894 collection made by Samuel B. Parish near Rose Mine in the San Bernardino Mountains. Nelson (1911) treated the plant as a variety, *Eriogonum ovalifolium* var. *vineum.* This combination has incorrectly often been attributed to Jepson (1914), (Reveal 1989, Hickman 1993). Jepson (1914) did publish the combination but subsequently (Jepson 1925) realized the priority of Nelson's combination, which was followed by Abrams (1944), Munz and Keck (1959), and Munz (1974).

*Eriogonum ovalifolium* var. *vineum* is a perennial plant of the buckwheat family (Polygonaceae) that forms low, dense mats typically 3 to 40 cm (1 to 16 in) in diameter (Hickman 1993, Munz and Keck 1959). The leaves are round to ovate, white-woolly on both surfaces, and are 0.7 to 1.5 cm (0.3 to 0.6 in) long (Munz and Keck 1959). The flowers are whitish-cream borne on flowers stalks reaching 10 to 25 cm (4 to 10 in) tall (Munz and Keck 1959). Plants flower from May through August (CNPS 2001). This species is primarily an outcrosser (pollen source for seed production is from another plant) (Neel and Ellstrand 2001).

*Eriogonum ovalifolium* var. *vineum* occurs in the carbonate belt of the northeastern San Bernardino Mountains extending from Rattlesnake Canyon in the east to White Mountain in the west, a distance of approximately 40 km (25 mi) (CDFG 2002). This includes occurrences in Arctic and Cushenbury Canyons, Terrace and Jacoby Springs, along Nelson Ridge, and southeast to near Onyx Peak (Barrows 1988c, Gonella and Neel 1995, Tierra Madre Consultants 1992, USFWS 1994, CDFG 2002). In the final listing rule, we identified 20 occurrences of *E. ovalifolium* var. *vineum* (USFWS 1994). The CNDDB (CDFG 2002) identifies 32 extant element occurrences. Subsequently, the SBNF has mapped 239 localized occurrences of this species for their detailed draft CHMS maps (SBNF, Unpublished GIS data, 2001).

This species inhabits open areas in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, pinyon, pinyon-juniper, Joshua tree woodlands, and blackbush scrub vegetation communities (Gonella 1994, Gonella and Neel 1995, USFWS 1994, Neel 2000). Plants closely associated with *Eriogonum ovalifolium* var. *vineum* include *Fremontodendron californicum, Arctostaphylos glauca* (big-berry manzanita), *A. patula* (green-leaf manzanita), *Phacelia douglasii* (Douglas' phacelia), *Yucca brevifolia, Pinus monophylla, Astragalus albens,* and *Erigeron parishii* (Gonella 1994, Gonella and Neel 1995, CDFG 2002).

*Eriogonum ovalifolium* var. *vineum* typically grows on soils derived from limestone or other carbonate substrates (Hickman 1993, USFWS 1994, CDFG 2002). It is generally found on gentle slopes to steep slopes mostly with north or west aspects (Neel 2000, White 2002). Other habitat characteristics include open areas with powdery fine soils and little accumulation of organic material, a canopy cover generally less than 15 percent, and rock cover exceeding 50 percent (Neel 2000). The species may also benefit from naturally unstable sites since it is often found on or adjacent to unstable talus, colluvium, or rock outcroppings (White 2002). *Eriogonum ovalifolium* var. *vineum* has the widest elevational range of all the carbonate plants, between 1,400 and 2,400 m (4,600 and 7,900 ft) (USFWS 1994, Neel 2000). The known occupied habitat for *Eriogonum ovalifolium* var. *vineum* is correlated mostly with the Bird Spring and Bonanza King soil formations (Redar and Eliason, *in litt.* 2001).

*Lesquerella Kingii ssp. Bernardina (San Bernardino Mountains Bladderpod)*

*Lesquerella kingii* ssp. *bernardina* is a member of the mustard family (Brassicaceae) and was first described by Munz (1932) as *Lesquerella bernardina* based on a collection made by Frank W. Peirson at the east end of Bear Valley in 1924. Munz (1958) subsequently reduced this to a subspecies and published the currently accepted combination *Lesquerella kingii* ssp. *bernardina.*

*Lesquerella kingii* ssp. *bernardina* is silvery, with dense star-shaped hairs, and is a short-lived perennial plant of the mustard family (Brassicaceae) (Munz and Keck 1959, Rollins 1993). It grows to 5 to 15 cm (2 to 6 in) tall, often purplish in color (Munz 1974, Rollins 1993). Leaves are wavy-margined to shallow toothed, the outer basal leaves are diamond shaped to round, and the inner leaves are elliptic with petioles 2 to 5 cm (0.8 to 2 in) long (Munz 1974, Rollins 1993). Flowers are borne in terminal racemes, and bloom from May to June (Munz 1974, CNPS 2001). The yellow petals are 5.5 to 13 mm (0.2 to 0.5 in) long, and styles are 3 to 4 mm (0.12 to 0.16 in) long (Munz 1974, Rollins 1993). The spherical fruits are short-haired, 2-chambered, and contain 2 to 4 seeds per chamber (Rollins 1993).

At the time of publication of the listing rule, *Lesquerella kingii* ssp. *bernardina* was known from two populations in the Big Bear area (USFWS 1994). One population is on the north side of Big Bear Lake near the east end of Bertha Ridge and adjacent to Big Bear City, and the other population is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge population (USFWS 1994, CDFG 2002). This species has the smallest known range of the five carbonate plants. Currently, the CNDDB (CDFG 2002) identifies four element occurrences. The SBNF has mapped 22 localized occurrences within the aforementioned populations of this species for their detailed draft CHMS maps (SBNF, Unpubished GIS data, 2001).

*Lesquerella kingii* ssp. *bernardina* typically is found within singleleaf pinyon-mountain juniper, white fir forest, Jeffrey pine-western juniper woodland, subalpine forest vegetation communities, and occasionally on old unpaved roads (Myers and Barrows 1988, USFWS 1994, Gonella 1994, Gonella and Neel 1995, Neel 2000, CDFG 2002). Plants closely associated with *Lesquerella kingii* ssp. *bernardina* include *Pinus contorta* ssp. *murrayana* (lodgepole pine), *Pinus flexilis* (limber pine), *Pinus jeffreyi* (Jeffrey pine), *Pinus monophylla, Juniperus occidentalis* ssp. *australis* (western juniper), and *Eriogonum ovalifolium* var. *vineum* (Gonella 1994, Neel 2000, CDFG 2002).

*Lesquerella kingii* ssp. *bernardina* is generally found on dry flats and slopes on soil substrates derived from dolomite parent rocks associated with the Bonanza King Formation and other Cambrian age substrates (Rollins 1993; Redar and Eliason, *in litt.* 2001; Eliason 2002). *Lesquerella kingii* ssp. *bernardina* occupies the narrowest elevational range of the five carbonate plants, between 2,098 and 2,700 m (6,883 and 8,800 ft) (CDFG 2002).

*Oxytheca Parishii var. Goodmaniana (Cushenbury Oxytheca)*

Barbara Ertter (1980) described the variety *Oxytheca parishii* var. *goodmaniana* based on material collected by S. P. Parish and W. F. Parish in 1882 near Cushenbury Spring. Collections of this species were previously identified as *Oxytheca parishii* var. *abramsii* or *Oxytheca watsonii* (Munz and Keck 1959, Munz 1974).

*Oxytheca parishii* var. *goodmaniana* is a small, wiry annual plant belonging to the buckwheat family (Polygonaceae). Specimens grow 5 to 60 cm (2 to 24 in) tall (Hickman 1993). The plants have a basal rosette of leaves, with each leaf 1 to 7 cm (0.4 to 3 in) long (Hickman 1993). The six small flowers have white to pink perianth segments (undifferentiated whorl of petals and sepals), occur in clusters of 3 to 20, and are surrounded at their base by a funnel-shaped involucre (modified leaf) (Hickman 1993).

*Oxytheca parishii* var. *goodmaniana* is an annual species, so the number and distribution pattern of individual standing plants fluctuates from year to year, depending on the seed bank dynamics and environmental conditions. In addition, because this species has few known occurrences, and the total number of individuals found within some occurrences is often low, this species may be more susceptible to localized extirpation from random events than the other four carbonate plant species (USFWS 1994).

*Oxytheca parishii* var. *goodmaniana* is scattered along the carbonate belt in the northeastern San Bernardino Mountains extending from White Mountain in the west to approximately Rattlesnake Canyon in the east. Terrace Springs is the is the eastern most area where occurrences are pure *Oxytheca parishii* var. *goodmaniana* (Eliason 2002). From Terrace Springs west to Rattlesnake Canyon *Oxytheca parishii* var. *goodmaniana* occurs with *Oxytheca parishii* var. *cienengensis* and some morphological intermediates (potential hybrids) between the two (B. Ertter, pers. comm., 2002). This area likely represents an evolutionarily important zone, and therefore, is important for the long-term adaptability of the species. The distribution of *Oxytheca parishii* var. *goodmaniana* includes occurrences near Cushenbury Spring; Cushenbury, Marble, Arctic, Wild Rose, and Furnace Canyons; Blackhawk, Mineral, and Tip Top Mountains; Terrace Springs; Rose Mine and Green Lead gold mine (USFWS 1994, CDFG 2002, CNPS 2001, Gonella and Neel 1995). This species occupies the second-smallest geographical area of the five carbonate plants. In the final listing rule, we identified seven known extant occurrences (USFWS 1994). The CNDDB (CDFG 2002) identifies 16 element occurrences. The SBNF has mapped 93 localized occurrences of this species for their detailed draft CHMS maps (SBNF, Unpublished GIS data, 2001).

*Oxytheca parishii* var. *goodmaniana* is typically found in singleleaf pinyon-Utah juniper, singleleaf pinyon-mountain juniper, singleleaf pinyon, and canyon live oak woodlands vegetation communities (USFWS 1994, Neel 2000). Plants closely associated with *Oxytheca parishii* var. *goodmaniana* include *Cercocarpus ledifolius* (mountain mahogany), *Arctostaphylos glauca, Chrysothamnus viscidiflorus* (yellow rabbitbrush), and *Achnatherum coronata* (needlegrass) (CDFG 2002).

*Oxytheca parishii* var. *goodmaniana* is typically found on soils derived from limestone, dolomite, or a mixture of limestone and dolomite substrates (Tierra Madre Consultants 1992, USFWS 1994, Neel 2000). Hickman (1993) describes it as occurring on limestone talus. Neel (2000) found that it generally occurs in areas with gentle slopes between 10 and 25 degrees with no apparent preference for aspect. *Oxytheca parishii* var. *goodmaniana* is typically found at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft) (Neel 2000). Known occupied habitat for this species is mostly correlated with the Bird Springs Formation, Bonanza King Formation, Monte Cristo Limestone, and Sultan Limestone, and Crystal Pass substrate (Redar and Eliason, *in litt.* 2001).

**Habitat Descriptions**

The San Bernardino Mountains support a wide diversity of natural habitats that are the result of their geographic position between the desert and coastal environments, geological history, elevation, varied topography, and uncommon geological substrates such as carbonate outcrops (*e.g.*, limestone and dolomite). The SBNF, which encompasses most of the San Bernardino Mountains, covers less than one percent of the land area within the State of California, yet reportedly contains populations of more than 25 percent of all native Californian plant species (Krantz 1994). The San Bernardino Mountains are also known to support one of the highest concentrations of endemic plants in the United States (Krantz 1994). This high rate of endemism includes a number of plants that are restricted to carbonate substrates in this area (Gonella 1994, Krantz 1994).

Within the mountain range, carbonate substrates occur in several east-west bands that run along the desert-facing slopes, from approximately White Mountain in the west to Blackhawk Mountain and Terrace Springs in the east. From here, the band of carbonate substrates narrows and extends southeast to Rattlesnake Canyon and Tip Top Mountain. Disjunct (separate) outcrops occur on ridges to the north and south of the Big Bear Valley, and eastward to the Sawtooth Hills (USGS geologic substrate map 1995).

Collectively, the ranges of these five species span 56 km (35 mi) and occupy elevations between 1,178 and 2,659 m (3,864 to 8,724 ft) in the San Bernardino Mountains (Neel 2000). Plant communities in this area vary greatly by substrate type and elevation and have been described by Holland (1986), Thorne (1995), Vasek and Barbour (1995), Vasek and Thorne (1995), and Neel (2000). Neel (2000) developed more detailed, quantitative descriptions of the vegetation types that are associated with the five carbonate plants using extensive vegetation sampling and found that most of the occurrences of each of the five carbonate plants are found in the following six vegetation communities: blackbush scrub; canyon live oak; singleleaf pinyon; singleleaf pinyon-mountain juniper; singleleaf pinyon-Utah juniper; and white fir forest.

*Astragalus albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum* are associated with blackbush scrub vegetation. Blackbush scrub vegetation primarily occurs between 1,130 and 1,665 m (3,707 to 5,463 ft) in this area and is increasingly abundant at the higher elevations. *Coleogyne ramosissima* (blackbush) is the dominant species. The sometimes quite dense shrub cover is generally under 1 m (3 ft) high. The generally open overstory canopy consists of *Yucca brevifolia, Pinus monophylla* (singleleaf pinyon), and *Juniperus osteosperma* (Utah juniper) (Neel 2000).

*Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana* are associated with singleleaf pinyon dominated vegetation (Neel 2000). The singleleaf pinyon plant community primarily occurs between 1,420 and 2,440 m (4,659 to 8,005 ft) in this area.

*Oxytheca parishii* var. *goodmaniana* is associated with canyon live oak dominated vegetation, including dominant species such as *Quercus chrysolepis* (canyon live oak) and *Pinus*

*monophylla.* The canyon live oak plant community primarily occurs between 1,793 and 2,440 m (5,883 and 8,005 ft) in this area. Tree cover in this vegetation type is the densest of all of the vegetation types mentioned in this document, while shrub cover is the sparsest (Neel 2000).

*Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* are associated with the singleleaf pinyon-mountain juniper vegetation community. This community type primarily occurs between 1,909 and 2,745 m (6,263 and 9,005 ft) in this area, and is dominated by *Pinus monophylla* and *Juniperus occidentalis* ssp. *australis. Cercocarpus ledifolius* is the only characteristic understory species of singleleaf pinyon-mountain juniper vegetation (Neel 2000).

*Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana* are associated with the singleleaf pinyon-Utah juniper dominated vegetation community. This community type primarily occurs between 1,212 and 2,390 m (3,976 and 7,841 ft) in this area (Neel 2000). *Ephedra viridis* (green ephedra) and *Achnatherum coronatum* (needlegrass) are characteristic understory species of singleleaf pinyon-Utah juniper dominated vegetation (Neel 2000).

*Lesquerella kingii* ssp. *bernardina* and *Oxytheca parishii* var. *goodmaniana* are associated with the white fir forest vegetation community. This community type primarily occurs on steep north-facing slopes between 2,196 and 2,720 m (7,205 and 8,924 ft) in this area (Neel 2000). White fir forest vegetation is dominated by *Abies concolor* (white fir) and *Pinus flexilis* (limber pine) in the overstory (Neel 2000).

The carbonate plants have also been reported to occur in five other vegetation communities: Jeffrey pine-western juniper woodland; Joshua tree woodland; pinyon woodland; pinyon-juniper woodland; and subalpine forest (Krantz 1979a, 1979b; Neel 2000; CDFG 2002). *Lesquerella kingii* ssp. *bernardina* is reported to be associated with Jeffrey pine-western juniper woodland (CDFG 2002). *Astragalus albens* and *Eriogonum ovalifolium* var. *vineum* are reported to be associated with Joshua tree woodland and pinyon woodland (CDFG 2002). *Astragalus albens, Erigeron parishii,* and *Eriogonum ovalifolium* var. *vineum* are reported to be associated with Pinyon-juniper woodland (CDFG 2002).

Some of these plant communities (*e.g.*, singleleaf pinyon woodlands, canyon live oak woodland) are also known to occur on nearby soils that are not derived from carbonate parent material. Big sagebrush, pebble plains, riparian, and meadow communities are also known to occur nearby on soils not derived from carbonate parent material; however, they do not occupy large areas and are not associated with carbonate endemic plants.

**Ecology**

Little is known about the life history and population dynamics of the five carbonate plants, including their pollination biology, seed dispersal agents and patterns, nature and dynamics of seed bank, seed dormancy requirements, and seedling ecology and establishment rates (Neel 2000). However, the distributions of each of these plants have been well studied through numerous independent botanical surveys, and botanical investigations and project-level surveys funded by Federal agencies and mining companies (Krantz 1979a, 1979b; Wilson and Bennett 1980; Barrows 1988a, 1988b, 1988c; Tierra Madre Consultants 1992; and herbarium specimens at Rancho Santa Ana Botanic Garden). The general ranges of these species are described in Munz and Keck (1959), Barneby (1959), Munz (1974), Hickman (1993), Nessom (1993), Rollins (1993), Spellenberg (1993), in our final rule listing the species (USFWS 1994), and the draft Recovery Plan. The five carbonate plants consistently occur on soils that are at least partially derived from carbonate substrates (Neel and Ellstrand, in press), although some occurrences of *Erigeron parishii* have been noted on soils derived from quartz monzonite and mixed layers of granite and limestone. The carbonate plants do not appear to be specifically linked to early vegetation successional stages following natural disturbance; however, they are found on some surfaces that are naturally disturbed by landslides and substrate upheaval (Neel 2000). Primarily, they occur in habitat that is undisturbed by human activities, but instances of colonization onto human-disturbed surfaces have been observed for all of the carbonate plants (Eliason 2002, White 2002). However, there is no evidence to support that soil structure or habitat structure and function associated with disturbed surfaces are equivalent to those of undisturbed surfaces (Eliason 2002). Each of these plants appear to have specific habitat and microhabitat requirements, including parent geology, vegetation community type and associated species, soil pH, slope, and elevation (Neel 2000).

Occurrences of carbonate plants likely shift over time within the range of suitable habitat. Historically, occurrences or portions of occurences likely have periodically been extirpated, while other suitable habitat may have been colonized by emigration from nearby occurrences. Given (1994) noted the need for enough suitable habitat to maintain equilibrium between naturally occurring local extirpations and colonizations. Not all habitat for a species is likely to be occupied at the same time, and failure to conserve enough suitable habitat could potentially reduce the size and viability of the metapopulation as surely as destruction of occupied habitat (Given 1994). A metapopulation has been described as ''* * * a set of populations (*i.e.*, independent demographic units; Ehrlich 1965) that are interdependent over ecological time. That is, although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that occur, say, on the order of every 10 to 100 generations'' (Harrison *et al.* 1988). The persistence of such species depends on the interrelatedness of local extirpations and recolonizations, the availability of newly suitable habitat, and dispersal (Given 1994; Hanski 1997, 1999; Hanksi and Gilpin 1991). Very little is known about how the five carbonate plants may function as metapopulations (Neel and Ellstrand, in press). However, because metapopulation dynamics may be exhibited in some or all of the carbonate plant taxa, long-term persistence of the carbonate plants may require sufficient suitable habitat contiguous with areas that are currently occupied by the plants. Just how much suitable habitat would be sufficient remains unclear, however, based on anecdotal observations of *Astragalus albens,* some relatively sparse occurrences may provide ''stepping-stones'' and facilitate gene flow among high density populations (Neel and Ellstrand, in press).

Each of the five carbonate plant species is subject to several limiting ecological factors that likely increase the potential for extirpation (*e.g.*, restricted and patchy distribution, habitat specialization). These factors may, among other things, limit gene flow by reducing pollen and seed dispersal among occurrences, and reduce the probability that new colonizations will occur. The amount of habitat required to sustain the five carbonate plant species may be larger than that required for species not subject to these limiting

ecological factors (see Burgman *et al.* 2001). Recent work on genetic variation completed for *Astragalus albens* (Neel 2000), *Eriogonum ovalifolium* var. *vineum* (Neel and Ellstrand, in press), *Erigeron parishii* (Neel and Ellstrand 2001) and *Oxytheca parishii* var. *goodmaniana* (Neel 2000) provide some insight into the population structure of these carbonate plant species. Neel and Ellstrand's work is limited by its temporal scope, but suggests that there may be extensive gene flow among populations of at least three of these species, and that the populations of these three species have not been sufficiently isolated to result in genetic divergence.

**Previous Federal Action**

On December 15, 1980, we published a Notice of Review (NOR) of plants which included *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* as Category 1 candidate taxa and *Erigeron parishii* as a Category 2 taxon (USFWS 1980). The February 21, 1990, NOR of plants also included *Astragalus albens* as a Category 1 taxon and *Oxytheca parishii* var. *goodmaniana* as a Category 2 taxon (USFWS 1990). Category 1 taxa were those taxa for which substantial information on biological vulnerability and threats were available to support preparation of listing proposals. Category 2 candidates were taxa for which data in our possession indicated listing was possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules.

On November 19, 1991, we published a proposed rule in the **Federal Register** to list the five plants as endangered (56 FR 58332). On August 24, 1994, we published a final rule listing *Erigeron parishii* as threatened and *Astragalus albens, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* as endangered (59 FR 43652). At that time, we indicated that designation of critical habitat for these plants was not prudent because such designation would likely increase the degree of threat from vandalism, over-collection, or other human activities.

In September 1997, we published the San Bernardino Mountains Carbonate Plants Draft Recovery Plan. The draft recovery plan identified lands as important for the long-term conservation of the carbonate plants, and proposed criteria to recover the carbonate plants to the point where they can be downlisted or delisted.

On June 15, 2000, the CNPS filed a lawsuit in U.S. District Court for the Southern District of California for our failure to designate critical habitat for the five carbonate plants (*California Native Plant Society* v. *Berg, et al.*, 00CV1207–L (LSP)). On April 27, 2001, the Court vacated our August 24, 1994, ''not prudent'' determination for critical habitat and ordered us to reevaluate its prudency, and if prudent to complete a proposed rule by January 31, 2002. The Court further ordered us to publish a final critical habitat designation on or before September 30, 2002.

On January 29, 2002, we determined that designation of critical habitat was prudent, and on February 12, 2002, we published in the **Federal Register** a proposed rule to designate approximately 5,335 ha (13,180 ac) of land as critical habitat for the five carbonate plants (67 FR 6578). On September 20, 2002, we published a notice reopening the public comment period for 30 days on the proposed rule and announcing the availability of the draft economic analysis (67 FR 59239). On September 16, 2002, we requested an 8-month extension from the court (until May 30, 2003) to allow us adequate time to complete an economic analysis, obtain public comment on the economic analysis, and complete the final designation. On October 7, 2002, California Native Plant Society filed a motion opposing the extension. A hearing date of December 9, 2002, was set by the court to hear the motions of both parties.

**Critical Habitat**

Critical habitat is defined in section 3 of the Endangered Species Act (Act), as amended, as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification with regard to actions carried out, funded, permitted, or authorized by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Further, consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that lack a Federal nexus.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)), and are, therefore, essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of its present range, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species. Section 4 of the Act also requires that we designate critical habitat, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential.

Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

**Methods**

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the five carbonate plants. This information included data from aerial photography (1995 Digital Orthorectified Quarter Quadrangles (DOQQ) and 2000 SPOT (*Système Pour l'Observation de la Terre*) satellite imagery); U.S. Geological Services (USGS) topographic maps; the SBNF Carbonate Species Suitable Habitat Models and ranking system (Redar and Eliason, *in litt.* 2001); species occurrence and/or suitable habitat data from the SBNF, draft CHMS (Olsen 2002), and CNDDB (CDFG 2002); the final listing rule (59 FR 43652); the Proposed Designation of Critical Habitat for Five Carbonate Plants From the San Bernardino Mountains in Southern California (67 FR 6578); the San Bernardino Mountains Carbonate Plants Draft Recovery Plan (USFWS 1997); information in species background sections (USFWS, *in prep.*) being prepared for the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan; research and survey observations published in peer-reviewed articles; regional GIS coverages (*e.g.*, soils, occurrence data, vegetation, land ownership, and elevation); project-specific and other miscellaneous reports and public comments submitted to us; additional information from the BLM regarding a section 7 consultation (1–8–01–F–18) on the effects of the California Desert Conservation Area Plan (CDCA) on 10 plant species (BLM 2001); a section 7 consultation with the SBNF on various ongoing and related activities affecting carbonate habitats (USFWS 2001a); discussions with representatives of the SBNF and botanical and other knowledgeable experts; and geologic map coverage of the Cushenbury Canyon area. We also visited portions of the carbonate belt in the northeastern San Bernardino Mountains, San Bernardino County, California, within the SBNF. We concentrated our analysis on those areas with known occurrences for each of these species.

The number of individuals of each carbonate plant species fluctuates over time and spatially (over an area) (Tierra Madre 1992, Krantz 1994, Neel 2000, CDFG 2002). Population estimates of each of the five carbonate plants from different time periods and surveyors also vary in precision and accuracy (S. Eliason, pers. comm., 2002). Therefore, comparing these data may yield misleading estimates of the number of individuals in a given area (Neel 2000). Additionally, the mapped occurrences of the carbonate plants have varied from year to year and surveyor to surveyor (Tierra Madre 1992, Krantz 1994, Neel 2000, CDFG 2002). Therefore, estimates of the number of individuals are not given in this document.

Names associated with the various groupings of carbonate plants also differ (*e.g.*, population, aggregate occurrence (grouped occurrences), element occurrence (as used by the CDFG), and point location (which describes a detailed mapping area used by the SBNF)) (USFWS 1994, Neel 2000, CDFG 2002). For the purposes of describing areas essential to the conservation of the carbonate plants, and to standardize the variation in mapping scale presented by CNPS and the SBNF, we reclassified the occurrence data identified by the CNDDB (CDFG 2002) and the SBNF into new groupings. These groupings were established based on likely hydrogeomorphic (*e.g.*, same drainage and soil derivation) and/or topographic relationships, which allowed us to analyze the localized occurrences with respect to general assumptions about the potential biological and ecological dynamics of these groupings, such as seed banks, connectivity and gene flow, and pollinator and seed dispersal vectors. The groupings also allowed for ease in the description, mapping, and definitions of legal boundaries. Consequently, hereafter, we refer to each of these new groupings as an ''aggregate occurrence,'' while distinct subunits of the aggregate occurrences are referred to as ''localized occurrences'' or simply ''occurences.'' Furthermore, the term ''core occurrences'' is used below to describe a relatively large number of individual plants in a given geographic area.

After analyzing all of the localized occurrence data from the CNDDB (CDFG 2002), the final listing rule, SBNF, and additional scientific and commercial sources, we grouped *Astragalus albens* into 20 aggregate occurrences, *Erigeron parishii* into 27 aggregate occurrences, *Eriogonum ovalifolium* var. *vineum* into 28 aggregate occurrences, *Lesquerella kingii* ssp. *bernardina* into 2 aggregate occurrences, and *Oxytheca parishii* var.

*goodmaniana* into 19 aggregate occurrences.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth; food, water, air, light, minerals, or other nutritional or physiological requirements; cover; sites for pollination, reproduction, germination, or seed dispersal and dormancy; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* are within their respective historical ranges and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of each species.

Habitat components that are essential for each of the five carbonate plants are primarily found in, but not limited to, pinyon woodland, pinyon-juniper woodland and forests, Joshua tree woodland, white fir forests, subalpine forest, canyon live oak woodlands and forests, and blackbush scrub vegetation communities in the San Bernardino Mountains. These habitat components likely provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow for and maintain gene flow between localized occurrences through pollinator activity and seed dispersal mechanisms; (3) areas that provide basic requirements for growth such as water, light, minerals; and (4) lands that support pollinators and seed dispersal vectors.

The following has been identified as important to the conservation of the five carbonate plants or narrow endemic plants in general: the conservation and management of existing populations (USFWS 1997); the conservation and management of suitable habitat that is not known to be currently occupied to maintain natural equilibrium between local extirpations and colonizations (Harrison *et al.* 2000); the protection and maintenance of upslope or upstream geologic features that provide the necessary materials to replace the soils continually lost to natural processes (USFWS 2002b); conservation and adequate connectivity of undisturbed areas between localized occurrences to allow and maintain gene flow among aggregate occurrences through pollen and seed dispersal vectors (Neel and Ellstrand, in press; Neel 2002; Neel 2000; USFWS 2001b); the conservation and maintenance of sites that may allow for pollen and seed dispersal (USFWS 2001b); the conservation of suitable micro-habitat that could be colonized to allow localized occurrences to expand and contract, or maintain normal population dynamics (Neel and Ellstrand, in press; Neel 2002; Neel 2000; Harrison *et al.* 2000); and the maintenance of normal ecological functions within all localized occurrences. The small fragmented range of the five carbonate plants and limiting ecological factors that reduce the chances of their survival make these species particularly vulnerable to natural and human disturbance (*e.g.*, non-native species, wildfire, livestock grazing, forest product harvesting, and mining) (Burgman *et al.* 2001; USFWS 2001b).

We considered the biological and ecological factors identified above while developing primary constituent elements for the proposed rule and this final rule. As stated earlier in the rule, there is limited available ecological information about the five carbonate plants. However, we were able to utilize in our determination of primary constituent elements specific information regarding soil types, vegetation associations, geographic distribution, geomorphic relationships and other habitat conditions in which these plants are commonly found. The resulting primary constituent elements are expected to capture significant aspects of the above ecological factors.

Based on our current knowledge of these species, the primary constituent elements of critical habitat for each species is listed below and consist of, but are not limited to:

*Astragalus Albens*

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on dry flats and slopes or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

*Erigeron Parishii*

(1) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover.

*Eriogonum Ovalifolium var. Vineum*

(1) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

*Lesquerella Kingii ssp. Bernardina*

(1) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

*Oxytheca Parishii var. Goodmaniana*

(1) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials

that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(2) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(3) Associated plant communities that have areas with a moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

**Criteria Used To Identify Critical Habitat**

The downlisting and delisting sections of the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS, in prep.) for the five carbonate plants, in concert with the draft CHMS (Olsen 2002), identify the specific recovery needs of these species and facilitated the identification of areas essential to their conservation. The published and revised draft recovery plans identify lands as important for the long-term conservation of the carbonate plants that: (1) Contain known occurrences that must be conserved to recover the species; (2) include habitats that were part of a historical population distribution adjacent to occupied areas and are needed for the expansion and stability of additional occurrences; and (3) provide landscape connectivity between occurrences that are required to maintain genetic exchange and the natural processes of extirpations and colonizations. To recover the carbonate plants to the point where they can be downlisted or delisted, it is essential to preserve the species' genetic diversity, as well as their habitat.

During the development of the programmatic consultation for the four southern California National Forests (USFWS 2001c) and the draft CHMS (Olsen 2002), the SBNF delineated the distribution of each of the five carbonate species and developed a model of potential suitable habitat based on geology, soil substrates, elevation range, and plant communities. The SBNF ranked the relative importance of the known localized occurrences of carbonate plants by evaluating the size, density, location, configuration, associated species, defensibility (*i.e.*, against threats) of each occurrence, and a general assessment of habitat conditions. Priority was also given to localized occurrences that represented the limits of ecological and geographical variability of the species (*e.g.*, highest and lowest in elevation, westernmost and easternmost in distribution).

We used the distribution and occurrence data from outside sources, our aggregate occurrence groupings, and the SBNF occurrence ranking information and modeled suitable habitat maps to determine habitat areas essential to the conservation of the five carbonate plants. We used 1996 and 2000 aerial photography to identify areas for removal from critical habitat designation that have (1) urban development; (2) active mining; and (3) other ongoing disturbances. The 1996 imagery provided 1-m resolution, while the 2000 imagery provided more recent information, but at a lower resolution. We also reviewed previous consultations completed under section 7 of the Act for the carbonate plants to remove any additional lands that were previously determined to be non-essential. The delineated localized occurrence boundaries were refined to include: (1) Potential adjacent seed banks; (2) habitat to maintain natural equilibrium between local extirpation and colonization events; (3) connectivity of suitable habitat to maintain potential gene flow among sites through pollen and seed dispersal; and (4) upslope or upstream geologic substrates that provide the necessary materials to replace the soils which are continually lost to natural processes. To map these essential lands, we overlaid them with a 100-m Universal Transverse Mercator (UTM) grid. Because the grid captured lands deemed non-essential, we then evaluated all grid cells adjacent to disturbed areas and eliminated grid cells where either the entire cell or the majority of the cell was within a disturbed area. Cells that had documented localized occurrences of the carbonate plants were retained even if the majority of the cell was disturbed.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, buildings, active mines, and lands unlikely to contain the primary constituent elements essential for the conservation of each of the five carbonate plants. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of non-essential lands included in our designation. However, as an artifact of the mapping process, critical habitat may include some disturbed areas and undisturbed areas that do not contain primary constituent elements. Though mapped as such, existing features and structures, such as buildings, mines that are active at the time of this publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas are unlikely to contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or the primary constituent elements in adjacent critical habitat.

The critical habitat units described below constitute our best assessment of areas that are essential for the species' conservation. New information obtained in the time between the proposed rule and this final rule, including additional information received during the two public comment periods, did not result in a refinement of our critical habitat boundaries for this final rulemaking.

**Critical Habitat Designation**

The acreage of designated critical habitat land ownership is shown in Table 1.

TABLE 1.—DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1]]

| Species | Federal [2] | Private | Total |
|---|---|---|---|
| *Astragalus albens* | 1,565 ha (3,870 ac) | 200 ha (495 ac) | 1,765 ha (4,365 ac). |
| *Erigeron parishii* | 1,330 ha (3,280 ac) | 460 ha (1,140 ac) | 1,790 ha (4,420 ac). |
| *Eriogonum ovalifolium* var. *vineum* | 2,440 ha (6,025 ac) | 375 ha (930 ac) | 2,815 ha (6,955 ac). |
| *Lesquerella kingii* ssp. *bernardina* | 405 ha (1,005 ac) | 10 ha (20 ac) | 415 ha (1,025 ac). |
| *Oxytheca parishii* var. *goodmaniana* | 1,085 ha (2,675 ac) | 190 ha (475 ac) | 1,275 ha (3,150 ac). |

TABLE 1.—DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA—Continued

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1]]

| Species | Federal [2] | Private | Total |
|---|---|---|---|
| Total [3] | 4,565 ha (11,280 ac) | 770 ha (1,900 ac) | 5,335 ha (13,180 ac). |

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.
[2] Federal lands include SBNF and BLM lands.
[3] Because of overlapping boundaries, the sum of designated critical habitat for each carbonate plant species does not equal the total area that has been designated as critical habitat for each species.

The designated critical habitat areas described below constitute our best assessment of the areas essential for the conservation of each of the five carbonate plants. Each polygon (*e.g.*, closed mapped area) representing critical habitat for each species is considered to be occupied by standing plants and seeds as part of the seed bank and contains one or more of their primary constituent elements. We are designating approximately 5,335 ha (13,180 ac) of land as critical habitat for the five carbonate plants.

The lands designated as critical habitat have been divided into three critical habitat units: the Northeastern Slope Unit (Unit 1), Bertha Ridge Unit (Unit 2), and Sugarlump Ridge Unit (Unit 3). The Northeastern Slope Unit contains *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* The Bertha Ridge Unit contains *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina.* The Sugarlump Ridge Unit contains *Lesquerella kingii* ssp. *bernardina.* Lands designated as critical habitat are under Federal and private ownership. Federal lands include areas owned or managed by the SBNF and BLM.

We are designating all or part of the following aggregate occurrences: 15 of 20 for *Astragalus albens,* 20 of 27 for *Erigeron parishii,* 22 of 28 for *Eriogonum ovalifolium* var. *vineum,* 18 of 19 for *Oxytheca parishii* var. *goodmaniana,* 2 of 2 for *Lesquerella kingii* ssp. *bernardina.* Based on public comment, we reviewed our aggregate grouping classification. As a result, the number of aggregate occurrences that we are designating may differ from those in the proposed rule, however, the extent of areas included in our designation has not changed. We are not including all or part of some aggregate occurrences because the habitat in those areas is considered to be too degraded, or so small and isolated as to not have long-term viability, and therefore, not essential to the conservation of the species.

A brief description of each unit and reasons for designating it as critical habitat are presented below.

**Unit 1: Northeastern Slope Unit, San Bernardino County, California (4,850 ha (11,980 ac))**

The Northeastern Slope Unit includes 115 separate polygons (subunits) around important occurrences of the carbonate plants. The unit extends from White Mountain at the western edge to Rattlesnake Canyon at the eastern edge, a distance of approximately 40 km (25 mi). The lands within this unit contain the majority of the carbonate substrates in the carbonate belt that spans the north to northeastern slope of the San Bernardino Mountains. This unit includes occurrences of four of the five carbonate plants: *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum,* and *Oxytheca parishii* var. *goodmaniana.* This unit contains the majority of the known range of occurrences for each of these four carbonate plants, including all or part of the following aggregate occurrences: 17 of 20 for *Astragalus albens*; 22 of 27 for *Erigeron parishii*; 22 of 28 for *Eriogonum ovalifolium* var. *vineum*; 18 of 19 for *Oxytheca parishii* var. *goodmaniana.*

This unit contains localized occurrences of the carbonate plants that the SBNF ranked as important for their survival and conservation (S. Eliason, *in litt.* 2001). The SBNF's ranking was instrumental in our determining which aggregate occurrences of each carbonate plant were essential within this critical habitat unit. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS, *in prep.*) specifically mentions that the permanent protection of (1) a large number of core (a relatively large number of individual plants in a given geographic area) occurrences, and (2) the majority of the remaining additional occurrences of each of these four carbonate plants are necessary for their downlisting and/or delisting.

This unit contains proposed management areas on public and private lands that, among other functions, would provide conservation benefits to the four carbonate plant species in this unit. These proposed management areas, at least in part, are intended to satisfy the CHMS conservation goals for the carbonate plants. These lands would include a proposed SBNF Special Management Area (SMA), a proposed BLM Area of Critical Environmental Concern (ACEC), and additional proposed reserve lands currently held by private mining interests. It is anticipated that these special land designations would occur sometime after the implementation of the CHMS through the provisions of a consultation between the SBNF and the Service. These lands, however, currently do not have approved management provisions for the carbonate plants and their habitat, and habitat degradation may still be occurring due to ongoing activities identified in the final listing rule for these species (see USFWS 2001b). Therefore, the subject lands continue to require special management and protection to ensure the conservation of the carbonate plants and their habitat.

The persistence of the carbonate plant populations likely depends on the combined dynamics of local extirpations and new colonizations by dispersal (Given 1994, Hanski 1999, Hanksi and Gilpin 1991). Every carbonate plant occurrence in this unit is important to maintain the natural population dynamics of local extirpation and colonization events that are necessary for the conservation of the species. Every carbonate plant occurrence in this unit is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between colonization and extirpation events. Every carbonate plant occurrence in this unit potentially provides important genetic material through cross pollination and seed dispersal which may help maintain genetic diversity and thus reduce the likelihood of extirpation.

Lands within this unit are essential to the conservation of these four carbonate

plants because they provide (1) suitable carbonate substrates and carbonate-derived soils with intact, natural surfaces associated with each of these species; (2) associated plant communities for each of these species; and (3) habitat conditions that support the majority of known plant occurrences of these species, including a number of important core occurrences.

The acreage of critical habitat for Unit 1 by land ownership is shown in Table 2.

TABLE 2.—CRITICAL HABITAT FOR UNIT 1 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1]]

| Species | BLM | USFS | Federal total | Private | Total |
|---|---|---|---|---|---|
| *Astragalus albens* | 345 ha (850 ac) | 1,220 ha (3,020 ac) | 1,565 ha (3,870 ac) | 200 ha (495 ac) | 1,765 ha (4,365 ac). |
| *Erigeron parishii* | 390 ha (960 ac) | 940 ha (2,320 ac) | 1,330 ha (3,280 ac) | 460 ha (1,140 ac) | 1,790 ha (4,420 ac). |
| *Eriogonum ovalifolium* var. *vineum*. | 175 ha (430 ac) | 2,120 ha (5,230 ac) | 2,290 ha (5,660 ac) | 375 ha (930 ac) | 2,665 ha (6,590 ac). |
| *Oxytheca parishii* var. *goodmaniana*. | 35 ha (85 ac) | 1,050 ha (2,590 ac) | 1,085 ha (2,675 ac) | 190 ha (475 ac) | 1,275 ha (3,150 ac). |
| Total [2] | 640 ha (1,585 ac) | 3,450 ha (8,515 ac) | 4,090 ha (10,100 ac) | 760 ha (1,880 ac) | 4,850 ha (11,980 ac) |

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of designated critical habitat for each carbonate plant species does not equal the total area that has been designated as critical habitat for each species.

**Unit 2: Bertha Ridge Unit, San Bernardino County, California (275 ha (685 ac))**

The Bertha Ridge Unit includes four separate polygons encompassing important occurrences of the carbonate plants. This unit is located on the north side of Big Bear Lake adjacent to Big Bear City, California. It is near the east end of Bertha Ridge on its south facing slope. The majority of lands within this unit contain soils derived from carbonate substrates (particularly dolomite) that are essential to the survival and conservation of both carbonate plant species. This unit contains important core occurrences of two of the five carbonate plants: *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina.*

This unit contains one of the two *Lesquerella kingii* ssp. *bernardina* aggregate occurrences. It is a core occurrence that may be large enough to maintain the natural dynamics of local extirpation and colonization events. This unit also contains a disjunct *Eriogonum ovalifolium* var. *vineum* aggregate occurrence, and the only *Eriogonum ovalifolium* var. *vineum* aggregate occurrence found on soils primarily derived from dolomite parent material. This aggregate occurrence may contain plants that harbor genetic characteristics essential to overall long-term conservation of the species.

Each of the localized occurrences contained in this unit has been identified by the SBNF as being important core occurrences for the survival and conservation for each carbonate plant species. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS, *in prep.*) specifically mentions that the permanent protection of each of the localized occurrences in this unit of these two carbonate plants are necessary for their downlisting and/or delisting.

The SBNF is planning a revision of their Resource Management Plan in the near future that, among other functions, would provide conservation benefits to the two carbonate plant species and their habitat in this unit. These lands, however, currently do not have approved management provisions for the carbonate plants and their habitat, and habitat degradation may still be occurring due to ongoing activities identified in the final listing rule for these species (see USFWS 2001b). Therefore, the subject lands continue to require special management and protection to ensure the conservation of these species and their habitat.

The core occurrences of the two carbonate plants in this unit are important as potential sources for the colonization events (*e.g.*, seed dispersal) necessary to maintain the natural population dynamics of the species. Every carbonate plant occurrence in this unit is important as a seed source to colonize unoccupied sites and therefore maintain an equilibrium between local colonization and extirpation events. Every carbonate plant occurrence in this unit potentially provides important genetic material through pollen and seed dispersal which may help maintain genetic diversity and reduce the likelihood of regional extirpation events.

Lands within this unit are essential to the conservation of both of these carbonate species because they provide (1) suitable carbonate substrates and carbonate derived soils with intact, natural surfaces associated with each of these species; (2) associated plant communities for each of these species; and (3) habitat conditions that support the majority of known plant occurrences of these species, including a number of important core occurrences.

The acreage of critical habitat for Unit 2 by land ownership is shown in Table 3.

TABLE 3.—CRITICAL HABITAT FOR UNIT 2 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within[1]]

| Species | BLM | USFS | Federal total | Private | Total |
|---|---|---|---|---|---|
| *Eriogonum ovalifolium* var. *vineum*. | 0 ha (0 ac) | 150 ha (365 ac) | 150 ha (365 ac) | 0 ha (0 ac) | 150 ha (365 ac). |

TABLE 3.—CRITICAL HABITAT FOR UNIT 2 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA—Continued

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within[1]]

| Species | BLM | USFS | Federal total | Private | Total |
|---|---|---|---|---|---|
| *Lesquerella kingii* ssp. *bernardina*. | 0 ha (0 ac) | 195 ha (490 ac) | 195 ha (490 ac) | 10 ha (20 ac) | 205 ha (510 ac). |
| Total[2] | 0 ha (0 ac) | 265 ha (665 ac) | 265 ha (665 ac) | 10 ha (20 ac) | 275 ha (685 ac). |

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

[2] Because of overlapping boundaries, the sum of designated critical habitat for each carbonate plant species does not equal the total area that has been designated as critical habitat for each species.

**Unit 3: Sugarlump Ridge Unit, San Bernardino County, California (210 ha (515 ac))**

The Sugarlump Ridge Unit includes two separate polygons encompassing an important core occurrence of the *Lesquerella kingii* ssp. *bernardina*. This unit is centered on the north-facing slope of Sugarlump Ridge south of Bear Valley, approximately 10 km (6.2 mi) south of the Bertha Ridge unit. The soils in this unit are primarily derived from dolomite instead of limestone. *Lesquerella kingii* ssp. *bernardina* is the only carbonate plant in this unit.

This unit contains one of the two known *Lesquerella kingii* ssp. *bernardina* aggregate occurrences, and has been identified by the SBNF as being a very important core occurrence for the survival and conservation of *Lesquerella kingii* ssp. *bernardina*. Additionally, the revised draft San Bernardino Mountains Carbonate Endemic Plants Recovery Plan (USFWS, *in prep.*) specifically mentions that the permanent protection of this occurrence is necessary for its downlisting or delisting.

The SBNF is planning a revision of their Resource Management Plan in the near future that, among other functions, would provide conservation benefits to *Lesquerella kingii* ssp. *bernardina* and its habitat in this unit. These lands, however, currently do not have approved management provisions for the carbonate plants and their habitat, and habitat degradation may still be occurring due to ongoing activities identified in the final listing rule for these species (*see* USFWS 2001b). Therefore, the subject lands continue to require special management and protection to ensure the conservation of *Lesquerella kingii* ssp. *bernardina* and its habitat.

The core *Lesquerella kingii* ssp. *bernardina* occurrence in this unit is important as a source for potential colonization events (*e.g.*, seed dispersal) that may be necessary to maintain the natural population dynamics of local extirpation and colonization. Every occurrence of this carbonate plant in this unit is important as a potential seed source to colonize unoccupied sites. Every occurrence of this species in this unit may provide important genetic material through pollen and seed dispersal which may maintain long-term viability and genetic diversity, and thereby potentially reduce the likelihood of extirpation.

Lands within this unit are essential to the conservation of *Lesquerella kingii* ssp. *bernardina* because they provide (1) suitable carbonate substrates and carbonate derived soils with intact, natural surfaces associated with this species; (2) associated plant communities for this species; and (3) habitat conditions that support the majority of known plant occurrences of this species, including an important core occurrence.

The acreage of critical habitat for Unit 3 by land ownership is shown in Table 4.

TABLE 4.—CRITICAL HABITAT FOR UNIT 3 IN HECTARES (HA) (ACRES (AC)) BY SPECIES AND LAND OWNERSHIP, SAN BERNARDINO COUNTY, CALIFORNIA

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within[1]]

| Species | BLM | USFS | Federal total | Private | Total |
|---|---|---|---|---|---|
| *Lesquerella kingii* ssp. *bernardina*. | 0 ha (0 ac) | 210 ha (515 ac) | 210 ha (515 ac) | 0 ha (0 ac) | 210 ha (515 ac). |

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical

habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features (*i.e.*, the primary constituent elements) that were the basis for determining the habitat to be critical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the five carbonate plants or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, a permit under section 10(a)(1)(B) of the Act from the Service, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or Federal Emergency Management Agency (FEMA)); permits from the Department of Housing and Urban Development (HUD); activities by Immigration and Naturalization Service (INS) on their land or land under their jurisdiction; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy (DOE), or any other Federal agency; regulation of airport improvement activities by FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of the five carbonate plants is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying the five carbonate plants habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (*e.g.*, plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, herbicide application, etc.);

(2) Activities that appreciably degrade or destroy the five carbonate plants' habitat (and their primary constituent elements), including, but not limited to, livestock grazing, clearing, discing, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use; and

(3) Appreciably decreasing habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, or fragmentation).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave., Portland, OR 97232 (telephone 503/231–6131; facsimile 503/231–6243).

**Relationship to Habitat Conservation Plans and Other Planning Efforts**

Only one habitat conservation plan (HCP), *Habitat conservation plan for the federally threatened desert tortoise, Cushenbury sand and gravel quarry, San Bernardino, California* (Lilburn Corporation 1994), has been completed within the area where these five carbonate plants occur. This HCP addresses the federally listed as threatened desert tortoise (*Gopherus agassizii*). While *Erigeron parishii* occurs within the area addressed by this HCP, neither this species nor any other carbonate plant addressed in this proposal is covered under this HCP. In the event that future HCPs are developed within the boundaries of designated critical habitat in which one or more of the carbonate plants is included as a covered species, we will work with applicants to ensure that the HCPs provide for protection and

management of habitat areas essential for their conservation by either directing development and habitat modification to non-essential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify critical habitat.

The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the five carbonate plants. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat preserves. We fully expect that any HCPs undertaken by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

**Summary of Comments and Recommendations**

In the February 12, 2002, proposed critical habitat designation (67 FR 6578), we requested all interested parties to submit comments on the specifics of the proposal including information related to biological justification, policy, economics, and proposed critical habitat boundaries. The initial 60-day comment period closed on April 15, 2002. The comment period was reopened from September 20, 2002, to October 21, 2002 (67 FR 59239), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, on February 18, 2002, we invited public comment through the publication of a legal notice in the San Bernardino Sun newspaper in southern California. We also provided notification of the draft economic analysis to all interested parties. This was accomplished through telephone calls, letters, and news releases faxed or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We posted the proposed rule and draft economic analysis and associated material on our Carlsbad Fish and Wildlife Office Internet site following the reopening of the public comment period on September 20, 2002.

We received a total of 120 comment letters from 193 separate parties (4 letters contained multiple signatures) during the two public comment periods. Comments were received from Federal and local agencies, and private organizations or individuals. No response was received from State agencies. Of these 120 comment letters, 10 were in favor of the designation, and 110 against it. We reviewed all comments received for substantive issues and comments, and new information regarding the five carbonate plants.

**Peer Review**

We requested six biologists, who have knowledge of the five carbonate plants, to provide peer review of the proposed designation of critical habitat for the five carbonate plants. Five independent peer reviewers submitted comments on our proposed critical habitat designation. Each reviewer generally endorsed the proposal. Four of the reviewers expressed some reservations as to the adequacy of the proposed designation. More specifically, they advocated the inclusion of additional lands to address the following issues: connectivity, outlying occurrences, edge effects, and the importance of protecting genetic diversity for the survival of the five carbonate plants. The fifth reviewer supported the designation as proposed.

Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. Comments were either incorporated directly into the final rule or final addendum to the economic analysis or addressed in the following summary.

*Issue 1: Biological Justification and Methodology*

*Comment 1:* Several commenters, including four peer reviewers, recommended revising the critical habitat boundaries to increase connectivity, and reduce the edge-to-area ratio to improve the biological or ecological defensibility of critical habitat. A few commenters suggested that the proposed rule ignores the principles of species composition and reserve design, citing that habitat in contiguous blocks is better than fragmented habitat. Another commenter, citing recent studies relating to fragmentation effects, suggested we failed to use the best available scientific information to propose adequate unoccupied critical habitat.

*Our Response:* In our proposed critical habitat designation for the five carbonate plants, we identified those areas that currently contain or provide populations and habitat components essential to the conservation of the five carbonate plants. We did not include some habitat areas where the five carbonate plants had not been observed recently because we did not believe that these areas were essential to the conservation of the species. We included those areas we believe to be essential, including core populations and habitat that provides the principal biological and physical components necessary for the conservation of the species.

One of the commenters cited recent studies that concluded that fragmentation effects are diminished if fragments are joined together by a corridor connecting two or more fragments. We believe that the configuration of areas in the designation may substantively reduce fragmentation effects. Although all of the designated occurrences of each of the five carbonate plants are not ''connected'' by the boundaries of the designation, many localized occurrences and some aggregate occurrences were designated within the same critical habitat area or polygon, thereby decreasing the likelihood of fragmentation effects and improving management defensibility and opportunities for genetic exchange. Please refer to the Criteria Used to Identify Critical Habitat section of this rulemaking for additional discussion regarding criteria used in the development of the critical habitat for the carbonate plants this.

During the process of developing this final rule, we re-evaluated our methodology and the boundaries defining proposed critical habitat. Following that re-evaluation, we believe that what we had proposed for the five carbonate plants is based on the best scientific and commercial information available and defines what we consider to be essential to the conservation of the five carbonate species. Consequently, we did not modify the designation for the final rule or believe that it was warranted to withdraw the designation and re-propose a new designation.

*Comment 2:* Two peer reviewers recommended including outlying localized occurrences of *Erigeron parishii* on BLM and University of California Burns Reserve lands into the designation.

*Our Response:* When we proposed critical habitat for *Erigeron parishii*,

information regarding one of the subject occurrences on BLM land was not available to us. We received information about this occurrence during the initial 60-day public review period for the proposed rule. After reviewing the location, size, and status of this occurrence, we have determined that the habitat encompassing this occurrence is likely to be too small and isolated to be considered as essential to the conservation of the species.

We evaluated the information that we had available concerning the known occurrences on the BLM and University of California Burns Reserve lands during the development of the proposed critical habitat designation. Based on the results of this review we determined that these areas were too isolated from the remaining occurrences and small in area to be considered as essential for the conservation of the species. Consequently, they were not proposed as critical habitat.

*Comment 3:* One commenter expressed concern that significant amounts of proposed critical habitat on BLM lands are not occupied by *Erigeron parishii* and do not contain constituent elements (*e.g.*, soils), and recommended that we modify critical habitat for this species to exclude areas shown in two maps provided by the commenter.

*Our Response:* During the development of this final designation we reviewed the SBNF occurrence data for *Eriogonum parishii* and were able to confirm that all of the proposed critical habitat in question include the SBNF mapped occurrences of the species. In subsequent discussions with staff at the BLM's Barstow Field Office, it became evident that BLM did not have the most current and accurate information in their database concerning occurrences of the subject species. In addition, we reviewed our proposed designation and found no aberrations to the methodology we used to determine the critical habitat boundaries in relation to the delineated occurrences on BLM lands.

The commenter also suggested that the subject critical habitat polygons do not contain primary constituent elements (*e.g.*, soils), though no evidence was provided to support the commenter's claim, making it difficult to provide a specific response. However, as defined in the Primary Constituent Elements section of the proposed rule, the species *Erigeron parishii* is associated with soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials. Also, as discussed in the Ecology section of the proposed rule and this final rule, this species is occasionally associated with a granitic/limestone interface. Several occurrences of this species are associated with granitic substrates overlaid by limestone soils (CDFG 2002). If the commenter was using a rock substrate map, it would reveal only the granitic substrate in those areas. Also, by our use of the 100-m UTM grid to delineate critical habitat, the designation likely results in the inclusion of exposed granitic substrates and granitic derived soils in these interface areas. Nevertheless, each critical habitat polygon designated for *Erigeron parishii* is known to include the primary constituent elements for the species.

*Comment 4:* Two commenters suggested that substantial portions of proposed critical habitat contain non-carbonate rock, and should not be considered habitat for the five carbonate plants. One commenter specifically claimed that the proposed critical habitat included lands adjacent to the ''3N88 or Crystal Creek haul road'' which contained granitic substrate and relatively small, degraded and isolated plant occurrences, and therefore, should be removed from the proposed critical habitat designation.

*Our Response:* The commenter refers to critical habitat within Unit 1 that includes *Eriogonum ovalifolium* var. *vineum* occurrences. As discussed in the Species Descriptions section of the proposed rule and this final rule, occurrences of some of the five carbonate plants have been described on granitic parent material that has been overlaid with soils derived from carbonate substrates washed down from upslope areas. A review of the geologic map provided by the commenter that includes the topography of the area around the subject haul road suggests that carbonate substrates do occur, and in fact are being actively mined, upslope from the subject haul road. Therefore, it is conceivable, if not likely, that carbonate soils overlay the granitic substrate in this particular area. Furthermore, as this species (including these occurrences) has not been recorded to occur on non-carbonate soils, it would not be unreasonable to assume that the granitic substrate in this area is overlaid with soils derived from carbonate substrates.

The commenter also claimed that four of the five mapped, localized occurrences immediately adjacent to the subject haul road are considered to be lost, extirpated, disturbed, declining, or difficult to protect. While reviewing this information, we noted that the fifth occurrence appears much larger and is presumably intact, and that all five occurrences are relatively close together. As discussed in the Ecology and Critical Habitat Designation sections of this final rule, there is some evidence to support that relatively sparse or small occurrences in close proximity to larger ones may help facilitate gene flow among larger populations. Therefore, we consider each carbonate plant occurrence in the subject critical habitat area to be important to maintaining the natural population dynamics of local extirpation and colonization events that are necessary for the conservation of the species. Furthermore, as we noted in the Ecology section of the proposed rule and this final rule, persistence of the carbonate plants requires sufficient suitable habitat contiguous with areas that are currently occupied by the plants.

Finally, as stated in the Primary Constituent Elements section of the proposed rule and this final rule, all areas designated as critical habitat for *Eriogonum ovalifolium* var. *vineum* contain one or more of the primary constituent elements essential for the conservation of the species. After evaluating the information provided by the commenter regarding habitat components, plant occurrences, and rock substrates on lands adjacent to the Crystal Creek (3N88) road, we were able to confirm that primary constituent elements are present in the subject area, it contains habitat components tied to the species, and the area is occupied by the species. Therefore, we consider the lands designated as critical habitat in subject area of Unit 1 to be essential for the conservation of the species.

*Comment 5:* A few commenters were concerned that the critical habitat proposal lacked documented science, particularly with respect to conclusions made about why lands proposed for designation are essential to the conservation of the species. One commenter further argued that determinations made about the number and configuration of acres or plant occurrences essential to the long-term persistence of these species in the proposed rule was based strictly on intuition rather than through a scientific analysis of population parameters.

*Our Response:* In developing our proposed designation of critical habitat for the five carbonate plants, we used the best commercial and scientific data available. As discussed in the Critical Habitat section of the proposed rule and this final rule, critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements,

as defined at 50 CFR 424.12(b)). As described in the Methods section of this rulemaking, we were able to utilize available data (*i.e.*, known occurrences, soils, and vegetation associations) to assist in making our determination. As the commenter asserted, there is almost no data on population dynamics and stability of the five carbonate plant species. Nevertheless, we are required to designate, when prudent, critical habitat for listed species and believe our approach used the best scientific and commercial information available to delineate those areas essential to the conservation of the species.

*Comment 6:* A few commenters expressed concern that no definition of ''essential'' was provided in the proposed rule.

*Our Response:* As described in the Critical Habitat section of the proposed rule and this final rule, to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Since the word ''essential'' is not a defined term in the Act or regulations governing the Act, it is interpreted the same as in common usage, *i.e.* a necessary component of the process leading to recovery. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Within the geographic area occupied by the species, we will not designate areas that do not, at the time of the designation, have the primary constituent elements that provide essential life cycle needs of the species. The best available scientific and commercial information regarding the five carbonate plants was used in determining the essential life cycle needs of each species. This information was then utilized to determine the primary constituent elements on which the designation was based.

*Comment 7:* Several commenters expressed concern that lands proposed for designation include significant portions of known mineral reserves where listed species are not present.

*Our Response:* As indicated in the Critical Habitat section of this final rule, each polygon representing critical habitat for each species is considered to be occupied by standing plants or seeds and contains one or more of their primary constituent elements. As described in the Criteria Used to Identify Critical Habitat section of the proposed rule and this final rule, the mapped localized occurrences were refined to include: (1) Potential adjacent seed banks; (2) sites to maintain natural equilibrium between local extirpation and colonization events; (3) connectivity of suitable habitat to maintain potential gene flow among sites through pollen and seed dispersal; and (4) upslope or upstream geologic substrates that provide the necessary materials to replace the soils which are continually lost to natural processes. To map these essential lands, we overlaid them with a 100-m UTM grid. Because the grid included some areas that were deemed to be non-essential, we then evaluated all grid cells adjacent to disturbed areas and eliminated grid cells where either the entire cell or the majority of the cell was within a disturbed area. Cells that had documented occurrences of the carbonate plants were retained even if the majority of the cell was disturbed. Since the five carbonate plants occur on carbonate substrates and carbonate derived soils, there is bound to be overlap with mineral reserves.

*Comment 8:* A few commenters suggest that the proposed rule does not incorporate related scientific and commercial information generated by the draft CHMS. One commenter indicated that most of the lands identified for future mining on draft CHMS maps are included within the proposed critical habitat, even though biologists involved in the CHMS have largely agreed that the mining on these lands would not threaten long-term conservation goals, providing that the mining effects were offset by setting aside occupied habitat elsewhere in the region.

*Our Response:* We support the CHMS stakeholders ongoing efforts to resolve conflicts between mining and listed species conservation needs. This type of regional conservation effort will likely reduce expenditures of time and resources for all parties involved relative to that expended when these types of conflicts are resolved in a piecemeal fashion. However, the details of the plan have not been finalized (Olson 2002) at this time and the court-ordered time frame for completing this critical habitat designation does not allow the flexibility to wait for the plan's completion.

In preparation of the proposed rule and this final rule, we utilized the available scientific and commercial information generated by SBNF for the draft CHMS to assist in making our critical habitat designation. As discussed in the Background and Methods sections of the proposed rule and this final rule, SBNF provided us with a GIS data layer from their detailed draft CHMS maps that included the SBNF Carbonate Species Suitable Habitat Model and ranking system, SBNF mapped carbonate plant occurrence data, mapped areas of existing disturbance by mining activities, and mapped proposed mining and conservation areas (SBNF GIS data 2001), all of which we considered in our determination of critical habitat. We do not believe that this designation should deter those participating in the CHMS and are confident that the plan will be compatible with this designation.

*Comment 9:* Two commenters expressed concern about the designation of lands adjacent to existing mining areas. One commenter stated that the designation may result in greater costs to the environment by limiting expansion of existing mines thereby increasing the development of new mining areas. Conversely, another commenter felt that carbonate plant habitat adjacent to existing mining operations is expendable since other lands remain unthreatened by mining disturbance.

*Our Response:* Adjacency to existing mining areas was not a criteria used in determining which habitat was essential to the conservation of the species. The economic analysis assumes that all acres of undisturbed potentially viable carbonate reserve are of equal value, irrespective of their distance from existing mining and transportation infrastructure. In reality, mining activities—particularly those activities likely to be initiated within the next 20 years—are more likely to expand in concentric circles around existing infrastructure. Many acres within critical habitat that are considered potentially viable reserves are located significant distances from existing infrastructure; conversely, many acres outside critical habitat that are considered viable reserves are much closer to existing infrastructure. To avoid underestimating the potential impact of the rulemaking, however, the economic analysis assigned an equal probability of future mining to all potentially viable reserves.

*Comment 10:* One commenter suggested that proposed designation of the boundary lines using UTM coordinates is not based on biology and results in the inclusion of lands not containing primary constituent elements.

*Our Response:* As described in the Criteria Used to Identify Critical Habitat section of the proposed rule and this final rule, we recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the five carbonate

plants. A 100-m grid is used to minimize areas that do not contain the primary constituent elements for the carbonate plants being included in the designation and to provide the public a precise description of the boundaries of the designation. Though mapped as such, existing features and structures, such as buildings, mines that are active at the time of this publication, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas are unlikely to contain one or more of the primary constituent elements. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

*Comment 11:* A few commenters interpreted the proposed designation to suggest that all, or nearly all, known occurrences of the five carbonate plants were placed into designated critical habitat. The commenters suggested that (1) there is no scientific data generated by CHMS, SBNF, or any other source, that supports the designation of all or nearly all occupied habitat, (2) that it appeared arbitrary to designate all occurrences that were captured by 100-m UTM grid cells, and (3) that such methods of determining critical habitat does not consider which stands are essential.

*Our Response:* As described in the Critical Habitat Designation section of this final rule, we did not propose to designate all known occurrences of the five carbonate plants. In our proposed and final designation of critical habitat, we selected essential habitat areas based on occurrence data, soils, vegetation, elevation, topography, and current land uses. To a great extent, this data was obtained from the SBNF, including their work on the CHMS. During the analysis, it was determined that some areas containing one or more primary constituent elements did not represent suitable habitat or were otherwise determined not to be essential for the conservation of the species. For example, lands containing several aggregate occurrences or portions of aggregate occurrences of each species were not designated, because they were either too small or isolated or disturbed by ongoing mining activities. Therefore, they were determined not to be essential to the conservation of the species.

*Comment 12:* A few commenters interpreted the language in the proposed rule to suggest that any proposed impacts to designated critical habitat would result in an adverse modification and/or jeopardy determination.

*Our Response:* The commenters refer to specific language in the Critical Habitat section of the proposed rule and this final rule that defines a Federal agency's responsibilities under section 7(a)(2) of the Act and 50 CFR 402.02 of the implementing regulations. One commenter, however, incorrectly interpreted the language in the proposed rule and the Act by assuming that ''destruction,'' per the definition, and ''degradation,'' per the commenters paraphrasing of the critical habitat definition, have the same meaning.

In 50 CFR 402.02 of the implementing regulations, destruction and adverse modification is defined as a ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Therefore, during a consultation on a proposed project in critical habitat we would evaluate the potential direct and indirect impacts of the project on the survival and recovery of the species. Projects that did not ''appreciably diminish the value of critical habitat'' for the survival and recovery of the species would not trigger an adverse modification determination.

Similarly, ''jeopardize the continued existence'' is defined as ''engag[ing] in an action that reasonable would be expected, directly or indirectly, to reduce appreciable the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of the at species.'' Therefore, when evaluating whether a proposed project would result in jeopardy we evaluate the potential direct and indirect impacts of the project and how likely the project is to appreciably reduce the survival and recovery of the species.

*Comment 13:* One commenter wondered how in the absence of general ecological information we can adequately assess what habitat is critical to the conservation of the species.

*Our Response:* As described in detail in the Critical Habitat section of the proposed rule and this final rule, section 4 of the Act requires that we designate critical habitat, to the maximum extent prudent and determinable. We are required to base our designations on what, at the time of designation, we know to be essential and therefore critical habitat. Please refer to the Critical Habitat section of this proposed rule for further explanation.

*Comment 14:* Several commenters stated that the designation was not necessary to protect the five carbonate plants.

*Our Response:* As discussed in the Prudency Determination section of the proposed rule, Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As described in our proposed rule to designate critical habitat for the five carbonate plants, we determined that it is prudent to propose the designation of critical habitat for these species. We made this determination, in part, because there may be some additional conservation benefits to the species by designating critical habitat on lands essential to the conservation of the five carbonate plants.

*Comment 15:* A few commenters expressed concern that the proposed rule understates the success of re-vegetation/reclamation efforts on reclaimed mining lands, and natural colonization by carbonate plants on disturbed sites. One commenter concluded that mining (and grazing) is compatible with the life histories of these species.

*Our Response:* As explained in the Ecology section of this rulemaking, the carbonate plants do not appear to be specifically linked to early vegetation successional stages following natural disturbance; however, they are found on some surfaces that are naturally disturbed by landslides and substrate upheaval (Neel 2000). Primarily, they occur in habitat that is undisturbed by human activities, but instances of colonization onto human-disturbed surfaces have been observed for all of the carbonate plants (Eliason 2002, White 2002). One of the subject commenters cited a USDA 2000 article that addressed the introduction of two of the carbonate plant species on disturbed sites, and claimed that this article clearly shows that re-vegetation/re-establishment of the listed plants is beyond the experimental stage. While we understand that there have been some successful efforts at reintroducing carbonate plant species on disturbed sites, and that some instances of natural recolonization has been observed, there is no evidence at this time to support

that soil structure, and/or habitat structure and function, and/or population dynamics associated with carbonate plant occurrences on disturbed surfaces are equivalent to those of undisturbed surfaces. Consequently, we are unable to ascertain whether disturbance from mining activities is compatible with the life histories of the five carbonate plants.

*Comment 16:* One commenter concluded that there is no evidence that present populations are at or near a minimum threshold for long-term persistence, and that the listed plants can continue to sustain population declines associated with mining operations well into the future.

*Our Response:* Although the carbonate plant species may have some ability to occupy reclaimed areas, mining operations have and continue to impact the viability of populations needed to conserve the species. The final listing rule for the five carbonate plants documented the species decline and why they were considered to be threatened or endangered. Limestone mining was cited as the primary threat to these species (59 FR 43652) and the primary threats to these plants continue to include population reduction and habitat loss, degradation, and fragmentation from surface mining activities. While listing the species and designating critical habitat provides significant regulatory protections for the species, they do not automatically halt the loss of individuals of the species. The goal of planning efforts such as the CHMS is to maximize the species recovery potential while providing opportunities for future mining activities.

*Comment 17:* One commenter expressed concern that the proposed rule makes a case for connectivity of plant occurrences to allow for gene flow, though there is no evidence presented that gene flow for the listed species is reduced across the naturally geologically fragmented habitat.

*Our Response:* Although anecdotal evidence indicates that the five carbonate plants may behave as metapopulations, the scope of the designation may, in fact, be limited to a great degree by the lack of adequate evidence of these relationships. Though we have not designated critical habitat based on speculation about what might be learned about the five carbonate plants in the future, the commenter poses an interesting question. We do know that within the naturally geologically fragmented landscape, there may be extensive gene flow among populations of at least three of the carbonate plant species, and that the populations of these three species have not been sufficiently isolated to result in genetic divergence (Neel 2002). While it is true that very little is known about how the five carbonate plants may function as metapopulations, these dynamic relationships may be exhibited in some or all of the carbonate plant species.

Just how much additional, if any, suitable habitat would be sufficient to ensure long-term persistence of the carbonate plants remains unclear. One distinction that may result from future work is that the geologically fragmented landscape, as well as naturally fragmented plant communities in the landscape, may not limit pollen and seed dispersal across the landscape, however, large-scale disturbances from mining operations may be shown to limit the movement of pollen and seeds, and result in fragmentation effects detrimental to relationships among populations of the five carbonate plants. Future information regarding ecological relationships or population structure and other factors may support linking aggregate occurrences across lands that at this time cannot be identified as containing primary constituent elements (*e.g.*, those lands with non-carbonate substrates or non-carbonate derived soils, or those lands with plant communities not known to be associated with carbonate plant occurrences).

*Comment 18:* One commenter suggested that potential threats of habitat and population losses to the five carbonate plant species attributable to mining activities have not been shown to be evident on lands where these activities are not anticipated to occur.

*Our Response:* Although areas included in the critical habitat designation may not face threats attributable to mining, they do contain features essential to the conservation of the species and, therefore, we have included them in the designation.

*Comment 19:* Several commenters suggested we propose a new draft designation that does not include unoccupied habitat.

*Our Response:* As indicated in our proposed rule and again in this final rule, we consider each polygon representing critical habitat for each of the five carbonate plants to be occupied by standing plants and seed as part of the seed bank. During the process of developing this final rule, we re-evaluated our methodology and the boundaries defining proposed critical habitat. Following that re-evaluation, we believe that what we had proposed for the five carbonate plants is based on the best scientific and commercial information available and defines what we consider to be essential to the conservation of the five carbonate species. Consequently, we did not modify the designation for the final rule or believe that it was warranted to withdraw the designation and re-propose a new designation.

*Issue 2: Policy and Regulations*

*Comment 20:* Several commenters expressed concern that the proposed critical habitat could negate the efforts of the draft CHMS, and requested that we withdraw, modify, and resubmit the critical habitat proposal, or otherwise make the critical habitat proposal consistent with the draft CHMS.

*Our Response:* We recognize that critical habitat is only one of many conservation tools for federally listed species, and the designation of critical habitat should not deter participation in the CHMS process. Regional planning, such as the proposed CHMS, are often the most important tools for reconciling land use with the conservation of listed species on Federal lands. We anticipate that future Federal land management plans in the range of the five carbonate plants will include it as a covered species and management will be provided for its long-term conservation. We expect that our future analyses of Federal actions under section 7 of the Act will show that activities carried out in accordance with the provisions of those consultations will not result in the destruction or adverse modification of critical habitat designated for the five carbonate plants. The take minimization and conservation measures provided under these consultations are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the conservation of the five carbonate plants is not appreciably diminished through direct or indirect alterations. If the CHMS is ultimately approved through a section 7 consultation, we may reassess the critical habitat boundaries in light of the consultation and as funds allow.

During the process of developing this final rule, we re-evaluated our methodology and the boundaries defining proposed critical habitat. Following that re-evaluation, we believe that what we had proposed for the five carbonate plants is based on the best scientific and commercial information available and defines what we consider to be essential to the conservation of the five carbonate species.

*Comment 21:* One commenter suggested that the designation of critical

habitat is an unnecessary ''duplicative'' layer of regulation.

*Our Response:* Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Therefore, if it is determined to be prudent, we are required by statute to designate critical habitat. As described in the proposed critical habitat rule, we determined that critical habitat was prudent for the carbonate plants and was necessary under the Act.

*Comment 22:* One commenter expressed concern over the clarity of language in the proposed rule regarding the exclusion of features such as active mines and roads that will remain within the proposed critical habitat due to mapping scale limitations. The commenter wondered if active mines, existing roads, active quarries, waste/overburden piles, processing facilities and surfaces undergoing reclamation would be excluded if one or more primary constituent elements were present.

*Our Response:* We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the five carbonate plants. In developing the proposed and final designation, we made an effort to minimize the inclusion of non-essential areas that do not contain the primary constituent elements for the plants. However, due to the mapping scale, some areas not essential to the conservation of the five carbonate plants were included within the boundaries of final critical habitat. These areas, such as active mines, existing roads, active quarries, processing facilities, and other surfaces with ongoing disturbance are unlikely to provide habitat for the plants. Disturbed surfaces undergoing reclamation, while they may eventually provide some benefit to the species, are not considered essential to the conservation of the five carbonate plants.

As discussed in the Critical Habitat and Primary Constituent Elements sections of the proposed rule and this final rule, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species. Therefore, the primary constituent elements of critical habitat for each species include (among other elements) soils with intact, natural surfaces that have not been substantially altered by land use activities. Lands having been altered by land use activities are further defined to include those that are graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment. Even though these lands may be within the boundaries of designated critical habitat, are considered to be critical habitat, and may contain one or more of the primary constituent elements (*e.g.*, rock substrate or soils) for the species, Federal actions limited to those specific areas will not likely trigger a section 7 consultation due to the existing and ongoing disturbance regime, unless they may affect the species or primary constituent elements in adjacent critical habitat.

*Comment 23:* One commenter suggested that the Service can exclude active mine sites and all other private lands from the designation under section 4(b)(2) of the Act. Another commenter suggested that the economic cost of the designation should outweigh the benefits to the species and critical habitat should be ''further curtailed'' under section 4(b)(2) of the Act.

*Our Response:* Section 4(b)(2) of the Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. To address the commenters' concerns, we re-evaluated lands proposed as critical habitat for economic costs under section 4(b)(2) of the Act. In the development of final critical habitat, we considered the following factors: (1) Results of our economic analyses and final addendum of this rulemaking; (2) the narrow endemic nature and sensitivity of these species and their habitat; (3) the significant correlation between active mines and private lands containing limestone deposits and occurrences of the carbonate plants; (4) the relationship of active mines and private lands to proposed critical habitat; and (5) the relationship between proposed critical habitat and CHMS. Based on our analysis, we believe that the designation of critical habitat will not have a significant economic impact on active mining operations or private lands, and will help focus the mining industry and other stakeholders to areas being identified by the CHMS for future mining to non-essential areas. Furthermore, as discussed in this final rule and our economic analyses and final addendum for this rulemaking, we have determined that no significant adverse economic effects should result from this critical habitat designation. Finally, we do not feel that the designation will have significant negative impact to private lands, the mining industry or the CHMS process. Therefore, we believe that the benefits of designating the lands in this final rule as critical habitat, including private lands and those within the boundaries of active mines, outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2) of the Act. Additionally, please refer to our response to Comment 22 for a discussion of lands within active mines that may have on-going or active disturbance.

*Comment 24:* Two commenters indicated opposition to any critical habitat designation that would lead to a takings of their mining claims without compensation or that would impose limitations on private property not supported by law.

*Our Response:* As discussed in the Takings section of the proposed rule and this final rulemaking, in accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating approximately 5,335 ha (13,180 ac) of land in San Bernardino County, California, in three units of critical habitat for the five carbonate plants. The takings implications assessment concludes that this rule does not pose significant takings implications. A copy of the Taking Implications Assessment has been included in the supporting record for this rulemaking.

The designation of critical habitat alone does not deny anyone economically viable use of their property. The Act does not automatically restrict all uses of critical habitat, but only imposes restrictions under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. Use of land is not categorically prohibited, but rather certain restrictions are imposed upon Federal agency actions that may result in the destruction or adverse modification of critical habitat.

We believe that the takings implications associated with this critical habitat designation will be insignificant, even though private lands are included as well as Federal lands. Impacts of critical habitat designation may occur on private lands where there is Federal involvement (*e.g.*, Federal funding or

permitting) subject to section 7 of the Act. Impacts on private entities may also result if the decision on a proposed action on federally owned land designated as critical habitat could affect economic activity on adjoining non-Federal land. Each action would be evaluated by the involved Federal agency, in consultation with us, in relation to its impact on the five carbonate plants and their designated critical habitat.

The Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. Based on our experience with section 7 consultations for all listed species, most projects, including those that in their initial proposed form would result in jeopardy or adverse modification determinations in section 7 consultations, can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Therefore, we anticipate that this critical habitat designation for the five carbonate plants will not result in significant takings implications on these lands.

*Comment 25:* One commenter expressed concern that the regulatory burden to Federal agencies will be increased by the proposed designation in unoccupied critical habitat areas.

*Our Response:* Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification with regard to actions carried out, funded, permitted, or authorized by a Federal agency. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat. In the proposed rule and draft economic analysis, we indicated that we do not expect that the designation of critical habitat would provide significant additional regulatory or economic burdens or restrictions to those afforded the five carbonate plants pursuant to the Act. This conclusion is based on the existing regulatory protections afforded the five carbonate plants from their being listed as threatened or endangered and the fact that the lands designated as critical habitat are considered occupied by the species. However, there may be specific circumstances where critical habitat may trigger an incremental regulatory burden. Please refer to our draft economic analysis for a discussion of these specific cases.

*Comment 26:* One commenter suggested that the highly fragmented proposed critical habitat designation ignores both the legal direction under the Act mandating promotion of species recovery and basic scientific understanding of requirements for effective species conservation. The commenter further suggested that these views are supported by case law (*Sierra Club* v. *U.S. Fish and Wildlife Service,* 2001 U.S. App. LEXIS 3936 (5th Cir. 2001)).

*Our Response:* The commenter refers to a recent Fifth U.S. Circuit Court of Appeals case in which the Court determined that requirements to designate critical habitat are aimed at preventing extinction (*i.e.*, jeopardy) and promoting recovery of the listed species. Critical habitat is defined in section 3 of the Act, as amended, to include specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Failure to conserve enough suitable habitat could potentially reduce the size and viability of fragmented populations as surely as destruction of occupied habitat. However, we believe that based on the current available information concerning the carbonate plants, we are designating lands that we believe are essential to the conservation of these species.

As discussed in the Critical Habitat section of this rulemaking, our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). We are required to base our designations on what, at the time of designation, we know to be essential to the conservation of the species. Recent genetic work on the five carbonate plants (Neel 2000; Neel and Ellstrand 2001; Neel and Ellstrand, in press) indicate that there is potentially extensive gene flow among populations, and that these fragmented populations have not been sufficiently isolated to undergo divergence. Nevertheless, more precise information on gene flow among carbonate plant populations is needed to justify that additional suitable habitat not currently occupied by the species is essential to the conservation of the five carbonate plants.

*Comment 27:* One commenter suggested that the critical habitat proposal should include environmental documentation in response to requirements of the National Environmental Policy Act (NEPA). The commenter further suggested that the Service's reliance on a 1983 **Federal Register** Notice to make the determination for not doing an Environmental Impact Statement pursuant to NEPA is inappropriate and inadequate.

*Our Response:* As we indicated in our proposed rule, we have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This position has been upheld by the Ninth Circuit Court of Appeals in *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995).

*Comment 28:* One commenter felt that the critical habitat legal descriptions in the **Federal Register** were not appropriate for public comment, as the legal descriptions could not easily be compared to section, range and township descriptions usually found on property ownership maps.

*Our Response:* This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). These regulations specify that each critical habitat will be defined by specific points and lines as found on standard topographic maps. We also made available a public viewing room where the proposed critical habitat units superimposed on 7.5 minute topographic maps and spot imagery could be inspected. Further, we distributed GIS coverages and maps of the proposed critical habitat to everyone who requested them. We believe the information made available to the public was sufficiently detailed to allow for informed public comment. The accompanying maps are for illustration purposes only. If additional clarification is necessary, contact the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

*Comment 29:* One commenter stated that the private lands occupied by the five carbonate plants are not the most significant or most critical to the continued existence of the five carbonate plants.

*Our Response:* As required by the Act and regulations (section 4(b)(1)(A) and 50 CFR 424.12), we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the five carbonate plants. Therefore, we are designating lands that contain the physical and biological features (primary constituent elements) that are essential to the conservation of the species regardless of landownership.

*Comment 30:* One commenter indicated critical habitat designation on private lands was not necessary, because mining companies are already subject to aggressive California Environmental Quality Act (CEQA) and Surface Mining Reclamation Act (SMARA) requirements to address these species.

*Our Response:* Pursuant to subsection 4(3)(A) of the Act and 50 CFR 424.12, we must, to the maximum extent prudent and determinable, designate critical habitat for species listed as endangered or threatened under the Act. Our proposed rule to designate critical habitat for the five carbonate plants and this final rule are in compliance with the Act and implementing regulations. While we recognize that California State law includes clear references to habitat values, we do not find that the provisions of CEQA and SMARA make the designation of critical habitat on privately owned lands unnecessary under the Act. Even with the provisions of CEQA and SMARA, we believe that the units designated continue to require special management and protection to ensure the conservation carbonate plants and their habitat.

As discussed previously, section 4(b)(2) of the Act and 50 CFR 424.19 requires us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We consider the effects of the critical habitat designation under California State law in our analysis. As discussed in this final rule and our economic analyses and final addendum for this rulemaking, we do not feel that the designation will have significant negative impact to private lands or the mining industry. Therefore, we believe that the benefits of designating the lands in this final rule as critical habitat, including private lands and those within the boundaries of active mines, outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2) of the Act.

*Comment 31:* One commenter disagreed with our statement in the Executive Order 13211 section of the proposed rule that ''this action is not a significant energy action; and that no Statement of Energy Effects is Required.'' The commenter suggested that the use of calcium carbonate, a product of limestone mining, reduces the need for millions of barrels of oil, and concluded that the designation will increase the need to import more oil.

*Our Response:* Executive Order 13211 applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that may significantly affect primary energy supply, distribution, and use. As discussed in the proposed rule and this final rule, the primary land uses within designated critical habitat for the five carbonate plants include mining, recreation, grazing and U.S. Forest Service operations. Therefore as stated in the proposed and final rule, no significant primary energy production, supply, and distribution facilities are included within designated critical habitat. We believe that the use of calcium carbonate as a filler to reduce the need for the importation of oil would be considered to be a secondary effect and consequently not considered under this Executive Order. As a result, this action is not a significant action affecting primary energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

*Comment 32:* Several commenters expressed opposition to a mineral withdrawal on SBNF lands.

*Our Response:* The proposed mineral withdrawal on SBNF lands is a U.S. Forest Service action. Though the proposed mineral withdrawal may be related to the SBNF's future management strategies for the five carbonate plants and other sensitive species and habitat, it is not a factor in our determination of critical habitat for the five carbonate plants.

*Comment 33:* A few commenters expressed opposition to the listing of the five carbonate plants. One commenter suggested that there is almost no peer-reviewed science to support the listing, and that the species' range is from Canada to Mexico. In conclusion, the commenter requested that a National Academy of Sciences Panel be convened to review the listing action.

*Our Response:* The current rulemaking is for the consideration and designation of critical habitat for the five carbonate plant species. While some may not agree with the action or rationale for the listing of these species in 1994 (59 FR 43652), that was a separate rulemaking procedure and will not be addressed herein. If the commenters believe that the five carbonate plant species were listed in error, then a more appropriate avenue would be to submit a petition with documentation supporting their position for a formal review pursuant to our petition management guidance.

*Comment 34:* One commenter expressed concern that, by taking an expansive and overbroad approach to critical habitat designation, we ignore the clear intent of Congress that a more restrictive approach—designating only occupied areas and those areas ''essential to the conservation of the species''—be implemented.

*Our Response:* In proposing critical habitat for the five carbonate plants, we identified those finite areas that we believed to be essential to the conservation of these species. We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the five carbonate plants.

In developing the proposal and this final designation, we made an effort to minimize the inclusion of nonessential areas that do not contain the primary constituent elements for the five carbonate plants. However, due to our mapping scale, some areas not essential to the conservation of the species were included within the boundaries of proposed and final critical habitat. These areas, such as existing mining operations, existing roads or other developed lands are unlikely to provide habitat for the five carbonate plants. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

*Comment 35:* One commenter suggested the recent Court cases invalidated our definition of adverse modification, and limited our authority under the jeopardy standard, thereby setting a lower threshold for adverse modification than that for the jeopardy standard.

*Our Response:* In the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a challenge to a not prudent finding, the Court determined that our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 is

invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

*Issue 3: Economic Issues*

*Comment 36:* A number of commenters provided information and general comments on regional and specific economics of the area and industries within proposed critical habitat prior to the release of the draft economic analysis. Further, several commenters provided specific comments on the draft economic analysis relating to various data and information used in the analysis.

*Our Response:* We appreciated receiving information concerning regional and specific economics of the area and industries within proposed critical habitat. Copies of all public comments on the proposed designation of critical habitat for the five carbonate plants were provided to our Division of Economics and their consultants, Industrial Economics, Inc., and subconsultants, Economic & Planning Systems, for use in the development of the draft economic analysis of the proposed designation. Additionally, we provided our Division of Economics, their consultants, and subconsultants with copies of all comments and information on the draft economic analysis submitted during the second public comment period for their use in developing the final addendum to the draft economic analysis. Specific information and comments related to the potential economic effects of the designation of critical habitat for the five carbonate plants and information contained within the draft economic analysis are addressed in this final rule, the draft economic analysis, or the final addendum to the draft economic analysis.

*Comment 37:* Several commenters critiqued a variety of underlying assumptions in the draft economic analysis without providing any alternative sources of information or approaches.

*Our Response:* While we appreciate comments concerning our approach to evaluating the potential economic effect of the critical habitat designation for the five carbonate plants, it is difficult for us to respond to or utilize comments that merely suggest that our approach is flawed or the underlying assumptions of our analysis are wrong. We can only acknowledge receipt of these comments and include them in the supporting record for the rulemaking. However, we attempted to address all comments in this final rule or in the final addendum to the draft economic analysis that provided specific information. Additionally, we are mandated to follow certain guidelines and standards for the development of economic analyses. These are referred to in our draft economic analysis and the final addendum to the draft economic analysis.

*Comment 38:* Several commenters stated that the required economic analysis was not completed and available for public review and comment concurrently with the release of the proposed critical habitat designation.

*Our Response:* Pursuant to subsection 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for the five carbonate plants during the development of the designation. We published our proposed designation in the **Federal Register** on February 12, 2002 (67 FR 6578). At that time, our Division of Economics, their consultants, Industrial Economics, Inc., and subconsultants, Economic & Planning Systems, initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on September 20, 2002 (67 FR 59239). Following a 30-day public comment period on the proposal and draft economic analysis, a final addendum to the economic analysis was completed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for the five carbonate plants. Consequently, we believe that we are in compliance with the provision of subsection 4(b)(2) of the Act. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

*Comment 39:* A few commenters expressed concern that the Service continues to use a ''baseline'' or incremental approach to quantifying economic impacts of the proposed rule. The commenters clarified that the Service has repeatedly stated its intention to follow the mandate of the *New Mexico Cattle Growers Association* v. *U.S.F.W.S.,* 248 F.3d 1277 (10th Cir. 2001) on the southwestern willow flycatcher critical habitat, but has seemingly failed to do so.

*Our Response:* In *New Mexico Cattle Growers Association* v. *U.S.F.W.S.,* the 10th Circuit Court of Appeals held that the baseline approach to the economic analysis of critical habitat designations that was used by the Service for the southwestern willow flycatcher designation was ''not in accord with the language or intent of the [Endangered Species Act (ESA)].''

In this analysis, the Service addresses the 10th Circuit's concern that we give meaning to the ESA's requirement of considering the economic impacts of designation by acknowledging the uncertainty of assigning certain post-designation economic impacts (particularly section 7 consultations) as having resulted from either the listing or the designation. The Service believes that for many species the designation of critical habitat has a relatively small economic impact, particularly in areas where consultations have been ongoing with respect to the species. This is because the majority of the consultations and associated project modifications, if any, already consider habitat impacts and as a result, the process is not likely to change due to the designation of critical habitat. Nevertheless, we recognize that the nationwide history of consultations on critical habitat is not broad, and, in any particular case, there may be considerable uncertainty whether an impact is due to the critical habitat designation or the listing alone. We also understand that the public wants to know more about the kinds of costs consultations impose and frequently believe that designation could require additional project modifications.

Therefore, this analysis incorporates two baselines. One addresses the impacts of critical habitat designation that may be ''attributable co-extensively'' to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting from critical habitat designations, we believe it is reasonable to estimate the upper bounds of the cost of project modifications based on the benefits and economic costs of project modifications that would be required due to consultation under the jeopardy standard. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision. As the court reaffirmed in the southwestern willow flycatcher decision, ''the ESA clearly bars economic considerations from having a seat at the table when the listing determination is being made.''

The other baseline, the lower boundary baseline, will be a more traditional rulemaking baseline. It will attempt to provide the Service's best analysis of which of the effects of future consultations actually result from the regulatory action under review—*i.e.* the critical habitat designation. These costs will, in most cases be the costs of

additional consultations, reinitiated consultations, and additional project modifications that would not have been required under the jeopardy standard alone as well as costs resulting from uncertainty and perceptional impacts on markets.

*Comment 40:* A few commenters expressed concern that the proposed rule states that the designation would result in little or no incremental economic effect. Another commenter cited language from the proposed rule that suggests that there may be instances when a section 7 consultation is triggered only by the presence of critical habitat.

*Our Response:* We agree that, as a result of the designation, there may be additional cost resulting from new consultations or the re-initiation of existing consultations. However, based on our analysis, we believe these events to be minimal in number and the potential costs resulting from them to be minor.

Please refer to our analysis of the potential economic effects of the designation in our draft economic analysis and the final addendum to the draft economic analysis for further discussion of these issues.

*Comment 41:* Several commenters expressed concern that information prepared and submitted by Mr. Edward P. Jucevic concerning economics of the mining industries within proposed critical habitat and potential effects resulting from the proposed designation were not substantially incorporated into or acknowledged by the draft economic analysis.

*Our Response:* Mr. Jucevic, representing the three largest mining companies with lands within the boundaries of proposed critical habitat, provided a response to a request for information made during the preparation of the draft economic analysis of the proposed designation. His report was titled, ''Economic Impact of the Proposed Designation of Critical Habitat'' (Jucevic 2002). He subsequently provided a correction paper to his report. Mr Jucevic's comment letter, his report, and subsequent corrections to his report were provided to our economic consultants for use in the development of the draft economic analysis of the proposed designation of critical habitat for the five carbonate plants. His report provided specific information related to the estimated value of mineral deposits and perceived potential economic impacts resulting from the designation of critical habitat if it were to be finalized as proposed.

Because our draft economic analysis differed significantly from the conclusions asserted by Mr Jucevic in his corrected report, we received substantial public comments on our draft economic analysis, specifically why our economic consultants did not rely more heavily on the data and conclusions of Mr. Jucevic's report in formulating their analysis. Our economic consultants carefully reviewed Mr. Jucevic's analysis, and identified a number of critical methodological problems that appeared to compromise its usefulness as a primary information source. Additionally, many of the assumptions provided in his report are not supported by documentation or citations. Our economists have incorporated into the final addendum to the draft economic analysis a response to Mr. Jucevic's report that describes the aforementioned difficulties with his analysis.

*Comment 42:* One commenter implied that a significant portion of the United States' economy, the construction industry, is heavily dependant on limestone material generated in the Lucerne Valley area, and that the regional economic impact of the proposed designation would be significant.

*Our Response:* The regional construction industry relies on limestone from the Lucerne Valley area and elsewhere. We believe that we have adequately analyzed the potential economic effects of the critical habitat designation on the local and regional economy, including the construction industry. Please refer to our draft economic analysis and the final addendum to the draft economic analysis for a more thorough discussion of how we addressed these significant issues.

*Comment 43:* Several commenters suggested that the analytical methods used in the draft economic analysis fails to address the secondary economic effects that the proposed rule may have on local interests, including material supplies utilized in the housing industry, indirectly related to the mining industry as a consideration under the analysis of ''any other relevant impact.''

*Our Response:* A number of comments suggested that the draft economic analysis underestimates total future costs because it ignores a number of indirect or distributional costs. Indirect costs refer to costs incurred by industries or third parties not directly associated with the mining industry due to ''downstream'' economic linkages or multiplier effects. For example, several commenters state that the local construction industry (including building materials for the housing industry) or the Lucerne Valley/High Desert economy as a whole would be impacted due to reduced output or increased prices for mining sector products. Distributional costs, in turn, refer to specific categories of direct costs that were not individually addressed in the draft economic analysis, including reduced proceeds to Kaiser Steel retirees, reduced stock market values, or reduction in royalties to the Butterfield family.

Indirect and distributional costs are different categories of costs or economic impact and are treated as such in the draft economic analysis. The distributional costs cited by several commenters are a subset of the total economic impact estimate provided in the draft economic analysis. In general, the costs estimates provided in the draft economic analysis were designed to be comprehensive and include all the direct costs borne by affected parties, as well as any applicable indirect costs that may be associated with other Federal, State, or local requirements in addition to economic impacts that may trickle down from direct effects. Indirect economic impacts, or multiplier affects, are discussed qualitatively in the economic analysis but not quantified. This is because the mining industry, while important to the local economy for diversification purposes, represents a very small portion of San Bernardino's overall employment (less than 0.1 percent).

The economic analysis prepared for our designations are designed to assess the overall impact to the region and to particular economic sectors. These analyses further assess the impacts to small businesses to determine if they could be disproportionately affected by the designation. In general, however, with the exception of the Small Business Impact section, the economic analysis is not designed to trace how the direct costs incurred by the various economic sectors would indirectly affect equity stakeholders. To perform such an analysis is generally far beyond the scope of regulatory analyses as it would require an inherent understanding of the legal construction of corporations, proprietary financial data, and a better understanding of company affiliations. This enhanced understanding is typically not necessary for us to make a final determination as opposed to our need to better understand potential economic impacts to particular industries, which we inherently understand would be borne in some part by equity stakeholders.

Please refer to the final addendum to the draft economic analysis of this rulemaking for a more comprehensive discussion of this issue.

*Comment 44:* Several commenters believed that our economic analysis failed to adequately consider all of the potential indirect effects associated with this rulemaking. One commenter believed that the economic analysis should include regional transportation issues, air quality compliance strategies, and other growth management issues, while other commenters expressed concerns about the economic loss to stockholders and small businesses such as rail transport, processing and packaging facilities, materials production and construction, and lodging, which would all be presumably associated with a decline in the carbonate rock mining industry.

*Response:* In some instances, impacts associated with the designation of critical habitat and co-extensive protections that occur because of listing may have indirect effects on the economic community. This may occur either because entities that are directly impacted happen to be a significant link in the economic chain and thus impose upstream and downstream effects on other industries or it may be because the designation may link to requirements in State and local regulations that will cause an additional impact.

The economic analysis prepared for this rulemaking considered both scenarios. First, the economic analysis concluded that the carbonate rock mining industry in the San Bernardino mountains would not be significantly affected by the designation of critical habitat and thus would not indirectly affect upstream and downstream industries in the area dependent on the economic activity of the mining industry. This conclusion was based on the consideration of the practices of the local mining industry and associated impacts to the carbonate plants, the potential for future consultations under section 7 of the Act and associated project modifications, and the likely future demand for carbonate-related materials from the area. Importantly, the economic analysis did not find that the designation would result in curtailment of the mining industry in the area, a premise that formed the basis of concern for some stakeholders. The economic analysis also considered the potential indirect effects associated with State regulation and local practices but concluded that there would be no significant change from current practices.

*Comment 45:* One commenter indicated that the draft economic analysis asserts that the listing of the five plant species under the Act would result in economic costs, but that only those costs incurred in the area designated as critical habitat are addressed. Another commenter suggested that the draft economic analysis arbitrarily ignores most, if not all, of the impacts associated with the listing of the species.

*Our Response:* Pursuant to section 4(b) of the Act, we are required to make listing decisions solely on the basis of the best available scientific and commercial data available after conducting a review of the status of the species. Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that, ''economic considerations have no relevance to determinations regarding the status of species * * *''. Economic effects are only considered during the listing process to evaluate the potential economic effect of designating critical habitat.

As part of the rulemaking process for designating critical habitat for the five carbonate plants, we are required, pursuant to section 4(b)(2) of the Act and 50 CFR 424.19, to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. Because we do not evaluate the economics of listing a species under the Act at the time of listing, the analysis of economics and other relevant factors conducted for a critical habitat designation that is performed following a listing is limited to the scope of the area being proposed for designation as critical habitat. However, within the area being designated as critical habitat, we did evaluate potential future costs resulting from the listing of the five carbonate plants under the Act. These costs are referred to as co-extensive costs in our draft economic analysis and final addendum to the draft economic analysis.

*Comment 46:* A few commenters suggested that assumptions in the draft economic analysis regarding the likelihood of future mining on lands designated as critical habitat are invalid, due to the language in the Act and associated regulations prohibiting adverse modification of critical habitat, thereby making all conclusions based on these assumptions questionable.

*Our Response:* Please refer to our response to Comment 12 for a discussion of this issue.

*Comment 47:* One commenter suggested that the Service should be able to anticipate specific project modifications that may be recommended in the future, and should include and assess this information in determining the potential economic impacts of the proposed designation.

*Our Response:* Every consultation under section 7 of the Act is unique in scope and potential effects to listed species and their designated critical habitat. Due in part to the requirement to conduct an effects analysis as part of a biological opinion, it would be predecisional to assume for any hypothetical future project what conservation measures we would recommend. However, in the draft economic analysis we utilized information from previous completed consultations to determine potential project modifications for likely future consultations. Please refer to our draft economic analysis and final addendum to the draft economic analysis for a more thorough discussion of this issue.

*Comment 48:* One commenter expressed concern that the draft economic analysis ignored the costs triggered by the ''likely finding of significance'' under CEQA and SMARA by removing these costs from the analysis and including them as part of the baseline.

*Our Response:* According to section 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, environmental impact reports are required by local lead agencies when, among other things, a project has the potential to ''reduce the number or restrict the range of an endangered, rare or threatened species.'' Though federally listed species are presumed to meet the CEQA definition of ''endangered, rare or threatened species'' under section 15380 (California Code of Regulations Title 14, Chapter 3), few additional constraints should result from the designation of critical habitat beyond that now in place for all federally listed species, including the five carbonate plants. The presence of designated critical habitat does not necessarily require mitigation according to these California regulations. Only if loss or degradation of the proposed project site's habitat resources (viewed comprehensively) are determined to be significant will significant impacts to habitat be analyzed and mitigation, where feasible, be planned as part of the project.

Beyond the fact that surface mining activities regulated by SMARA are

generally subject to the CEQA process, there is no specific requirement under SMARA regarding findings of significance. The SMARA and the performance standards for wildlife habitat identified in its implementing regulations (California Code of Regulations Title 14, section 3703) do require that reclamation plans provide for the conservation of federally listed species in accordance with the requirements of the federal Endangered Species Act. Such potential future section 7 costs that may be associated with a future mining activity regulated under SMARA were considered in the economic analysis.

*Comment 49:* One commenter suggested that the ''gross output'' method of determining economic impacts meets the criteria of the recent Tenth Circuit Court decision, and that the value added method used in the draft economic analysis does not.

*Our Response:* The value of affected reserves is reported by Jucevic in terms of gross revenue (*i.e.*, ''gross output''), obtained by multiplying future tons produced by market price. This measure does not take into account the costs that would be incurred by the mining companies to extract, process and market the limestone reserves. ''Value added'' equals the production value of total mining output minus the costs of the goods and services used to create this output, and is thus a more accurate measure of economic impact than the gross revenue method. We believe the use of the ''value added'' method is consistent with the Tenth Circuit's ruling in the *New Mexico Cattle Growers* case.

*Comment 50:* One commenter suggested that the proposed critical habitat designation will have a destructive effect on recreation income upon which the valley of Big Bear depends. The commenter specifically cited recreation opportunities in the Baldwin Lake area as being at risk.

*Our Response:* We are designating critical habitat for *Erigeron parishii* on SBNF lands approximately 1.2 km (0.75 m) from the northeastern edge of the lake bed near Canyon Spring. This area, however, is outside the drainage basin for Baldwin Lake, therefore we do not anticipate that the critical habitat designation will have any economic effect on recreation activities at Baldwin Lake. Further, designation of critical habitat should not have an impact on recreational activities on non-Federal lands in the general area, because the regulatory effects of critical habitat are only triggered where there is a Federal nexus.

*Comment 51:* One commenter expressed concern that the draft economic analysis did not consider the cost of the designation in light of the CHMS. The commenter clarified that as part of the implementation of the CHMS, the Service will issue a biological opinion for certain future mining projects, but that the designation will lead to a reinitiation of consultation that will greatly increase costs associated with the consultation and project modifications.

*Our Response:* The commenter appears to be referring to regulations at 50 CFR 402.16 that requires Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultations or conference with us on actions for which formal consultation has been completed, if those actions may affect proposed or designated critical habitat. However, since we are only informally consulting on the CHMS, there will not be a reinitiation consultation, but a formal consultation will likely be initiated when the plan is finalized. We anticipate that the consultation associated with the plan will be compatible with this critical habitat designation.

*Comment 52:* One commenter indicated that, effective October 1, 2002, the economic analysis is subject to the requirements of the Federal Data Quality Act (DQA) 44 U.S.C. 3506, and the specific guidelines that the Service adopted pursuant to the DQA. The commenter suggested that the economic analysis does not meet the criteria that the guidelines require, maximizing the quality, objectivity, utility and integrity of information disseminated by Federal agencies.

*Our Response:* The U.S. Department of the Interior, of which the Fish and Wildlife Service is part, issued guidelines regarding data quality, in response to the passage of Public Law 106–554 referenced by the commenter. These guidelines, Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act For Fiscal Year 2001, became effective October 1, 2002. The Service rulemaking procedure, inclusive of this designation of critical habitat for the five carbonate plants, includes a comprehensive public comment process and imposes a legal obligation on us to respond to comments on all aspects of the action. These procedural safeguards can ensure a thorough response to comments on quality of information. The thorough consideration required by this process generally meets the needs of the request for correction of information process. In the case of rulemakings and other public comment procedures, where we disseminate a study analysis, or other information prior to the final rulemaking, requests for correction will be considered prior to the final action.

We believe the public comment and review process for this rulemaking adequately addresses the commenter's concerns regarding the quality, objectivity, utility, and integrity of the economic analysis. Further, the commenter did not specifically identify how the draft economic analysis did not meet the criteria that the guidelines require. Regardless, we believe that the draft economic analysis was objectively prepared by a professional third party economic consultant, using the best and most reliable available scientific and commercial data available regarding potential costs of the designation, and meets the criteria of the data quality guidelines.

*Comment 53:* Many commenters suggested that the Service's conclusion that economic harm to the mining industry would be mitigated by the dispersion of mining to other geographic areas ignores the real possibility of harm to local communities.

*Our Response:* As discussed in the final addendum to the draft economic analysis, the indirect impacts from the critical habitat designation are likely to be minimal due to a variety of factors, including the fact that (1) the mining sector constitutes a very small component of San Bernardino's economy (less than 1 percent of total employment, as noted in the draft economic analysis), (2) the local mining sector's products constitute a relatively small component of total production costs for industries that consume these products, (3) the reduction in mining output due to the listing and proposed designation represents a very small component of total mining output in the County, and (4) the competitive nature of the mining sector suggests that any reduction in supply within the proposed critical habitat boundaries will be off-set by increases in production elsewhere, resulting in a minimal change in consumer prices.

Although the indirect economic impact may be disproportionately concentrated in the Lucerne Valley area, this impact is difficult if not impossible to quantify. For one, economic multipliers are not available below the

county level due to their lack of reliability in a sub-regional context. Indeed, very little economic data of any kind is available on Lucerne Valley given that it is an unincorporated area within San Bernardino County. It is also important to note that the draft economic analysis does not suggest that the mining industry in Lucerne Valley will decline from its current level due to the listing or proposed designation, but rather that future increases in production may be lower than if they were not regulated under section 7 of the Act. The indirect economic impact of regulating future mining expansion is likely to be much smaller than a curtailment or reduction in current output levels.

*Comment 54:* One commenter suggested that the current pre-draft situation of the CHMS should not be addressed or speculated about in the economic analysis.

*Our Response:* The CHMS is an ongoing cooperative effort among the Service, SBNF, the BLM, San Bernardino County, the CNPS, mining companies, and other stakeholders. It is geared toward establishing a strategy to balance future mining activity with carbonate plant habitat protection and has been ongoing for approximately five years. While the CHMS is likely to address an agreement between the parties on management protocols for future activities within carbonate plant habitat areas, the fact that it has not yet been adopted precluded its consideration as a baseline element. Had the agreement been adopted, it is likely that the estimated impacts of the economic analysis would be significantly less. However, certain aspects of the economic analysis rely upon information generated as part of the CHMS process as it represents the best available information regarding the mining industry in the area.

*Comment 55:* We received one comment suggesting that the total costs of the economic analysis should not be discounted. The commenter stated that discounting is only appropriate for evaluating comparisons between alternatives that have variable benefit and cost streams over time. Because the economic analysis does not attempt to fully quantify the economic benefits of the rulemaking, the commenter asserts that the total estimated cost of the regulation is best expressed without discounting.

*Our Response:* We disagree with the commenter's assertion concerning discounting the potential economic effect of the designation. The primary purpose of discounting is to provide a present value summation of future benefits or costs that accrue in different years. Discounting enables the comparison of benefits or costs occurring in different years within the context of a common unit of measurement (OMB Circular A–94, section 5(a), *http://www.whitehouse.gov/omb/circulars/a094/a094.html*). Accordingly, this practice is recommended by the U.S. Office of Management and Budget (OMB) in their guidelines for cost-benefit studies (*http://www.whitehouse.gov/omb/inforeg/riaguide.htm*). OMB guidance suggests using a discount rate of seven percent to estimate the current value of future resource use in the context of performing regulatory analyses.

We note that contrary to the commenter's assertions, our economic analyses must make comparisons between future costs that are projected to occur in different years. The necessity for discounting does not diminish simply because there is no explicit comparison with future benefits because it is important to understand time preferences for cost estimates when making our final determination. Accordingly, with a positive (non-zero) discount rate, future costs are currently worth less than they are at the time they are incurred. The application of a zero discount rate, which would reflect no time preferences, would imply that a person (or society) would be indifferent to having a $100 dollar cost now and having a $100 dollar cost 50 years from now.

In the process of making our final determination, we turn to our economic analysis for information regarding the estimated costs of the designation and the stakeholders that could be significantly impacted. Because our decision has the potential to impact certain stakeholders in future years, we need to put those impacts into a present day perspective to better compare with the final determination that we are making today. If our economic analysis failed to discount future costs, then it would give an inaccurate picture of the actual resource costs (or benefits) to society from any particular policy or alternative.

Accordingly, the economic analysis prepared for this rulemaking estimates the present value of resource costs to be between approximately $221 million and $357 million with an annualized value of between approximately $16 million and $25 million. Approximately 99.9 percent of this cost represents the current valuation of future foregone limestone rock mining in the San Bernardino mountain area due to Section 7. The costs due solely to the designation of critical habitat are estimated at between $38,000 and $115,900 (annualized value of between $2,700 and $8,255). In making our final determination, we considered this resource cost against the expected conservation benefits to the species. See our response to comment 23 for a complete explanation of our analysis.

*Comment 56:* One commenter stated that the draft economic analysis did not adequately address the impact of the listing and the designation on residential development, especially the ability to provide affordable housing.

*Our Response:* As discussed in the final addendum to the economic analysis, the listing or designation is not expected to have a significant effect on the construction cost of new homes and thus on the ability of the development community to supply affordable housing. Please refer to the final addendum for a more thorough discussion of this issue.

**Summary of Changes From the Proposed Rule**

Based on public comments, we reviewed our methodology for determining the extent of the designation of critical habitat for the five carbonate plants. We believe that we have defined those areas that are essential for the conservation of these five plant species based on the best available scientific and commercial information available. Consequently, we did not refine the boundaries of our original proposed critical habitat for this final designation. We did, however, clarify our description of the methodology and rationale used in defining our boundaries of critical habitat. Please refer to the Methods and the Criteria Used to Identify Critical Habitat sections of the rulemaking for these refinements.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We have conducted an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination (Economic & Planning Systems, Incorporated

2002a, 2002b). On September 20, 2002, we announced the availability of the draft economic analysis with a notice in the **Federal Register**, and opened a 30-day public comment period on the draft economic analysis and proposed rule (67 FR 59239). Following an evaluation of the draft economic analysis of this designation and the public comments, we completed a final addendum. Our final addendum to the draft economic analysis indicates that the anticipated economic impact resulting from this designation is approximately $38,000 to $116,000. Please refer to the draft economic analysis and final addendum for more details concerning our economic analysis of this designation.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. As required by E.O. 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for the five carbonate plants will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, mineral mining, timber harvesting, *etc.*). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. While SBREFA does not explicitly define either ''substantial number'' or ''significant effect,'' the Small Business Administration as well as other Federal agencies, has interpreted these terms to represent an impact on 20 percent or greater of the number of small entities in any industry and an effect equal to three percent or more of a business' annual sales. Thus a ''substantial number'' of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the five carbonate plants. Federal agencies must also consult with us if their activities may affect designated critical habitat. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Activities with Federal involvement that may require consultation regarding the five carbonate plants and their critical habitat include: regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act; management activities carried out by the SBNF on National Forest lands; and, road construction, maintenance, and right of way designations that are authorized, funded, or carried out by a Federal agency. As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of the five carbonate plants and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $174 and $281 million over the next 60-year period. Public comment on the draft economic analysis led to a revision of third party cost estimates that would result from section 7 consultations. The changes in cost estimates are discussed and reflected in the Addendum to the Draft Economic Impact Analysis of Critical Habitat Designation for the San Bernardino Carbonate Plants (Economic & Planning Systems, Incorporated 2002b), where we found that the future section 7 consultations resulting from the listing of the five carbonate plants and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $221 and $357 million over the next 60-year period.

Based on the past consultation history of the five carbonate plants, the economic analysis anticipated that future section 7 consultations could

potentially affect small businesses associated with residential development. To be conservative (*i.e.*, more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undergo each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis. There are approximately 291 mining claims overlapping the critical habitat designation, which are held by 46 claimants, 43 of which are conservatively assumed to be small businesses. This estimate is considered to be especially conservative because it assumes that none of the claims owned by the claimants will be mined due to regulatory constraints imposed by section 7 of the Act, and that none has already been mined. In reality, it is likely that some would never have been mined due to economic and geologic factors independent of section 7, and that some of the claims have already been mined or at least partially mined. Conversely, it is also likely that some of the claims will still be mined in the future following the designation of critical habitat.

According to BLM personnel, there are 954 claimants in San Bernardino County, although no information was available regarding the name or size of the individual entities. Assuming the same proportion of large entities to total claimants within the proposed critical habitat area (6.5 percent), this analysis assumes that 892 of the claimants in the County are small entities. This represents a very conservative assumption because it is unlikely that many claimants in the County other than Omya, Mitsubishi, and SMI have greater than 500 employees, and should be excluded as large entities. Dividing the number of ''small'' claimants potentially affected by the designation (43) by the number of ''small'' claimants in the County (892) shows that approximately 4.8 percent of small claimants are potentially affected by the designation, which falls below the 20 percent ''substantial'' number threshold. Finally, one individual holding (a grazing allotment) on BLM land that has been proposed for critical habitat designation could be affected. According to Dun and Bradstreet (Dun's Market Identifiers database 2002), there are 59 establishments engaged in beef cattle ranching or farming (NAICS Code 112111) in San Bernardino County. Therefore, the potentially affected individuals do not represent a ''substantial'' number of affected small entities affected by the designation of critical habitat for the five carbonate plants. The draft economic analysis and final addendum contain the factual bases for this certification and contain a complete analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Service's Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the five carbonate plants will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the economic analysis and the final addendum to the economic analysis, we determined that designation of critical habitat would not cause (a) any annual effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to final addendum for a complete discussion of the effects of this determination.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for the five carbonate plants include mining, recreation, grazing and National Forest operations. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that Federal agencies funding, permitting, or authorizing other activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

(b) For the reasons described in the economic analysis and this final rule, this rule will not produce a Federal mandate on State, local, or tribal governments of $100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating approximately 5,335 ha (13,180 ac) of land in San Bernardino County, California, in three units of critical habitat for the five carbonate plants. The takings implications assessment concludes that this rule does not pose significant takings implications. A copy of the Taking Implications Assessment has been included in the supporting record for this rulemaking.

*Federalism*

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat designation with, appropriate State natural resources agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for the five carbonate plants with the appropriate State

agencies. The designation of critical habitat for the five carbonate plants imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of the five carbonate plants. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of the five carbonate plants. Therefore, the designated critical habitat for the five carbonate plants does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

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

**Author**

The primary author of this final rule is Daniel R. Brown (*see* **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | * | |
| *Astragalus albens* | Cushenbury milk-vetch. | U.S.A. (CA) | Fabaceae | E | 548 | 17.96(a) | NA |
| * | * | * | * | * | * | * | |
| *Erigeron parishii* | Parish's daisy | U.S.A. (CA) | Asteraceae | T | 548 | 17.96(a) | NA |
| * | * | * | * | * | * | * | |
| *Eriogonum ovalifolium* var. *vineum*. | Cushenbury buck-wheat. | U.S.A. (CA) | Polygonaceae | E | 548 | 17.96(a) | NA |
| * | * | * | * | * | * | * | |
| *Lesquerella kingii* ssp. *bernardina*. | San Bernardino Mountains bladderpod. | U.S.A. (CA) | Brassicaceae | E | 548 | 17.96(a) | NA |

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| * | * | * | * | * | * | | |
| *Oxytheca parishii* var. *goodmaniana*. | Cushenbury oxytheca. | U.S.A. (CA) ..... | Polygonaceae ..... | E | 548 | 17.96(a) | NA |
| * | * | * | * | * | * | | |

3. Amend paragraph (a) of § 17.96 to add critical habitat entries for the *Astragalus albens, Erigeron parishii, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* in alphabetical order by family under Asteraceae, Brassicaceae, Fabaceae, and Polygonaceae (respectively) to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) * * *

**Family Asteraceae: *Erigeron Parishii* (Parish's Daisy)**

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Erigeron parishii* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(i) Soils derived primarily from upstream or upslope limestone, dolomite, or quartz monzonite parent materials that occur on dry, rocky hillsides, shallow drainages, or outwash plains at elevations between 1,171 and 1,950 m (3,842 and 6,400 ft);

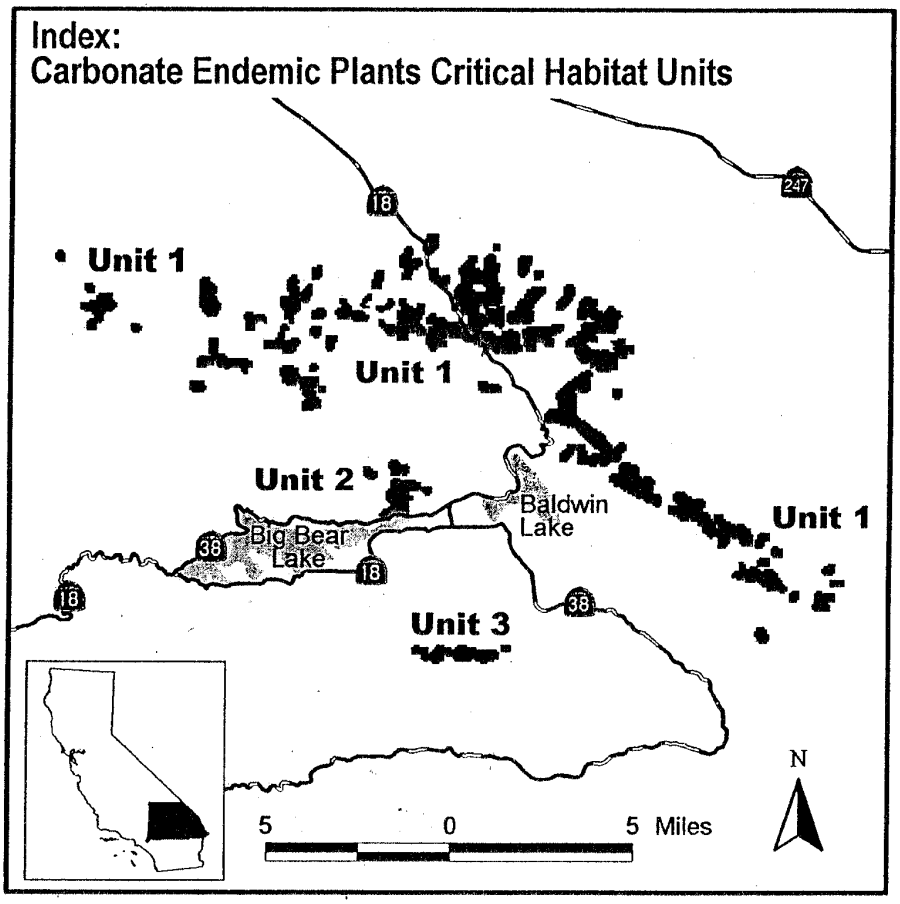
(ii) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(iii) Associated plant communities that have areas with an open canopy cover.

(3) Existing features and structures, such as buildings, active mines, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas, are not likely to contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

(i) Note: Index map follows:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

(4) Northeastern Slope Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, and Onyx Peak, California.

(ii) Subunit 1a: land bounded by the following UTM11 NAD27 coordinates (E, N): 507200, 3802000; 507400, 3802000; 507400, 3801800; 507500, 3801800; 507500, 3801600; 507400, 3801600; 507400, 3801500; 507500, 3801500; 507500, 3801200; 507600, 3801200; 507600, 3801300; 507700, 3801300; 507700, 3801400; 507800, 3801400; 507800, 3801500; 507900, 3801500; 507900, 3801600; 508100, 3801600; 508100, 3801100; 508000, 3801100; 508000, 3800900; 507900, 3800900; 507900, 3800800; 507700, 3800800; 507700, 3800900; 507600, 3800900; 507600, 3801000; 507500, 3801000; 507500, 3800700; 507400, 3800700; 507400, 3800300; 507300, 3800300; 507300, 3799900; 507100, 3799900; 507100, 3800100; 506900, 3800100; 506900, 3800500; 506800, 3800500; 506800, 3800700; 506700, 3800700; 506700, 3801100; 507100, 3801100; 507100, 3801400; 507000, 3801400; 507000, 3801800; 507100, 3801800; 507100, 3801900; 507200, 3801900; and 507200, 3802000.

(iii) Subunit 1b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3802400; 508500, 3802400; 508500, 3801900; 508400, 3801900; 508400, 3801800; 508100, 3801800; 508100, 3802300; 508300, 3802300; and 508300, 3802400.

(iv) Subunit 1c: Land bounded by the following UTM11 NAD27 coordinates (E, N): 509700, 3800500; 510200, 3800500; 510200, 3800200; 510100, 3800200; 510100, 3800100; 509700, 3800100; and 509700, 3800500.

(v) Subunit 1d: Land bounded by the following UTM11 NAD27 coordinates (E, N): 510300, 3801000; 510500, 3801000; 510500, 3800800; 510300, 3800800; and 510300, 3801000.

(vi) Subunit 1e: Land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3802200; 511200, 3802200; 511200, 3801700; 511100, 3801700; 511100, 3801400; 510700, 3801400; 510700, 3801800; 510800, 3801800; 510800, 3802100; 510900, 3802100; and 510900, 3802200.

(vii) Subunit 1f: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511400, 3801000; 511600, 3801000; 511600, 3800900; 511700, 3800900; 511700, 3800700; 511600, 3800700; 511600, 3800600; 511500, 3800600; 511500, 3800500; 511200, 3800500; 511200, 3800400; 511000, 3800400; 511000, 3800500; 510900, 3800500; 510900, 3800600; 511000, 3800600; 511000, 3800700; 511300, 3800700; 511300, 3800800; 511400, 3800800; and 511400, 3801000.

(viii) Subunit 1g: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511800, 3800000; 512200, 3800000; 512200, 3799900; 512300, 3799900; 512300, 3799800; 512400, 3799800; 512400, 3799800; 512400, 3799500; 512300, 3799400; 511900, 3799400; 511900, 3799500; 511700, 3799500; 511700, 3799400; 511500, 3799400; 511500, 3799500; 511400, 3799500; 511400, 3799600; 511300, 3799600; 511300, 3799800; 511800, 3799800; and 511800, 3800000.

(ix) Subunit 1h: Land bounded by the following UTM11 NAD27 coordinates (E, N): 512100, 3800700; 512400, 3800700; 512400, 3800600; 512500, 3800600; 512500, 3800400; 512600, 3800400; 512600, 3800300; 512700, 3800300; 512700, 3800100; 512600, 3800100; 512600, 3800000; 512300, 3800000; 512300, 3800300; 512200, 3800300; 512200, 3800200; 512100, 3800200; 512100, 3800100; 511900, 3800100; 511900, 3800200; 511800, 3800200; 511800, 3800400; 511900, 3800400; 511900, 3800500; 512100, 3800500; and 512100, 3800700.

(x) Subunit 1i: Land bounded by the following UTM11 NAD27 coordinates (E, N): 512200, 3803200; 512400, 3803200; 512400, 3802900; 512100, 3803100; 512500, 3803100; 512500, 3802800; 512400, 3802800; 512400, 3802600; 512500, 3802600; 512500, 3802700; 512800, 3802700; 512800, 3802600; 512900, 3802600; 512900, 3802400; 512800, 3802400; 512800, 3802300; 512700, 3802300; 512700, 3802200; 512500, 3802200; 512500, 3802000; 512400, 3802000; 512400, 3801800; 512000, 3801800; 512000, 3802100; 512100, 3802100; 512100, 3802300; 511900, 3802300; 511900, 3802800; 512000, 3802800; 512000, 3802900; 512100, 3802900; 512100, 3803100; 512200, 3803100; and 512200, 3803200.

(xi) Subunit 1j: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3802300; 513600, 3802300; 513600, 3802000; 513700, 3802000; 513700, 3801900; 513800, 3801900; 513800, 3802000; 514100, 3802000; 514100, 3801600; 514000, 3801600; 514000, 3801400; 513800, 3801400; 513800, 3801500; 513600, 3801500; 513600, 3801600; 513400, 3801600; 513400, 3801700; 513300, 3801700; 513300, 3801800; 513200, 3801800; 513200, 3802200; 513300, 3802200; and 513300, 3802300.

(xii) Subunit 1k: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515800, 3802900; 516000, 3802900; 516000, 3802800; 516100, 3802800; 516100, 3802500; 516300, 3802500; 516300, 3802200; 516000, 3802200; 516000, 3802000; 516100, 3802000; 516100, 3801900; 516200, 3801900; 516200, 3801700; 516300, 3801700; 516300, 3801500; 516400, 3801500; 516400, 3800800; 516300, 3800800; 516300, 3800700; 516000, 3800700; 516000, 3801300; 515900, 3801300; 515900, 3801400; 515800, 3801400; 515800, 3801600; 515700, 3801600; 515700, 3801700; 515100, 3801700; 515100, 3801800; 515000, 3801800; 515000, 3801500; 515100, 3801500; 515100, 3801200; 515000, 3801200; 515000, 3801100; 514900, 3801100; 514900, 3800700; 514400, 3800700; 514400, 3801000; 514300, 3801000; 514300, 3801400; 514400, 3801400; 514400, 3801500; 514500, 3801500; 514500, 3801600; 514600, 3801600; 514600, 3801600; 514600, 3802100; 514700, 3802100; 514700, 3802400; 514800, 3802400; 514800, 3802600; 514900, 3802600; 514900, 3802800; 515300, 3802800; 515300, 3802500; 515200, 3802500; 515200, 3802300; 515400, 3802300; 515400, 3802200; 515400, 3802200; 515500, 3802200; 515500, 3802100; 515600, 3802700; 515700, 3802700; 515700, 3802800; 515800, 3802800, and 515800; 3802900.

(xiii) Subunit 1l: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515600, 3801200; 515900, 3801200; 515900, 3800800; 515500, 3800800; 515500, 3801100; 515600, 3801100; and 515600, 3801200.

(xiv) Subunit 1m: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514900, 3799900; 514900, 3800000; 515000, 3800000; 515000, 3800200; 514900, 3800200; 514900, 3800500; 515000, 3800500; 515000, 3800600; 515400, 3800600; 515400, 3800200; 515500, 3800200; 515500, 3799700; 515400, 3799700; 515400, 3799600; 516000, 3799600; 516000, 3799500; 516100, 3799500; 516100, 3799200; 516500, 3799200; 516500, 3799100; 516600, 3799100; 516600, 3798900; 516500, 3798900; 516500, 3798800; 516200, 3798800; 516200, 3798800; 516200, 3798900; 516000, 3798900; 516000, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3799100; 515600, 3799100; 515600, 3799000; 515200, 3799000; 515200, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514100, 3799300; 514100, 3799400; 514000, 3799400; 514000, 3799300; 513600, 3799300; 513600, 3799400; 513500, 3799400; 513500, 3799600; 513600, 3799600; 513600, 3799700; 513500, 3799700; 513500, 3800000; 513600, 3800000; 513600, 3800100; 513700, 3800100; 513700, 3800200; 513900, 3800200; 513900; 3800000; 514700, 3800000; 514700, 3799900; and 514900, 3799900; excluding land bounded by 514900, 3799900; 514900, 3799700; 515000, 3799700; 515000, 3799900; and 514900, 3799900.

(xv) Subunit 1n: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517300, 3801000; 517800, 3801000; 517800, 3800600; 517600, 3800600; 517600, 3800300; 517500, 3800300; 517500, 3800200; 517000, 3800200; 517000, 3800700; 517100, 3800700; 517100, 3800800; 517200, 3800800; 517200, 3800900; 517300, 3800900; and 517300, 3801000.

(xvi) Subunit 1o: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3801600; 519500, 3801600; 519500, 3801500; 519600, 3801500; 519600, 3801100; 519500, 3801100; 519500, 3800900; 519400, 3800900; 519400, 3800800; 519300, 3800800; 519300, 3800700; 519200, 3800700; 519200, 3800600; 519100, 3800600; 519100, 3800500; 518800, 3800500; 518800, 3800900; 518900, 3800900; 518900, 3801000; 519000, 3801000; 519000, 3801100; 519100, 3801100; 519100, 3801500; 519200, 3801500; and 519200, 3801600.

(xvii) Subunit 1p: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3801100; 520300, 3801100; 520300, 3800700; 520100, 3800700; 520100, 3800600; 519900, 3800600; 519900, 3800700; 519800, 3800700; 519800, 3800900; 519900, 3800900; 519900, 3801000; 520000, 3801000; and 520000, 3801100.

(xviii) Subunit 1q: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521100, 3800700; 521300, 3800700; 521300, 3800600; 521400, 3800600; 521400, 3800500; 521600, 3800500; 521600, 3800300; 521700, 3800300; 521700, 3800200; 521600, 3800200; 521600, 3800100; 521500, 3800100; 521500, 3800000; 521300, 3800000; 521300, 3799900; 521200, 3799900; 521200, 3799700; 521000, 3799700; 521000, 3799600; 520900, 3799600; 520900, 3799500; 520500, 3799500; 520500, 3799100; 520300, 3799100; 520300, 3799300; 520200, 3799300; 520200, 3799200; 520000, 3799200; 520000, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798600; 520800, 3798600; 520800, 3798700; 521500, 3798700; 521500, 3798800; 521300, 3798800; 521300, 3798900; 521700, 3798900; 521700,

3799000; 522000, 3799000; 522000, 3798900; 522100, 3798900; 522100, 3798700; 522000, 3798700; 522000, 3798600; 521900, 3798600; 521900, 3798400; 521500, 3798400; 521500, 3798100; 521300, 3798100; 521300, 3798000; 521200, 3798000; 521200, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798100; 520400, 3798100; 520400, 3798200; 520300, 3798200; 520300, 3798400; 520200, 3798400; 520200, 3798500; 520100, 3798500; 520100, 3798600; 519600, 3798600; 519600, 3798900; 519200, 3798900; 519200, 3799200; 519300, 3799200; 519300, 3799300; 519500, 3799300; 519500, 3799400; 519700, 3799400; 519700, 3799500; 519900, 3799500; 519900, 3799600; 520100, 3799600; 520100, 3799700; 520300, 3799700; 520300, 3799800; 520400, 3799800; 520400, 3799900; 520500, 3799900; 520500, 3800100; 520600, 3800100; 520600, 3800300; 520800, 3800300; 520800, 3800400; 520900, 3800400; 520900, 3800500; 521000, 3800500; 521000, 3800600; 521100, 3800600; and 521100, 3800700.

(xix) Subunit 1r: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519200, 3797300; 519600, 3797300; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796600; 519300, 3796600; 519300, 3796500; 519500, 3796500; 519500, 3796400; 519600, 3796400; 519600, 3796100; 519700, 3796100; 519700, 3796000; 519600, 3796000; 519600, 3795400; 519300, 3795400; 519300, 3795500; 518500, 3795500; 518500, 3795900; 518800, 3795900; 518800, 3796000; 519000, 3796000; 519000, 3796100; 519100, 3796100; 519100, 3796200; 519200, 3796200; 519200, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796900; 518900, 3796900; 518900, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; and 519200, 3797300.

(xx) Subunit 1s: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3797600; 520300, 3797600; 520300, 3797100; 520100, 3797100; 520100, 3797000; 520000, 3797000; 520000, 3796900; 519800, 3796900; 519800, 3797000; 519700, 3797000; 519700, 3797400; 519800, 3797400; 519800, 3797500; 520000, 3797500; and 520000, 3797600.

(xxi) Subunit 1t: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3797100; 521700, 3797100; 521700, 3796700; 521600, 3796700; 521600, 3796600; 521400, 3796600; 521400, 3796700; 521300, 3796700; and 521300, 3797100.

(xxii) Subunit 1u: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3794600; 519700, 3794600; 519700, 3794300; 519600, 3794300; 519600, 3794100; 519500, 3794100; 519500, 3794000; 519400, 3794000; 519400, 3793900; 519300, 3793900; 519300, 3793800; 519000, 3793800; 519000, 3794200; 519100, 3794200; 519100, 3794300; 519200, 3794300; 519200, 3794400; 519300, 3794400; and 519300, 3794600.

(xxiii) Subunit 1v: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794300; 520200, 3794300; 520200, 3793900; 520300, 3793900; 520300, 3794000; 520500, 3794000; 520500, 3794100; 521000, 3794100; 521000, 3794200; 521600, 3794200; 521600, 3793900; 521500, 3793900; 521500, 3793800; 521200, 3793800; 521200, 3793700; 521100, 3793700; 521100, 3793600; 520800, 3793600; 520800, 3793700; 520600, 3793700; 520600, 3793600; 520300, 3793600; 520300, 3793700; 520200, 3793700; 520200, 3793800; 520000, 3793800; 520000, 3793700; 519800, 3793700; and 519800, 3794300.

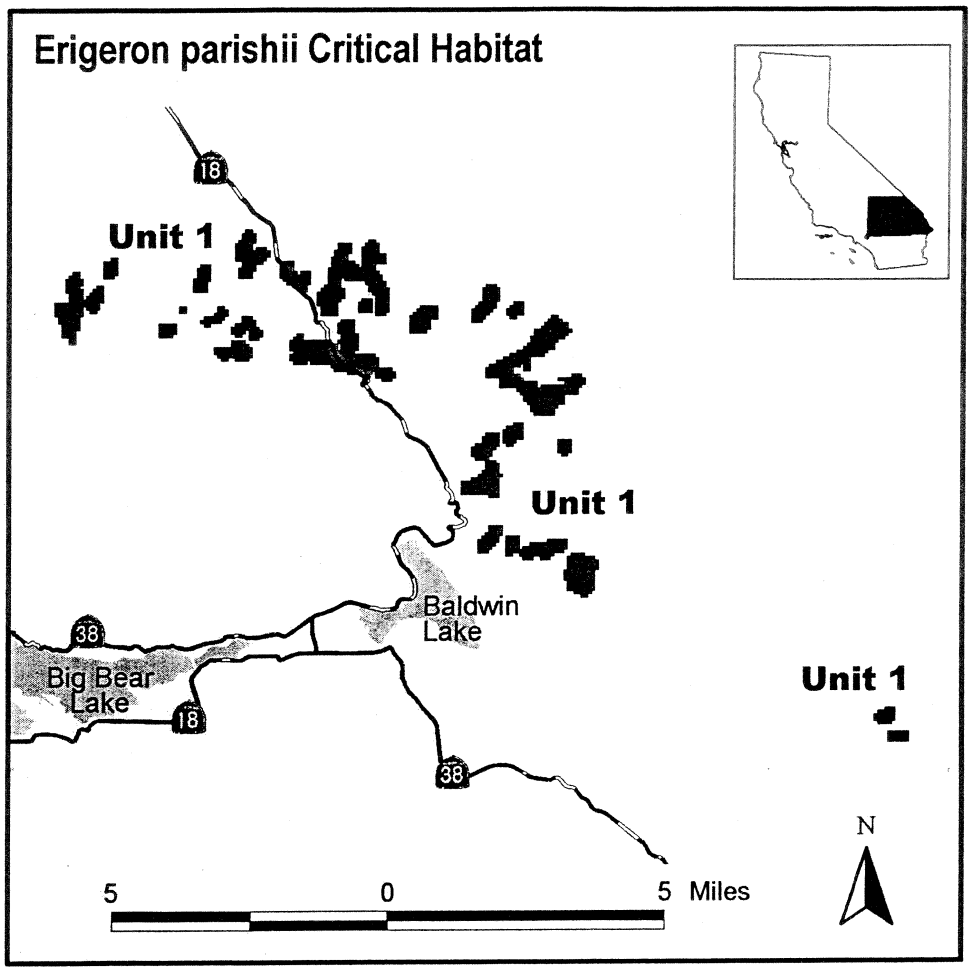
(xxiv) Subunit 1w: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521700, 3793800; 522100, 3793800; 522100, 3793700; 522400, 3793700; 522400, 3793600; 522500, 3793600; 522500, 3793300; 522400, 3793300; 522400, 3792700; 522300, 3792700; 522300, 3792600; 522200, 3792600; 522200, 3792500; 522000, 3792500; 522000, 3792600; 521800, 3792600; 521800, 3792700; 521600, 3792700; 521600, 3793000; 521500, 3793000; 521500, 3793300; 521600, 3793300; 521600, 3793700; 521700, 3793700; and 521700, 3793800.

(xxv) Subunit 1x: Land bounded by the following UTM11 NAD27 coordinates (E, N): 530800, 3789300; 531100, 3789300; 531100, 3788900; 531000, 3788900; 531000, 3788800; 530600, 3788800; 530600, 3788900; 530500, 3788900; 530500, 3789100; 530600, 3789100; 530600, 3789200; 530800, 3789200; and 530800, 3789300.

(xxvi) Subunit 1y: Land bounded by the following UTM11 NAD27 coordinates (E, N): 530900, 3788600; 531500, 3788600; 531500, 3788300; 530900, 3788300; and 530900, 3788600.

(xxvii) Note: *Erigeron parishii* map follows.

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

* * * * *

**Family Brassicaceae: *Lesquerella Kingii* ssp. *Bernardina* (San Bernardino Mountains Bladderpod)**

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Lesquerella kingii* ssp. *bernardina* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(i) Soils derived primarily from Bonanza King Formation and Undivided Cambrian parent materials that occur on hillsides or on large rock outcrops at elevations between 2,098 and 2,700 m (6,883 and 8,800 ft);

(ii) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(iii) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(3) Existing features and structures, such as buildings, active mines, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas, are not likely to contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Bertha Ridge Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California.

(ii) Subunit 2a: Land bounded by the following UTM11 NAD27 coordinates (E, N): 510400, 3793600; 510700, 3793600; 510700, 3793500; 510800, 3793500; 510800, 3793400; 511000, 3793400; 511000, 3793100; 510900, 3793100; 510900, 3793000; 510600, 3793000; 510600, 3793100; 510500, 3793100; 510500, 3793200; 510400, 3793200; and 510400, 3793600.

(iii) Subunit 2b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511600, 3793900; 511900, 3793900; 511900, 3793800; 512000, 3793800; 512000, 3793700; 512300, 3793700; 512300, 3793600; 512400, 3793600; 512400, 3793300; 512300, 3793300; 512300, 3793200; 512100, 3793200; 512100, 3793300; 512000, 3793300; 512000, 3793200; 511600, 3793200; 511600, 3793500; 511500, 3793500; 511500, 3793800; 511600, 3793800; and 511600, 3793900.

(iv) Subunit 2c: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511700, 3793100; 512000, 3793100; 512000, 3793000; 512200, 3793000; 512200, 3792700; 512100, 3792700; 512100, 3792500; 511900, 3792500; 511900, 3792300; 512600, 3792300; 512600, 3792100; 512400, 3792100; 512400, 3791400; 512100, 3791400; 512100, 3791500; 511900, 3791500; 511900, 3791400; 511700, 3791400; 511700, 3791300; 511600, 3791300; 511600, 3791200; 511200, 3791200; 511200, 3791400; 511100, 3791400; 511100, 3791500; 511200, 3791500; 511200, 3791600; 511300, 3791600; 511300, 3791700; 511600, 3791700; 511600, 3792300; 511500, 3792300; 511500, 3792500; 511600, 3792500; 511600, 3792600; 511700, 3792600; 511700, 3792700; 511600, 3792700; 511600, 3793000; 511700, 3793000; and 511700, 3793100.

(5) Sugarlump Ridge Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle map Moonridge, California.

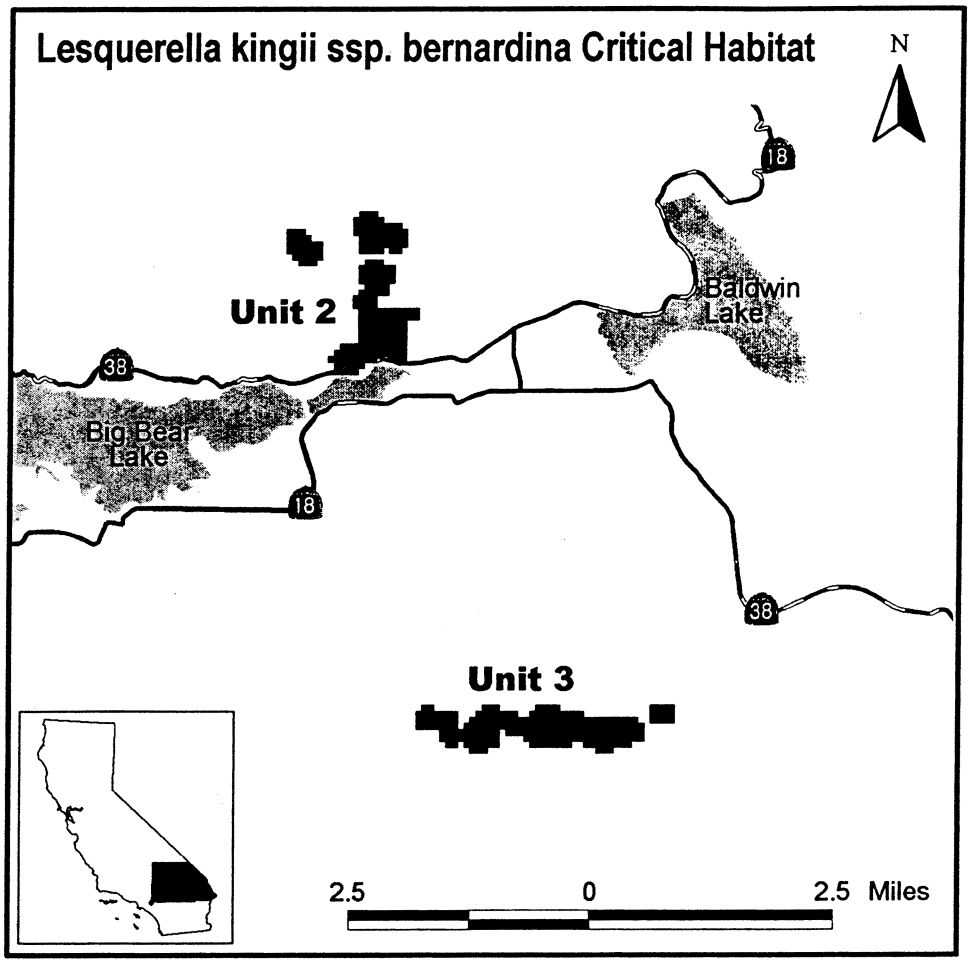
(ii) Subunit 3a: Land bounded by the following UTM11 NAD27 coordinates (E, N): 512700, 3785700; 512900, 3785700; 512900, 3785600; 513300, 3785600; 513300, 3785300; 513400, 3785300; 513400, 3785400; 513500, 3785400; 513500, 3785500; 513600, 3785500; 513600, 3785600; 513700, 3785600; 513700, 3785700; 514000, 3785700; 514000, 3785600; 514300, 3785600; 514300, 3785500; 514500, 3785500; 514500, 3785600; 514600, 3785600; 514600, 3785700; 515000, 3785700; 515000, 3785600; 515400, 3785600; 515400, 3785500; 516300, 3785500; 516300, 3785400; 516400,

3785400; 516400, 3785100; 516200, 3785100; 516200, 3785000; 515900, 3785000; 515900, 3784900; 515600, 3784900; 515600, 3785000; 515400, 3785000; 515400, 3785100; 515200, 3785100; 515200, 3785000; 514500, 3785000; 514500, 3785100; 514400, 3785100; 514400, 3785200; 514100, 3785200; 514100, 3785300; 514000, 3785300; 514000, 3785000; 513800, 3785000; 513800, 3784900; 513500, 3784900; 513500, 3785000; 513400, 3785000; 513400, 3785100; 513300, 3785100; 513300, 3785000; 513100, 3785000; 513100, 3785100; 513000, 3785100; 513000, 3785300; 512600, 3785300; 512600, 3785600; 512700, 3785600; and 512700, 3785700.

(iii) Subunit 3b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516500, 3785700; 516900, 3785700; 516900, 3785400; 516500, 3785400; and 516500, 3785700.

(iv) Note: *Lesquerella kingii* ssp. *bernardina* map follows:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

* * * * *

**Family Fabaceae: *Astragalus Albens* (Cushenbury Milk-Vetch)**

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus albens* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(i) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Undivided Cambrian parent materials that occur on hillsides or along rocky washes with limestone outwash/deposits at elevations between 1,171 and 2,013 m (3,864 and 6,604 ft);

(ii) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(iii) Associated plant communities that have areas with an open canopy cover and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(3) Existing features and structures, such as buildings, active mines, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas, are not likely to contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Northeastern Slope Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, and Cougar Buttes, California.

(ii) Subunit 1a: Land bounded by the following UTM11 NAD27 coordinates (E, N): 503300, 3801900; 503600, 3801900; 503600, 3801700; 503700, 3801700; 503700, 3801600; 503800, 3801600; 503800, 3801500; 503900, 3801500; 503900, 3801200; 503800, 3801200; 503800, 3801100; 503900, 3801100; 503900, 3800900; 504000, 3800800; 504100, 3800800; 504100, 3800800; 504100, 3800500; 504000, 3800500; 504000, 3800300; 503900, 3800300; 503900, 3800200; 503500, 3800200; 503500, 3800300; 503400, 3800300; 503400, 3800400; 503300, 3800400; 503300, 3800600; 503200, 3800600; 503200, 3801800; 503300, 3801800; and 503300, 3801900.

(iii) Subunit 1b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 507000, 3801600; 507400, 3801600; 507400, 3801300; 507500, 3801300; 507500, 3800900; 507600, 3800900; 507600, 3800500; 507500,

3800500; 507500, 3800400; 507400, 3800400; 507400, 3800300; 507300, 3800300; 507300, 3800200; 507200, 3800200; 507200, 3800100; 507100, 3800100; 507100, 3800200; 507000, 3800200; 507000, 3800500; 506800, 3800500; 506800, 3800600; 506700, 3800600; 506700, 3801100; 506900, 3801100; 506900, 3801000; 507100, 3801000; 507100, 3801300; 507000, 3801300; and 507000, 3801600.

(iv) Subunit 1c: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513100, 3803700; 513600, 3803700; 513600, 3803100; 513500, 3803100; 513500, 3803000; 513400, 3803000; 513400, 3802900; 513300, 3802900; 513300, 3802800; 513100, 3802800; 513100, 3802900; 513000, 3802900; 513000, 3803000; 512900, 3803000; 512900, 3803400; 513000, 3803400; 513000, 3803500; 513100, 3803500; and 513100, 3803700.

(v) Subunit 1d: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3803300; 516300, 3803300; 516300, 3803000; 516000, 3803000; and 516000, 3803300.

(vi) Subunit 1e: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3802600; 515200, 3802600; 515200, 3802200; 515100, 3802200; 515100, 3801900; 515300, 3801900; 515300, 3802000; 515400, 3802000; 515400, 3801900; 515500, 3801900; 515500, 3801600; 515100, 3801600; 515100, 3801500; 514800, 3801500; 514800, 3801600; 514700, 3801600; 514700, 3801900; 514600, 3801900; 514600, 3802000; 514500, 3802000; 514500, 3802300; 514600, 3802300; 514600, 3802400; 514700, 3802400; 514700, 3802500; 514800, 3802500; and 514800, 3802600.

(vii) Subunit 1f: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516000, 3802500; 516200, 3802500; 516200, 3802400; 516300, 3802400; 516300, 3802100; 516200, 3802100; 516200, 3801900; 515800, 3801900; 515800, 3801800; 515700, 3801800; 515700, 3801900; 515600, 3801900; 515600, 3802100; 515500, 3802100; 515500, 3802200; 515600, 3802200; 515600, 3802300; 515900, 3802300; 515900, 3802400; 516000, 3802400; and 516000, 3802500.

(viii) Subunit 1g: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513700, 3800000; 514100, 3800000; 514100, 3799900; 514300, 3799900; 514300, 3799800; 514700, 3799800; 514700, 3799500; 514800, 3799500; 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514500, 3799400; 514500, 3799300; 514100, 3799300; 514100, 3799500; 514000, 3799500; 514000, 3799400; 513800, 3799400; 513800, 3799500; 513700, 3799500; and 513700, 3800000.

(ix) Subunit 1h: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515200, 3801300; 515500, 3801300; 515500, 3801200; 515600, 3801200; 515600, 3800800; 515500, 3800800; 515500, 3800700; 515400, 3800700; 515400, 3800400; 515300, 3800400; 515300, 3800300; 515400, 3800300; 515400, 3800200; 515500, 3800200; 515500, 3799600; 515600, 3799600; 515600, 3799500; 515900, 3799500; 515900, 3799400; 516300, 3799400; 516300, 3799200; 516500, 3799200; 516500, 3799000; 516700, 3799000; 516700, 3799600; 517100, 3799600; 517100, 3799400; 517200, 3799400; 517200, 3799300; 517100, 3799300; 517100, 3799200; 517200, 3799200; 517200, 3798900; 517100, 3798900; 517100, 3798600; 516500, 3798600; 516500, 3798900; 516400, 3798900; 516400, 3798800; 516200, 3798800; 516200, 3798900; 515400, 3798900; 515400, 3799000; 515300, 3799000; 515300, 3799100; 515200, 3799100; 515200, 3799600; 515100, 3799600; 515100, 3799700; 515000, 3799700; 515000, 3800100; 514900, 3800100; 514900, 3800800; 514800, 3800800; 514800, 3800700; 514600, 3800700; 514600, 3800800; 514500, 3800800; 514500, 3801000; 514600, 3801000; 514600, 3801100; 514800, 3801100; 514800, 3801000; 514900, 3801000; 514900, 3801100; 515100, 3801100; 515100, 3801200; 515200, 3801200; and 515200, 3801300.

(x) Subunit 1i: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517200, 3802800; 517700, 3802800; 517700, 3802400; 517600, 3802400; 517600, 3802100; 517500, 3802100; 517500, 3802000; 517400, 3802000; 517400, 3801900; 517200, 3801900; 517200, 3802000; 517100, 3802000; 517100, 3802700; 517200, 3802700; and 517200, 3802800.

(xi) Subunit 1j: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3802200; 518200, 3802200; 518200, 3801900; 518100, 3801900; 518100, 3801800; 517800, 3801800; and 517800, 3802200.

(xii) Subunit 1k: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517700, 3801500; 518300, 3801500; 518300, 3801200; 518200, 3801200; 518200, 3801100; 518100, 3801100; 518100, 3801000; 518000, 3801000; 518000, 3800900; 517900, 3800900; 517900, 3800800; 517800, 3800800; 517800, 3800600; 517700, 3800600; 517700, 3800500; 517800, 3800500; 517800, 3800000; 517700, 3800000; 517700, 3799900; 517300, 3799900; 517300, 3800000; 517200, 3800000; 517200, 3799900; 516800, 3799900; 516800, 3800000; 516700, 3800000; 516700, 3800200; 517100, 3800200; 517100, 3800900; 517200, 3800900; 517200, 3801000; 517400, 3801000; 517400, 3801200; 517500, 3801200; 517500, 3801400; 517700, 3801400; and 517700, 3801500.

(xiii) Subunit 1l: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517800, 3799800; 518600, 3799800; 518600, 3799500; 518500, 3799500; 518500, 3799400; 518400, 3799400; 518400, 3799300; 518200, 3799300; 518200, 3799100; 517900, 3799100; 517900, 3798700; 517500, 3798700; 517500, 3798900; 517400, 3798900; 517400, 3799600; 517700, 3799600; 517700, 3799700; 517800, 3799700; and 517800, 3799800.

(xiv) Subunit 1m: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520200, 3801000; 520600, 3801000; 520600, 3800700; 520500, 3800700; 520500, 3800600; 520600, 3800600; 520600, 3800500; 520800, 3800500; 520800, 3800400; 520900, 3800400; 520900, 3800300; 521100, 3800300; 521100, 3800200; 521200, 3800200; 521200, 3800000; 521100, 3800000; 521100, 3799900; 520800, 3799900; 520800, 3800100; 520300, 3800100; 520300, 3800200; 520200, 3800200; 520200, 3800300; 520100, 3800300; 520100, 3800200; 519800, 3800200; 519800, 3800700; 520100, 3800700; 520100, 3800600; 520200, 3800600; and 520200, 3801000.

(xv) Subunit 1n: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519300, 3799300; 519600, 3799300; 519600, 3798900; 519300, 3798900; 519300, 3799000; 519200, 3799000; 519200, 3799200; 519300, 3799200; and 519300, 3799300.

(xvi) Subunit 1o: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3800000; 520400, 3800000; 520400, 3799900; 520500, 3799900; 520500, 3799700; 520400, 3799700; 520400, 3799600; 520000, 3799600; 520000, 3799500; 520100, 3799500; 520100, 3799400; 520200, 3799400; 520200, 3799300; 520300, 3799300; 520300, 3799400; 520600, 3799400; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520100, 3799200; 520100, 3799000; 520200, 3799000; 520200, 3798900; 520300, 3798900; 520300, 3798800; 520700, 3798800; 520700, 3798700; 521500, 3798700; 521500, 3798800; 521400, 3798800; 521400, 3799000; 521300, 3799000; 521300, 3799100; 521200, 3799100; 521200, 3799200; 521500, 3799200; 521500, 3799300; 521800, 3799300; 521800, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3797900; 521100, 3797900; 521100, 3798000; 521000, 3798000; 521000, 3797900; 520900, 3797900; 520900, 3797800; 520600, 3797800; 520600, 3797900; 520500, 3797900; 520500, 3798000; 520300, 3798000; 520300, 3798300; 520200, 3798300; 520200, 3798200; 519900, 3798200; 519900, 3798300; 519800, 3798300; 519800, 3798400; 519700, 3798400; 519700, 3799000; 519800, 3799000; 519800, 3799100; 519700, 3799100; 519700, 3799600; 519900, 3799600; 519900, 3799900; 520100, 3799900; and 520100, 3800000.

(xvii) Subunit 1p: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3799000; 522200, 3799000; 522200, 3798600; 521900, 3798600; and 521900, 3799000.

(xviii) Subunit 1q: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520100, 3797900; 520300, 3797900; 520300, 3797800; 520400, 3797800; 520400, 3797600; 520300, 3797600; 520300, 3797000; 520200, 3797000; 520200, 3796900; 519900, 3796900; 519900, 3797000; 519600, 3797000; 519600, 3796900; 519500, 3796900; 519500, 3796800; 519400, 3796800; 519400, 3796700; 519600, 3796700; 519600, 3796600; 519700, 3796600; 519700, 3795900; 519800, 3795900; 519800, 3795800; 519900, 3795800; 519900, 3795700; 520100, 3795700; 520100, 3795600; 520200, 3795600; 520200, 3795500; 520300, 3795500; 520300, 3795400; 520400, 3795400; 520400, 3795300; 520600, 3795300; 520600, 3795200; 520800, 3795200; 520800, 3795100; 520900, 3795100; 520900, 3795000; 521000, 3795000; 521000, 3794800; 521100, 3794800; 521100, 3794700; 521200, 3794700; 521200, 3794600; 521300, 3794600; 521300, 3794400; 521600, 3794400; 521600, 3794300; 521700, 3794300; 521700, 3793900; 521600, 3793900; 521600, 3793800; 521200, 3793800; 521200, 3793900; 521100, 3793900; 521100, 3794000; 521000, 3794000; 521000, 3794100; 520900, 3794100; 520900, 3794200; 520800, 3794200; 520800, 3794300; 520700, 3794300; 520700, 3794400; 520500, 3794400; 520500, 3794500; 520400, 3794500; 520400, 3794600; 520300, 3794600; 520300, 3794700; 520200, 3794700; 520200, 3794800; 520100, 3794800; 520100, 3794900; 520000, 3794900; 520000, 3795000; 519900, 3795000; 519900, 3795100; 519800, 3795100; 519800, 3795200; 519700, 3795200; 519700, 3795300; 519500, 3795300; 519500, 3795400; 519400, 3795400; 519400, 3795300; 519300,

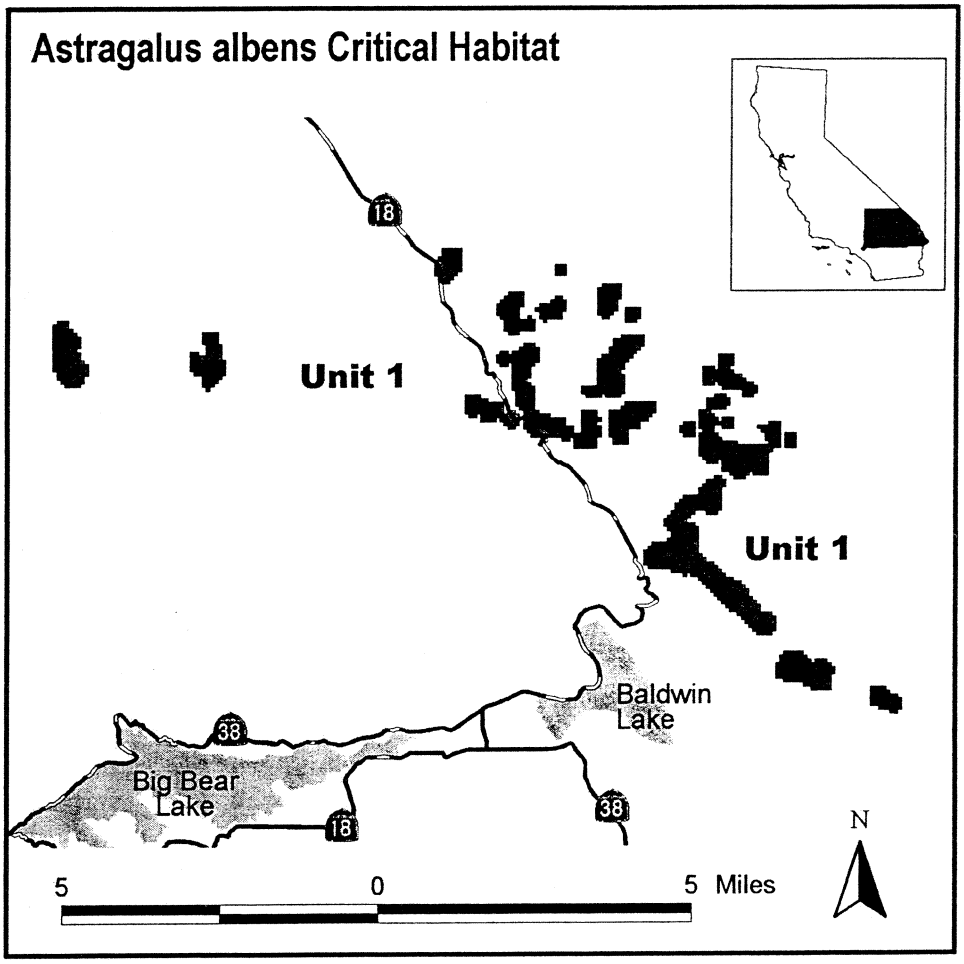
3795300; 519300, 3795400; 519000, 3795400; 519000, 3795500; 518400, 3795500; 518400, 3795600; 518300, 3795600; 518300, 3796000; 518400, 3796000; 518400, 3796100; 518500, 3796100; 518500, 3796200; 518900, 3796200; 518900, 3796300; 519000, 3796300; 519000, 3796500; 518900, 3796500; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3796900; 519000, 3796900; 519000, 3797000; 519100, 3797000; 519100, 3797200; 519200, 3797200; 519200, 3797300; 519300, 3797300; 519300, 3797400; 519700, 3797400; 519700, 3797600; 519800, 3797600; 519800, 3797700; 519900, 3797700; 519900, 3797800; 520100, 3797800; and 520100, 3797900.

(xix) Subunit 1r: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521900, 3793400; 522400, 3793400; 522400, 3793300; 522500, 3793300; 522500, 3793200; 522600, 3793200; 522600, 3793100; 522700, 3793100; 522700, 3793200; 523000, 3793200; 523000, 3793100; 523100, 3793100; 523100, 3793000; 523200, 3793000; 523200, 3792800; 523100, 3792800; 523100, 3792400; 522600, 3792400; 522600, 3792500; 522400, 3792500; 522400, 3792600; 521900, 3792600; 521900, 3792700; 521700, 3792700; 521700, 3793100; 521800, 3793100; 521800, 3793300; 521900, 3793300; and 521900, 3793400.

(xx) Subunit 1s: Land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524500, 3792500; 524500, 3792400; 524600, 3792400; 524600, 3792300; 524800, 3792300; 524800, 3792200; 524900, 3792200; 524900, 3791900; 524800, 3791900; 524800, 3791800; 524600, 3791800; 524600, 3791900; 524300, 3791900; 524300, 3792000; 524100, 3792000; and 524100, 3792500.

(xxi) Note: *Astragalus albens* map follows:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

* * * * *

**Family Polgonaceae: *Eriogonum Ovalifolium* var. *Vineum* (Cushenbury Buckwheat)**

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Eriogonum ovalifolium* var. *vineum* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(i) Soils derived primarily from the upper and middle members of the Bird Spring Formation and Bonanza King Formation parent materials that occur on hillsides at elevations between 1,400 and 2,400 m (4,600 and 7,900 ft);

(ii) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(iii) Associated plant communities that have areas with an open canopy cover (generally less than 15 percent cover) and little accumulation of organic material (*e.g.*, leaf litter) on the surface of the soil.

(3) Existing features and structures, such as buildings, active mines, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas, are not likely to contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Northeastern Slope Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Fawnskin, Big Bear City, Rattlesnake Canyon, Butler Peak, and Onyx Peak, California.

(ii) Subunit 1a: Land bounded by the following UTM11 NAD27 coordinates (E, N): 497000, 3803000; 497200, 3803000; 497200, 3802900; 497300, 3802900; 497300, 3802500; 497000, 3802500; 497000, 3802600; 496900,

3802600; 496900, 3802900; 497000, 3802900; and 497000, 3803000.

(iii) Subunit 1b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 498000, 3800800; 498600, 3800800; 498600, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; and 498000, 3800800.

(iv) Subunit 1c: Land bounded by the following UTM11 NAD27 coordinates (E, N): 503400, 3801200; 503700, 3801200; 503700, 3801100; 503900, 3801100; 503900, 3800800; 504000, 3800800; 504000, 3800400; 503900, 3800400; 503900, 3800300; 503700, 3800300; 503700, 3800400; 503400, 3800400; 503400, 3800600; 503300, 3800600; 503300, 3800700; 503200, 3800700; 503200, 3801000; 503300, 3801000; 503300, 3801100; 503400, 3801100; and 503400, 3801200.

(v) Subunit 1d: Land bounded by the following UTM11 NAD27 coordinates (E, N): 505200, 3800400; 505500, 3800400; 505500, 3800300; 506000, 3800300; 506000, 3800200; 506100, 3800200; 506100, 3799900; 506000, 3799900; 506000, 3800000; 505700, 3800000; 505700, 3799900; 505600, 3799900; 505600, 3799600; 505200, 3799600; 505200, 3800100; 505100, 3800100; 505100, 3800300; 505200, 3800300; and 505200, 3800400.

(vi) Subunit 1e: Land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3799900; 507000, 3799900; 507000, 3799800; 507100, 3799800; 507100, 3799600; 506900, 3799600; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798700; 507300, 3798700; 507300, 3798600; 506800, 3798600; 506800, 3798800; 506200, 3798800; 506200, 3799200; 506500, 3799200; 506500, 3799300; 506600, 3799300; 506600, 3799500; 506700, 3799500; 506700, 3799800; 506800, 3799800; and 506800, 3799900.

(vii) Subunit 1f: Land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507000, 3798100; 507000, 3798000; 507500, 3798000; 507500, 3797700; 507600, 3797700; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506800, 3797300; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

(viii) Subunit 1g: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3798200; 508300, 3798200; 508300, 3798100; 508400, 3798100; 508400, 3797900; 508300, 3797900; 508300, 3797800; 508000, 3797800; 508000, 3798100; 508100, 3798100; and 508100, 3798200.

(ix) Subunit 1h: Land bounded by the following UTM11 NAD27 coordinates (E, N): 507900, 3797600; 508400, 3797600; 508400, 3797200; 508300, 3797200; 508300, 3797100; 508200, 3797100; 508200, 3796800; 507800, 3796800; 507800, 3797100; 507700, 3797100; 507700, 3797500; 507900, 3797500; and 507900, 3797600.

(x) Subunit 1i: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508400, 3797200; 508700, 3797200; 508700, 3796900; 508400, 3796900; and 508400, 3797200.

(xi) Subunit 1j: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508300, 3800600; 508600, 3800600; 508600, 3800500; 508700, 3800500; 508700, 3800200; 508600, 3800200; 508600, 3800100; 508100, 3800100; 508100, 3800500; 508300, 3800500; and 508300, 3800600.

(xii) Subunit 1k: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508100, 3799800; 508500, 3799800; 508500, 3799400; 508400, 3799400; 508400, 3799300; 508200, 3799300; 508200, 3799400; 508000, 3799400; 508000, 3799700; 508100, 3799700; and 508100, 3799800.

(xiii) Subunit 1l: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508700, 3799400; 509200, 3799400; 509200, 3799100; 509100, 3799100; 509100, 3798900; 508700, 3798900; and 508700, 3799400.

(xiv) Subunit 1m: Land bounded by the following UTM11 NAD27 coordinates (E, N): 509400, 3800700; 509700, 3800700; 509700, 3800600; 509800, 3800600; 509800, 3800500; 510300, 3800500; 510300, 3800400; 510400, 3800400; 510400, 3800300; 510600, 3800300; 510600, 3800100; 510200, 3800100; 510200, 3800300; 510100, 3800300; 510100, 3800400; 509900, 3800400; 509900, 3800200; 509500, 3800200; 509500, 3800100; 509200, 3800100; 509200, 3800300; 509100, 3800300; 509100, 3800500; 509200, 3800500; 509200, 3800600; 509400, 3800600; and 509400, 3800700.

(xv) Subunit 1n: Land bounded by the following UTM11 NAD27 coordinates (E, N): 510500, 3801200; 510700, 3801200; 510700, 3800900; 510500, 3800900; 510500, 3800800; 510400, 3800800; 510400, 3800700; 510600, 3800700; 510600, 3800600; 510300, 3800600; 510300, 3800700; 510200, 3800700; 510200, 3800800; 510300, 3800800; 510300, 3801000; 510400, 3801000; 510400, 3801100; 510500, 3801100; and 510500, 3801200.

(xvi) Subunit 1o: Land bounded by the following UTM11 NAD27 coordinates (E, N): 510900, 3800700; 511300, 3800700; 511300, 3800500; 510900, 3800500; and 510900, 3800700.

(xvii) Subunit 1p: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511900, 3801000; 512200, 3801000; 512200, 3800800; 512300, 3800800; 512300, 3800700; 512500, 3800700; 512500, 3800600; 512700, 3800600; 512700, 3800800; 513000, 3800800; 513000, 3800300; 512900, 3800300; 512900, 3800100; 512800, 3800100; 512800, 3799900; 512900, 3799900; 512900, 3799800; 513000, 3799800; 513000, 3799700; 513100, 3799700; 513100, 3799500; 513000, 3799500; 513000, 3799400; 512700, 3799400; 512700, 3799500; 512500, 3799500; 512500, 3799600; 512300, 3799600; 512300, 3799700; 512200, 3799700; 512200, 3799800; 512100, 3799800; 512100, 3799600; 512200, 3799600; 512200, 3799500; 512300, 3799500; 512300, 3799200; 511800, 3799200; 511800, 3799500; 511700, 3799500; 511700, 3799400; 511400, 3799400; 511400, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799700; 511100, 3799700; 511100, 3799800; 511000, 3799800; 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511700, 3799900; 511700, 3799800; 511800, 3799800; 511800, 3799900; 512000, 3799900; 512000, 3800100; 511900, 3800100; 511900, 3800500; 512000, 3800500; 512000, 3800700; 511900, 3800700; and 511900, 3801000.

(xviii) Subunit 1q: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513200, 3800300; 513500, 3800300; 513500, 3800200; 513900, 3800200; 513900, 3800100; 514000, 3800100; 514000, 3800000; 514100, 3800000; 514100, 3799900; 514200, 3799900; 514200, 3800000; 514600, 3800000; 514600, 3799800; 514500, 3799800; 514500, 3799300; 514100, 3799300; 514100, 3799600; 514000, 3799600; 514000, 3799400; 513700, 3799400; 513700, 3799500; 513500, 3799500; 513500, 3799400; 513600, 3799400; 513600, 3799300; 513900, 3799300; 513900, 3799200; 514000, 3799200; 514000, 3798900; 513600, 3798900; 513600, 3798800; 513500, 3798800; 513500, 3798700; 513300, 3798700; 513300, 3798800; 513200, 3798800; 513200, 3799000; 513100, 3799000; 513100, 3799500; 513200, 3799500; 513200, 3799800; 513400, 3799800; 513400, 3799900; 513100, 3799900; 513100, 3800200; 513200, 3800200; and 513200, 3800300.

(xix) Subunit 1r: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514500, 3800800; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

(xx) Subunit 1s: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3802100; 515900, 3802100; 515900, 3801900; 516000, 3801900; 516000, 3801800; 516100, 3801800; 516100, 3801600; 516000, 3801600; 516000, 3801500; 516500, 3801500; 516500, 3801200; 516400, 3801200; 516400, 3801100; 516200, 3801100; 516200, 3800900; 516100, 3800900; 516100, 3800800; 516000, 3800800; 516000, 3800700; 515800, 3800700; 515800, 3800600; 516200, 3800600; 516200, 3800700; 516500, 3800700; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3799900; 515800, 3799900; 515800, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; 515300, 3799800; 515000, 3799800; 515000, 3799900; 514900, 3799900; 514900, 3800100; 515000, 3800100; 515000, 3800200; 515300, 3800200; 515300, 3800100; 515400, 3800100; 515400, 3800200; 515500, 3800200; 515500, 3800300; 515600, 3800300; 515600, 3800200; 515800, 3800200; 515800, 3800300; 515700, 3800300; 515700, 3800600; 515600, 3800600; 515600, 3800800; 515100, 3800800; 515100, 3800700; 515200, 3800700; 515200, 3800400; 515100, 3800400; 515100, 3800300; 514700, 3800300; 514700, 3800400; 514600, 3800400; 514600, 3800800; 514500, 3800800; 514500, 3800900; 514400, 3800900; 514400, 3801100; 514500, 3801100; 514500, 3801200; 514600, 3801200; 514600, 3801300; 514800, 3801300; 514800, 3801400; 515200, 3801400; 515200, 3801300; 515700, 3801300; 515700, 3801500; 515600, 3801500; 515600, 3801600; 515500, 3801600; 515500, 3801700; 515400, 3801700; 515400, 3802000; 515500, 3802000; and 515500, 3802100.

(xxi) Subunit 1t: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3799600; 515000, 3799600; 515000, 3799500; 515100, 3799500; 515100, 3799200; 515000, 3799200; 515000, 3799100; 514800, 3799100; 514800, 3799200; 514700, 3799200; 514700, 3799300; 514600, 3799300; 514600, 3799400; 514700, 3799400; 514700, 3799500; 514800, 3799500; and 514800, 3799600.

(xxii) Subunit 1u: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3799700; 516900, 3799700; 516900, 3799600; 517100, 3799600; 517100, 3799500; 517200, 3799500; 517200, 3799000; 517300, 3799000; 517300, 3798700; 516800, 3798700;

516800, 3798600; 516400, 3798600; 516400, 3798700; 516300, 3798700; 516300, 3798600; 516100, 3798600; 516100, 3798700; 516000, 3798700; 516000, 3798800; 515900, 3798800; 515900, 3798900; 515700, 3798900; 515700, 3799000; 515400, 3799000; 515400, 3799100; 515300, 3799100; 515300, 3799500; 516000, 3799500; 516000, 3799400; 516300, 3799400; 516300, 3799300; 516400, 3799300; 516400, 3799600; 516700, 3799600; and 516700, 3799700.

(xxiii) Subunit 1v: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516700, 3800500; 517100, 3800500; 517100, 3800300; 517200, 3800300; 517200, 3800000; 517100, 3800000; 517100, 3799900; 516700, 3799900; 516700, 3800000; 516600, 3800000; 516600, 3800400; 516700, 3800400; and 516700, 3800500.

(xxiv) Subunit 1w: Land bounded by the following UTM11 NAD27 coordinates (E, N): 518600, 3799900; 519100, 3799900; 519100, 3799600; 519000, 3799600; 519000, 3799500; 518700, 3799500; 518700, 3799400; 518500, 3799400; 518500, 3799200; 518400, 3799200; 518400, 3799100; 518300, 3799100; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798900; 517800, 3798900; 517800, 3798800; 517600, 3798800; 517600, 3798900; 517500, 3798900; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517300, 3799300; 517300, 3799700; 517500, 3799700; 517500, 3799800; 518100, 3799800; 518100, 3799700; 518400, 3799700; 518400, 3799800; 518600, 3799800; and 518600, 3799900.

(xxv) Subunit 1x: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515400, 3797400; 515800, 3797400; 515800, 3797300; 516300, 3797300; 516300, 3797200; 516400, 3797200; 516400, 3796900; 515500, 3796900; 515500, 3797000; 515400, 3797000; and 515400, 3797400.

(xxvi) Subunit 1y: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519100, 3797200; 519400, 3797200; 519400, 3797100; 519500, 3797100; 519500, 3796900; 519700, 3796900; 519700, 3796000; 519600, 3796000; 519600, 3795900; 519500, 3795900; 519500, 3795700; 519100, 3795700; 519100, 3796100; 519000, 3796100; 519000, 3796300; 518900, 3796300; 518900, 3796600; 518800, 3796600; 518800, 3796800; 518900, 3796800; 518900, 3797000; 519000, 3797000; 519000, 3797100; 519100, 3797100; and 519100, 3797200.

(xxvii) Subunit 1z: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519600, 3797600; 519800, 3797600; 519800, 3797500; 520300, 3797500; 520300, 3797100; 520200, 3797100; 520200, 3797000; 519800, 3797000; 519800, 3797100; 519700, 3797100; 519700, 3797200; 519500, 3797200; 519500, 3797500; 519600, 3797500; and 519600, 3797600.

(xxviii) Subunit 1aa: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519700, 3800600; 520200, 3800600; 520200, 3800200; 520100, 3800200; 520100, 3800100; 519700, 3800100; and 519700, 3800600.

(xxix) Subunit 1ab: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3800000; 520700, 3800000; 520700, 3799900; 520800, 3799900; 520800, 3799500; 520400, 3799500; 520400, 3799600; 519900, 3799600; 519900, 3799900; 520000, 3799900; and 520000, 3800000.

(xxx) Subunit 1ac: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521000, 3800000; 521500, 3800000; 521500, 3799700; 521400, 3799700; 521400, 3799500; 520900, 3799500; 520900, 3799800; 521000, 3799800; and 521000, 3800000.

(xxxi) Subunit 1ad: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520000, 3799400; 520500, 3799400; 520500, 3799300; 520600, 3799300; 520600, 3799100; 520300, 3799100; 520300, 3799200; 520200, 3799200; 520200, 3799100; 520000, 3799100; 520000, 3799000; 520200, 3799000; 520200, 3798800; 520100, 3798800; 520100, 3798700; 519700, 3798700; 519700, 3799100; 519900, 3799100; 519900, 3799300; 520000, 3799300; and 520000, 3799400.

(xxxii) Subunit 1ae: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521400, 3799000; 522000, 3799000; 522000, 3798600; 521600, 3798600; 521600, 3798500; 521500, 3798500; 521500, 3798400; 521300, 3798400; 521300, 3798300; 521200, 3798300; 521200, 3798200; 520900, 3798200; 520900, 3798300; 520700, 3798300; 520700, 3798000; 520300, 3798000; 520300, 3798300; 520400, 3798300; 520400, 3798400; 520600, 3798400; 520600, 3798500; 520400, 3798500; 520400, 3798700; 520500, 3798700; 520500, 3798800; 520700, 3798800; 520700, 3798700; 520800, 3798700; 520800, 3798800; 521100, 3798800; 521100, 3798700; 521400, 3798700; 521400, 3798800; 521300, 3798800; 521300, 3798900; 521400, 3798900; and 521400, 3799000.

(xxxiii) Subunit 1af: Land bounded by the following UTM11 NAD27 coordinates (E, N): 519800, 3794600; 520100, 3794600; 520100, 3794200; 519800, 3794200; and 519800, 3794600.

(xxxiv) Subunit 1ag: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520400, 3794200; 521100, 3794200; 521100, 3793900; 521000, 3793900; 521000, 3793800; 520700, 3793800; 520700, 3793700; 520400, 3793700; 520400, 3793800; 520300, 3793800; 520300, 3793700; 520000, 3793700; 520000, 3793800; 519900, 3793800; 519900, 3794000; 520000, 3794000; 520000, 3794100; 520400, 3794100; and 520400, 3794200.

(xxxv) Subunit 1ah: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521600, 3794700; 521800, 3794700; 521800, 3794600; 521900, 3794600; 521900, 3794300; 521800, 3794300; 521800, 3794200; 521400, 3794200; 521400, 3794500; 521500, 3794500; 521500, 3794600; 521600, 3794600; and 521600, 3794700.

(xxxvi) Subunit 1ai: Land bounded by the following UTM11 NAD27 coordinates (E, N): 521300, 3793300; 521700, 3793300; 521700, 3793200; 521800, 3793200; 521800, 3793000; 521900, 3793000; 521900, 3793100; 522400, 3793100; 522400, 3793000; 522600, 3793000; 522600, 3792900; 522800, 3792900; 522800, 3792800; 523000, 3792800; 523000, 3792500; 523100, 3792500; 523100, 3792400; 523400, 3792400; 523400, 3792300; 523500, 3792300; 523500, 3791900; 523400, 3791900; 523400, 3791800; 523200, 3791800; 523200, 3791900; 523100, 3791900; 523100, 3792000; 522800, 3792000; 522800, 3792100; 522700, 3792100; 522700, 3792200; 522400, 3792200; 522400, 3792300; 522200, 3792300; 522200, 3792400; 522000, 3792400; 522000, 3792600; 521900, 3792600; 521900, 3792500; 521800, 3792500; 521800, 3792600; 521700, 3792600; 521700, 3792700; 521400, 3792700; 521400, 3792900; 521200, 3792900; 521200, 3793200; 521300, 3793200; and 521300, 3793300.

(xxxvii) Subunit 1aj: Land bounded by the following UTM11 NAD27 coordinates (E, N): 524100, 3792500; 524300, 3792500; 524300, 3792400; 524500, 3792400; 524500, 3792300; 524700, 3792300; 524700, 3792200; 524800, 3792200; 524800, 3792100; 524900, 3792100; 524900, 3792200; 525300, 3792200; 525300, 3792100; 525400, 3792100; 525400, 3791800; 525300, 3791800; 525300, 3791600; 525500, 3791600; 525500, 3791500; 525600, 3791500; 525600, 3791300; 525700, 3791300; 525700, 3791200; 525800, 3791200; 525800, 3791500; 526200, 3791500; 526200, 3791300; 526300, 3791300; 526300, 3791200; 526500, 3791200; 526500, 3791100; 526700, 3791100; 526700, 3791000; 526800, 3791000; 526800, 3791100; 527100, 3791100; 527100, 3791000; 527200, 3791000; 527200, 3790900; 527400, 3790900; 527400, 3790600; 527500, 3790600; 527500, 3790100; 527000, 3790100; 527000, 3790200; 526900, 3790200; 526900, 3790400; 526600, 3790400; 526600, 3790500; 526500, 3790500; 526500, 3790200; 526400, 3790200; 526400, 3790100; 526300, 3790100; 526300, 3790000; 526000, 3790000; 526000, 3790500; 525700, 3790500; 525700, 3790400; 525600, 3790400; 525600, 3790500; 525500, 3790500; 525500, 3790600; 525400, 3790600; 525400, 3790700; 525300, 3790700; 525300, 3791000; 525100, 3791000; 525100, 3791200; 524800, 3791200; 524800, 3791300; 524700, 3791300; 524700, 3791200; 524300, 3791200; 524300, 3791300; 524200, 3791300; 524200, 3791400; 524000, 3791400; 524000, 3791500; 523800, 3791500; 523800, 3791900; 524200, 3791900; 524200, 3792100; 524000, 3792100; 524000, 3792400; 524100, 3792400; and 524100, 3792500; excluding land bounded by 525900, 3791100; 525900, 3790900; 526000, 3790900; 526000, 3791100; and 525900, 3791100.

(xxxviii) Subunit 1ak: Land bounded by the following UTM11 NAD27 coordinates (E, N): 527600, 3790400; 527900, 3790400; 527900, 3790300; 528000, 3790300; 528000, 3790100; 527900, 3790100; 527900, 3790000; 527600, 3790000; and 527600, 3790400.

(xxxix) Subunit 1al: Land bounded by the following UTM11 NAD27 coordinates (E, N): 527900, 3789600; 528200, 3789600; 528200, 3789300; 527800, 3789300; 527800, 3789500; 527900, 3789500; and 527900, 3789600.

(xl) Subunit 1am: Land bounded by the following UTM11 NAD27 coordinates (E, N): 526900, 3789400; 527100, 3789400; 527100, 3789300; 527200, 3789300; 527200, 3789100; 527400, 3789100; 527400, 3789200; 527700, 3789200; 527700, 3789100; 527800, 3789100; 527800, 3789000; 528000, 3789000; 528000, 3789100; 528400, 3789100; 528400, 3789000; 528500, 3789000; 528500, 3788900; 528600, 3788900; 528600, 3788700; 528700, 3788700; 528700, 3788600; 528800, 3788600; 528800, 3788400; 528900, 3788400; 528900, 3788300; 529000, 3788300; 529000, 3788100; 528900, 3788100; 528900, 3788000; 528700, 3788000; 528700, 3788100; 528100, 3788100; 528100, 3788300; 527900, 3788300; 527900, 3788400; 527800, 3788400; 527800, 3788500; 527700, 3788500; 527700, 3788600; 527600, 3788600; 527600, 3788500; 527200, 3788500; 527200, 3788700; 527100, 3788700; 527100, 3788600; 526800, 3788600; 526800, 3788700; 526600, 3788700; 526600, 3788900; 526700, 3788900;

526700, 3789000; 526900, 3789000; and 526900, 3789400.

(xli) Subunit 1an: Land bounded by the following UTM11 NAD27 coordinates (E, N): 529200, 3788100; 529500, 3788100; 529500, 3787700; 529400, 3787700; 529400, 3787600; 529100, 3787600; 529100, 3788000; 529200, 3788000; and 529200, 3788100.

(xlii) Subunit 1ao: Land bounded by the following UTM11 NAD27 coordinates (E, N): 530200, 3788000; 531100, 3788000; 531100, 3787600; 530800, 3787600; 530800, 3787500; 530900, 3787500; 530900, 3787200; 530200, 3787200; 530200, 3787300; 530100, 3787300; 530100, 3787500; 530200, 3787500; and 530200, 3788000.

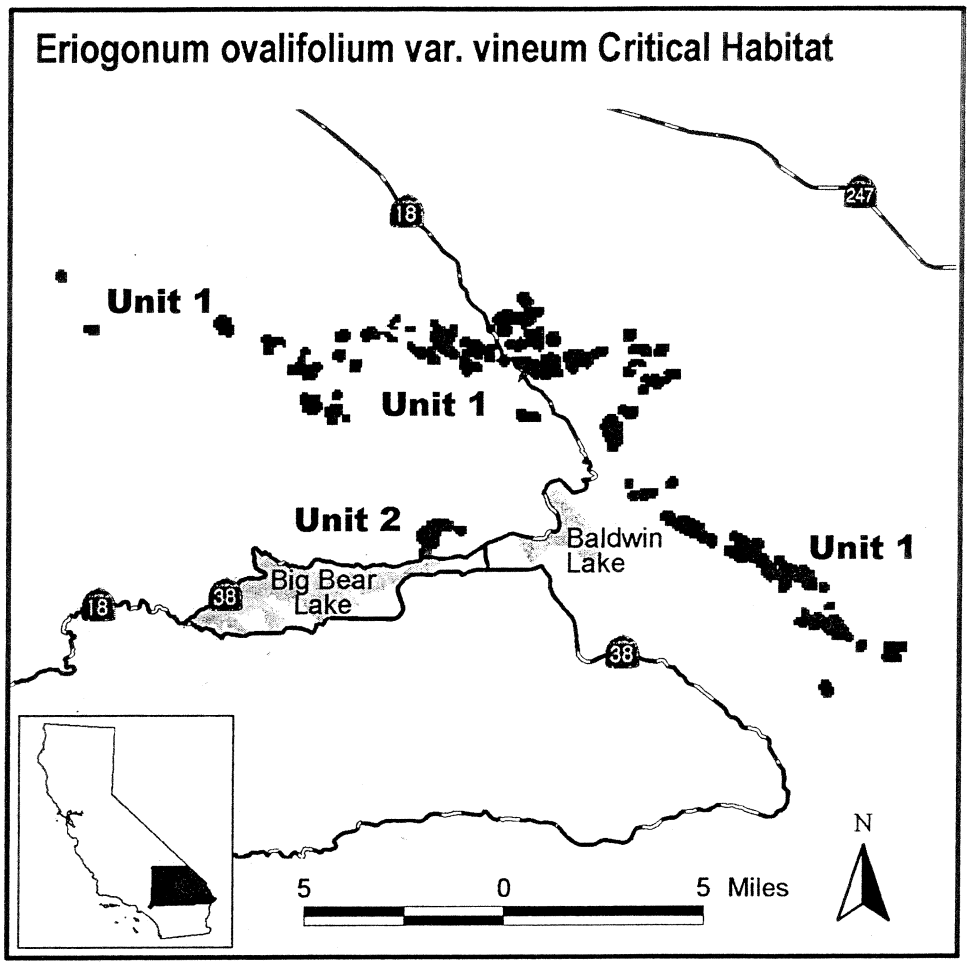
(xliii) Subunit 1ap: Land bounded by the following UTM11 NAD27 coordinates (E, N): 527700, 3786500; 528000, 3786500; 528000, 3786400; 528100, 3786400; 528100, 3786200; 528200, 3786200; 528200, 3785900; 528100, 3785900; 528100, 3785800; 527800, 3785800; 527800, 3785900; 527700, 3785900; 527700, 3786100; 527600, 3786100; 527600, 3786300; 527700, 3786300; and 527700, 3786500.

(5) Bertha Ridge Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Fawnskin and Big Bear City, California, land bounded by the following UTM11 NAD27 coordinates (E, N): 512000, 3793000; 512700, 3793000; 512700, 3792900; 512900, 3792900; 512900, 3792700; 513400, 3792700; 513400, 3792400; 513300, 3792400; 513300, 3792300; 513100, 3792300; 513100, 3792400; 513000, 3792400; 513000, 3792500; 512900, 3792500; 512900, 3792600; 512800, 3792600; 512800, 3792500; 512400, 3792500; 512400, 3792300; 512300, 3792300; 512300, 3791900; 512200, 3791900; 512200, 3791800; 512000, 3791800; 512000, 3791600; 511900, 3791600; 511900, 3791400; 511500, 3791400; 511500, 3791800; 511600, 3791800; 511600, 3792000; 511500, 3792000; 511500, 3792100; 511400, 3792100; 511400, 3792500; 511500, 3792500; 511500, 3792600; 511600, 3792600; 511600, 3792700; 511800, 3792700; 511800, 3792900; 512000, 3792900; and 512000, 3793000.

(ii) Note: *Eriogonum ovalifolium* var. *vineum* map follows:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

* * * * *

**Family Polygonaceae: *Oxytheca Parishii* var. *goodmaniana* (Cushenbury Oxytheca)**

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Oxytheca parishii* var. *goodmaniana* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements of critical habitat for this species are listed below and consist of, but are not limited to:

(i) Soils derived primarily from upslope limestone, a mixture of limestone and dolomite, or limestone talus substrates with parent materials that include Bird Spring Formation, Bonanza King Formation, middle and lower members of the Monte Cristo Limestone, and the Crystal Pass member of the Sultan Limestone Formation at elevations between 1,440 and 2,372 m (4,724 and 7,782 ft);

(ii) Soils with intact, natural surfaces that have not been substantially altered by land use activities (*e.g.*, graded, excavated, re-contoured, or otherwise altered by ground-disturbing equipment); and

(iii) Associated plant communities that have areas with a moderately open canopy cover (generally between 25 and 53 percent (Neel 2000)).

(3) Existing features and structures, such as buildings, active mines, paved or unpaved roads, other paved or cleared areas, lawns, and other urban landscaped areas, are not likely to contain one or more of the primary

constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

(4) Northeastern Slope Unit, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Butler Peak, Fawnskin, Big Bear City, Rattlesnake Canyon, and Onyx Peak, California.

(ii) Subunit 1a: Land bounded by the following UTM11 NAD27 coordinates (E, N): 498200, 3801600; 498500, 3801600; 498500, 3801500; 498600, 3801500; 498600, 3801200; 498300, 3801200; 498300, 3801300; 498200, 3801300; and 498200, 3801600.

(iii) Subunit 1b: Land bounded by the following UTM11 NAD27 coordinates (E, N): 498800, 3801200; 499400, 3801200; 499400, 3800900; 499500, 3800900; 499500, 3800800; 499600, 3800800; 499600, 3800600; 499500, 3800600; 499500, 3800500; 499400, 3800500; 499400, 3800400; 499100, 3800400; 499100, 3800300; 499000, 3800300; 499000, 3800000; 498900, 3800000; 498900, 3799900; 498700, 3799900; 498700, 3799600; 498300, 3799600; 498300, 3800000; 498400, 3800000; 498400, 3800100; 498600, 3800100; 498600, 3800300; 498500, 3800300; 498500, 3800400; 498200, 3800400; 498200, 3800500; 498000, 3800500; 498000, 3800800; 498400, 3800800; 498400, 3800900; 498700, 3800900; 498700, 3801100; 498800, 3801100; and 498800, 3801200.

(iv) Subunit 1c: Land bounded by the following UTM11 NAD27 coordinates (E, N): 500200, 3799900; 500600, 3799900; 500600, 3799800; 500700, 3799800; 500700, 3799600; 500600, 3799600; 500600, 3799500; 500300, 3799500; 500300, 3799600; 500200, 3799600; and 500200, 3799900.

(v) Subunit 1d: Land bounded by the following UTM11 NAD27 coordinates (E, N): 502800, 3797400; 503400, 3797400; 503400, 3797200; 503500, 3797200; 503500, 3797000; 503400, 3797000; 503400, 3796900; 502900, 3796900; 502900, 3797000; 502800, 3797000; and 502800, 3797400.

(vi) Subunit 1e: Land bounded by the following UTM11 NAD27 coordinates (E, N): 503600, 3799300; 504000, 3799300; 504000, 3798600; 504300, 3798600; 504300, 3798500; 504400, 3798500; 504400, 3798400; 505300, 3798400; 505300, 3798300; 505500, 3798300; 505500, 3798000; 505300, 3798000; 505300, 3797700; 505100, 3797700; 505100, 3797800; 505000, 3797800; 505000, 3798000; 504500, 3798000; 504500, 3797900; 504300, 3797900; 504300, 3798000; 504000, 3798000; 504000, 3798100; 503900, 3798100; 503900, 3798300; 503800, 3798300; 503800, 3798100; 503500, 3798100; 503500, 3798000; 503100, 3798000; 503100, 3798400; 503200, 3798400; 503200, 3798500; 503700, 3798500; 503700, 3798600; 503600, 3798600; and 503600, 3799300.

(vii) Subunit 1f: Land bounded by the following UTM11 NAD27 coordinates (E, N): 506700, 3799500; 506900, 3799500; 506900, 3799200; 507200, 3799200; 507200, 3799300; 507500, 3799300; 507500, 3799200; 507600, 3799200; 507600, 3799000; 507500, 3799000; 507500, 3798900; 507400, 3798900; 507400, 3798800; 506900, 3798800; 506900, 3798900; 506700, 3798900; 506700, 3798800; 506000, 3798800; 506000, 3799200; 506600, 3799200; 506600, 3799400; 506700, 3799400; and 506700, 3799500.

(viii) Subunit 1g: Land bounded by the following UTM11 NAD27 coordinates (E, N): 506800, 3798100; 507300, 3798100; 507300, 3797800; 507400, 3797800; 507400, 3797700; 507600, 3797700; 507600, 3797600; 507900, 3797600; 507900, 3797500; 508000, 3797500; 508000, 3797400; 508100, 3797400; 508100, 3797200; 508200, 3797200; 508200, 3797000; 508300, 3797000; 508300, 3796700; 508400, 3796700; 508400, 3796600; 508500, 3796600; 508500, 3796200; 508200, 3796200; 508200, 3796100; 507700, 3796100; 507700, 3796500; 507800, 3796500; 507800, 3796600; 507900, 3796600; 507900, 3796700; 507800, 3796700; 507800, 3796800; 507700, 3796800; 507700, 3797000; 507600, 3797000; 507600, 3797400; 507500, 3797400; 507500, 3797300; 507400, 3797300; 507400, 3797200; 507000, 3797200; 507000, 3797300; 506900, 3797300; 506900, 3797400; 506800, 3797400; 506800, 3797600; 506700, 3797600; 506700, 3798000; 506800, 3798000; and 506800, 3798100.

(ix) Subunit 1h: Land bounded by the following UTM11 NAD27 coordinates (E, N): 508800, 3799300; 509000, 3799300; 509000, 3799200; 509100, 3799200; 509100, 3798800; 509000, 3798800; 509000, 3798700; 508800, 3798700; 508800, 3798800; 508700, 3798800; 508700, 3799100; 508800, 3799100; and 508800, 3799300.

(x) Subunit 1i: Land bounded by the following UTM11 NAD27 coordinates (E, N): 509300, 3801000; 509600, 3801000; 509600, 3800800; 509700, 3800800; 509700, 3800700; 509800, 3800700; 509800, 3800500; 510100, 3800500; 510100, 3800400; 510300, 3800400; 510300, 3800300; 510500, 3800300; 510500, 3800000; 509900, 3800000; 509900, 3800100; 509500, 3800100; 509500, 3800400; 509600, 3800400; 509600, 3800500; 509500, 3800500; 509500, 3800600; 509400, 3800600; 509400, 3800800; 509300, 3800800; and 509300, 3801000.

(xi) Subunit 1j: Land bounded by the following UTM11 NAD27 coordinates (E, N): 511000, 3800100; 511200, 3800100; 511200, 3800000; 511300, 3800000; 511300, 3799900; 511500, 3799900; 511500, 3799800; 511600, 3799800; 511600, 3799600; 511500, 3799600; 511500, 3799500; 511300, 3799500; 511300, 3799600; 511200, 3799600; 511200, 3799800; 511100, 3799800; 511100, 3799900; 511000, 3799900; and 511000, 3800100.

(xii) Subunit 1k: Land bounded by the following UTM11 NAD27 coordinates (E, N): 512300, 3800600; 512600, 3800600; 512600, 3800500; 512700, 3800500; 512700, 3800100; 512600, 3800100; 512600, 3799900; 512700, 3799900; 512700, 3799600; 512300, 3799600; 512300, 3799700; 512100, 3799700; 512100, 3799600; 511700, 3799600; 511700, 3799800; 511900, 3799800; 511900, 3799900; 512000, 3799900; 512000, 3799800; 512100, 3799800; 512100, 3800000; 511900, 3800000; 511900, 3800100; 511800, 3800100; 511800, 3800500; 512300, 3800500; and 512300, 3800600.

(xiii) Subunit 1l: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3799300; 513600, 3799300; 513600, 3799200; 513700, 3799200; 513700, 3798900; 513600, 3798900; 513600, 3798800; 513400, 3798800; 513400, 3798900; 513200, 3798900; 513200, 3799200; 513300, 3799200; and 513300, 3799300.

(xiv) Subunit 1m: Land bounded by the following UTM11 NAD27 coordinates (E, N): 513300, 3800400; 513500, 3800400; 513500, 3800200; 513700, 3800200; 513700, 3800100; 513800, 3800100; 513800, 3800000; 514000, 3800000; 514000, 3799900; 514100, 3799900; 514100, 3799700; 513800, 3799700; 513800, 3799800; 513700, 3799800; 513700, 3799900; 513300, 3799900; 513300, 3800000; 513200, 3800000; 513200, 3800300; 513300, 3800300; and 513300, 3800400.

(xv) Subunit 1n: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514200, 3800800; 514400, 3800800; 514400, 3800700; 514500, 3800700; 514500, 3800500; 514200, 3800500; and 514200, 3800800.

(xvi) Subunit 1o: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514800, 3801300; 515000, 3801300; 515000, 3801200; 515100, 3801200; 515100, 3801000; 515000, 3801000; 515000, 3800900; 514700, 3800900; 514700, 3801200; 514800, 3801200; and 514800, 3801300.

(xvii) Subunit 1p: Land bounded by the following UTM11 NAD27 coordinates (E, N): 514600, 3799700; 514900, 3799700; 514900, 3799400; 514600, 3799400; and 514600, 3799700.

(xviii) Subunit 1q: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515900, 3802200; 516200, 3802200; 516200, 3801900; 516100, 3801900; 516100, 3801800; 515900, 3801800; 515900, 3801900; 515800, 3801900; 515800, 3802100; 515900, 3802100; and 515900, 3802200.

(xix) Subunit 1r: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516100, 3801400; 516400, 3801400; 516400, 3801000; 516100, 3801000; 516100, 3801100; 516000, 3801100; 516000, 3801300; 516100, 3801300; and 516100, 3801400.

(xx) Subunit 1s: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515300, 3800400; 515600, 3800400; 515600, 3800300; 515700, 3800300; 515700, 3799800; 515600, 3799800; 515600, 3799700; 515300, 3799700; and 515300, 3800400.

(xxi) Subunit 1t: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515700, 3800600; 516100, 3800600; 516100, 3800500; 516400, 3800500; 516400, 3800400; 516500, 3800400; 516500, 3799800; 516400, 3799800; 516400, 3799700; 516300, 3799700; 516300, 3799800; 516100, 3799800; 516100, 3800000; 516000, 3800000; 516000, 3800100; 515800, 3800100; 515800, 3800300; 515700, 3800300; and 515700, 3800600.

(xxii) Subunit 1u: Land bounded by the following UTM11 NAD27 coordinates (E, N): 516800, 3800400; 517100, 3800400; 517100, 3800300; 517200, 3800300; 517200, 3800000; 516800, 3800000; and 516800, 3800400.

(xxiii) Subunit 1v: Land bounded by the following UTM11 NAD27 coordinates (E, N): 515500, 3799600; 515900, 3799600; 515900, 3799500; 516000, 3799500; 516000, 3799400; 516400, 3799400; 516400, 3799300; 516500, 3799300; 516500, 3799100; 516700, 3799100; 516700, 3799200; 516600, 3799200; 516600, 3799400; 516700, 3799400; 516700, 3799500; 517000, 3799500; 517000, 3799300; 517100, 3799300; 517100, 3799100; 517200, 3799100; 517200, 3798700; 516500, 3798700; 516500, 3798800; 516300, 3798800; 516300, 3798900; 516200, 3798900; 516200, 3799000; 516100, 3799000; 516100, 3799100; 515900, 3799100; 515900, 3799000; 515700, 3799000; 515700, 3798900; 515400, 3798900; 515400, 3799000;

515300, 3799000; 515300, 3799300; 515400, 3799300; 515400, 3799500; 515500, 3799500; and 515500, 3799600.

(xxiv) Subunit 1w: Land bounded by the following UTM11 NAD27 coordinates (E, N): 517500, 3799800; 518000, 3799800; 518000, 3799700; 518300, 3799700; 518300, 3799800; 518600, 3799800; 518600, 3799700; 518800, 3799700; 518800, 3799400; 518600, 3799400; 518600, 3799300; 518700, 3799300; 518700, 3798900; 518300, 3798900; 518300, 3799000; 518200, 3799000; 518200, 3799100; 517900, 3799100; 517900, 3798800; 517800, 3798800; 517800, 3798700; 517500, 3798700; 517500, 3799000; 517400, 3799000; 517400, 3799300; 517500, 3799300; and 517500, 3799800.

(xxv) Subunit 1x: Land bounded by the following UTM11 NAD27 coordinates (E, N): 520900, 3798700; 521200, 3798700; 521200, 3798600; 521300, 3798600; 521300, 3798300; 521200, 3798300; 521200, 3798100; 520800, 3798100; 520800, 3798200; 520700, 3798200; 520700, 3798600; 520900, 3798600; and 520900, 3798700.

(xxvi) Subunit 1y: Land bounded by the following UTM11 NAD27 coordinates (E, N): 526700, 3791000; 527000, 3791000; 527000, 3790900; 527300, 3790900; 527300, 3790800; 527400, 3790800; 527400, 3790600; 527000, 3790600; 527000, 3790400; 526600, 3790400; 526600, 3790700; 526700, 3790700; and 526700, 3791000.

(xxvii) Subunit 1z: Land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3790700; 528200, 3790700; 528200, 3790300; 528000, 3790300; 528000, 3790200; 527800, 3790200; 527800, 3790300; 527700, 3790300; 527700, 3790600; 527800, 3790600; and 527800, 3790700.

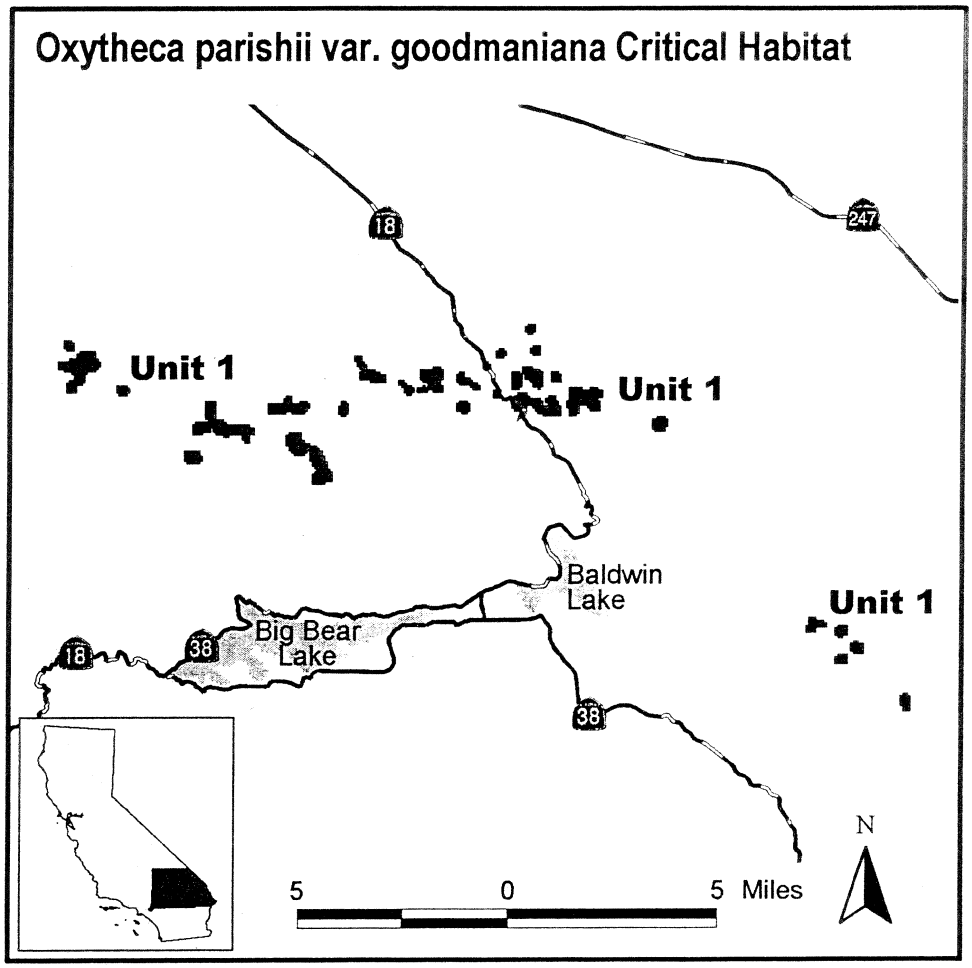
(xxviii) Subunit 1aa: Land bounded by the following UTM11 NAD27 coordinates (E, N): 527800, 3789600; 528200, 3789600; 528200, 3789200; 527700, 3789200; 527700, 3789500; 527800, 3789500; and 527800, 3789600.

(xxix) Subunit 1ab: Land bounded by the following UTM11 NAD27 coordinates (E, N): 528400, 3790100; 528600, 3790100; 528600, 3790000; 528800, 3790000; 528800, 3789600; 528400, 3789600; 528400, 3789700; 528300, 3789700; 528300, 3790000; 528400, 3790000; and 528400, 3790100.

(xxx) Subunit 1ac: Land bounded by the following UTM11 NAD27 coordinates (E, N): 530300, 3788100; 530500, 3788100; 530500, 3788000; 530600, 3788000; 530600, 3787400; 530300, 3787400; 530300, 3787600; 530200, 3787600; 530200, 3788000; 530300, 3788000; and 530300, 3788100.

(xxxi) Note: *Oxytheca parishii* var. *goodmaniana* map follows:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

* * * * *

Dated: December 9, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02–31631 Filed 12–23–02; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
December 24, 2002

# Part III

# Environmental Protection Agency

## 40 CFR Parts 63, 264, and 265

## National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 63, 264, and 265**

**[FRL–7418–4]**

**RIN 2060–AG99**

## National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for automobile and light-duty truck surface coating operations located at major sources of hazardous air pollutants (HAP). The proposed NESHAP would implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The primary HAP emitted by these operations are toluene, xylene, glycol ethers, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), ethylbenzene, and methanol. The proposed rule would reduce nationwide HAP emissions from these major sources by about 60 percent.

This action also proposes to amend the Air Emission Standards for Equipment Leaks for owners and operators of hazardous waste treatment, storage, and disposal facilities to exempt certain activities covered by the proposed NESHAP from these standards.

**DATES:** *Comments.* Submit comments on or before February 7, 2003.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing, they should do so by January 3, 2003. If requested, a public hearing will be held approximately 15 days after the date of publication of this document in the **Federal Register**.

**ADDRESSES:** *Comments.* By U.S. Postal Service, written comments should be submitted (in duplicate if possible) to: Office of Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2001–22, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Office of Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–2001–22, U.S. EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

*Public Hearing.* If a public hearing is held, it will be held at our Office of Administration auditorium in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946 to request to speak at a public hearing or to find out if a hearing will be held.

*Docket.* Docket No. A–2001–22 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW, Washington, DC 20460 in Room B108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Salman, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0859; facsimile number (919) 541–5689; electronic mail (e-mail) address: *salman.dave@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by e-mail to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–2001–22. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Mr. David Salman, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Regulated Entities.* Categories and entities potentially regulated by this action are listed in Table 1.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

| Category | NAICS | Examples of potentially regulated entities |
|---|---|---|
| Industry | 336111<br>336112<br>336211 | Automobile and light-duty truck assembly plants, producers of automobile and light-duty truck bodies. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in section § 63.3081 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Outline.* The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from automobile and light-duty truck surface coating?
II. Summary of the Proposed Rule
A. What source categories are affected by this proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and other standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance provisions?
H. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
G. How did we select the continuous compliance requirements?
H. How did we select the notification, recordkeeping, and reporting requirements?
I. How did we select the compliance date?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental, and energy impacts?
E. Can we achieve the goals of the proposed rule in a less costly manner?
V. How will the proposed amendments to 40 CFR parts 264 and 265, subparts BB of the hazardous waste regulations be implemented in the States?
A. Applicability of Federal Rules in Authorized States
B. Authorization of States for Today's Proposed Amendments
VI. Solicitation of Comments and Public Participation
VII. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

## I. Background

### *A. What is the Source of Authority For Development of NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Surface Coating of Automobiles and Light-duty Trucks category of major sources was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit equal to, or greater than, 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

### *B. What Criteria Are Used in the Development of NESHAP?*

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

### *C. What Are the Health Effects Associated With HAP Emissions From Automobile and Light-Duty Truck Surface Coating?*

The major HAP emitted from the automobile and light-duty truck surface coating source category are toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. These compounds account for over 95 percent of the nationwide HAP emissions from this source category. These pollutants can cause toxic effects following sufficient exposure. Some of the potential toxic effects include effects to the central nervous system, such as fatigue, nausea, tremors, and lack of coordination; adverse effects on the liver, kidneys, and blood; respiratory effects; and developmental effects.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are

dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

## II. Summary of the Proposed Rule

### *A. What Source Categories Are Affected by This Proposed Rule?*

The proposed rule would apply to you if you own or operate an automobile and light-duty truck surface coating operation that is a major source, or is located at a major source, or is part of a major source of HAP emissions. We have defined an automobile and light-duty truck surface coating operation as any facility engaged in the surface coating of new automobile or new light-duty truck bodies or collections of body parts for new automobiles or new light-duty trucks. Coating operations included in this source category include, but are not limited to, the application of electrodeposition primer, primer-surfacer, topcoat (including basecoat and clear coat), final repair, glass bonding primer, glass bonding adhesive, sealer, adhesive, and deadener. The application of blackout and anti-chip materials is included in these coating operations, as is the cleaning and purging of equipment associated with the coating operations. Automobile customizers, body shops, and refinishers are excluded from this source category. Coating of separate, non-body miscellaneous metal parts and separate, non-body plastic parts that are not attached to the vehicle body at the time that the coatings are applied to these parts is excluded from this source category.

You would not be subject to the proposed rule if your coating operation is located at an area source. An area source is any stationary source of HAP that is not a major source. You may establish area source status prior to the compliance date of the final rule by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations.

We are also proposing to amend the Resource Conservation and Recovery Act (RCRA) Air Emissions Standards for Equipment Leaks at 40 CFR parts 264 and 265, subparts BB. The amendments would exempt facilities which would otherwise be subject to requirements of subparts BB if they are subject to the requirements of this proposed NESHAP. Generally, subparts BB of 40 CFR parts 264 and 265 apply to equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight. The regulations apply to large quantity generators as well as to RCRA treatment, storage, and disposal facilities. The regulations were designed to minimize the potential for leaks from pumps, valves, flanges, and connections.

The work practice standards that must be met in this proposed NESHAP in § 63.3094 address coating line purging emissions that would result from solvent purging of coating applicators, and the subsequent collection and transmission of the paint/solvent mixture to reclamation or recovery system. The collection and transmission systems would potentially be subject to the requirements of subparts BB. To avoid duplication, and because any potential for air releases from these sources are relatively small, we are proposing that if such a collection, transmission, and reclamation or recovery system is located at a facility subject to this proposed NESHAP, then it is exempt from the requirements of subparts BB of 40 CFR parts 264 and 265.

As stated elsewhere in this preamble, the HAP emissions from these sources are relatively small in comparison with the coating application, drying, and curing. Measurements made by industry indicate that emissions of VOC would be at least two orders of magnitude less than concentrations that would meet the definition of a leak under subparts BB of 40 CFR parts 264 and 265. Additionally, because the mixture is usually sold to a solvent recycler, the industry has an incentive to capture as much of the solvent as possible, and would therefore want to repair any leaks as quickly as possible.

In addition to the coating operations covered under the proposed NESHAP, some automobile and light-duty truck facilities also have separate, non-body plastic parts coating operations or separate, non-body metal parts coating operations. Purges from these separate, non-body plastic parts coating operations and separate, non-body metal parts coatings operations are analogous to those for automobile and light-duty truck body coatings and would also be exempt from the requirements of subparts BB of 40 CFR parts 264 and 265, if the operations occur in the same facility as the automobile and light-duty truck body coating. Many of the coatings applied to separate, non-body plastic and separate, non-body metal parts are similar in composition to those applied to automobile and light-duty truck bodies. The purged materials are conveyed to waste tanks in the same fashion as the purged materials from automobile and light-duty truck body coating operations.

### *B. What Is the Relationship to Other Rules?*

Affected sources subject to the proposed rule may also be subject to other rules. Automobile and light-duty truck surface coating operations that began construction, reconstruction, or modification after October 5, 1979 are subject to new source performance standards (NSPS) under 40 CFR part 60, subpart MM. That rule limits emissions of volatile organic compounds (VOC). The EPA has also published control techniques guidelines which establish reasonably available control technologies for limiting VOC emissions from automobile and light-duty truck surface coating operations. Additional VOC emission limitations may also apply to these facilities through conditions incorporated in State operating permits and permits issued under authority of title V of the CAA. Facilities in this subcategory may also be subject to various emission limitations pursuant to State air toxics rules.

An automobile and light-duty truck surface coating facility may be subject to other NESHAP. Rules are presently under development which will limit emissions from coating operations conducted on separate, non-body miscellaneous metal parts and separate, non-body plastic parts and products. Coating of parts (such as automobile bumpers, fascias, brackets, etc.) for subsequent attachment to vehicle bodies would be subject to one or more of these rules, as would collocated aftermarket replacement part coating operations. Facilities may also be subject to other rules relating to collocated equipment such as foundries and boilers.

The capture, transmission, and storage of purge materials from coating equipment may also be subject to the RCRA Air Emission Standards for Equipment Leaks under subparts BB of 40 CFR parts 264 and 265. Those regulations apply to equipment that contains or contacts RCRA hazardous waste with organic concentrations of at least 10 percent by weight. To avoid such possible duplication, we are proposing to exempt such equipment from subparts BB if it is located at a

facility subject to this proposed NESHAP.

*C. What Are the Primary Sources of Emissions and What Are the Emissions?*

*HAP emission sources.* Emissions from coating application, drying, and curing account for most of the HAP emissions from automobile and light-duty truck surface coating operations. The remaining emissions are primarily from cleaning of booths and application equipment and purging of spray equipment. In most cases, HAP emissions from surface preparation, storage, handling, and waste/wastewater operations are relatively small.

*Organic HAP.* Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from automobile and light-duty truck surface coating operations are toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. These compounds account for over 95 percent of the nationwide HAP emissions from this source category.

*Inorganic HAP.* Based on information reported during the development of the proposed NESHAP, lead, manganese, and chromium are contained in some of the coatings used by this source category but are not likely to be emitted due to the coating application techniques used. No inorganic HAP were reported in thinners or cleaning materials. Most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated, are collected by the circulating water under the spray booth floor grates, or are deposited on the walls, floor, and grates of the spray booths and other equipment in which they are applied. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified.

*D. What Is the Affected Source?*

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed rule for automobile and light-duty truck surface coating defines the affected source as all of the equipment used to apply coating to new automobile or new light-duty truck bodies or collections of body parts for new automobiles or new light-duty trucks and to dry or cure the coating after application; all storage containers and mixing vessels in which vehicle body coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying vehicle body coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by an automobile and light-duty truck surface coating operation.

The affected source does not include research or laboratory equipment or janitorial, building, and facility maintenance operations.

*E. What Are the Emission Limits, Operating Limits, and Other Standards?*

*Emission limits.* We are proposing to limit organic HAP emissions from each new or reconstructed automobile and light-duty truck surface coating facility using the emission limits in Table 2 of this preamble.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES (MONTHLY AVERAGE)

| Operation | Limit |
|---|---|
| Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation. | 0.036 kilogram (kg) (0.30 pound (lb)) organic HAP/liter (HAP/gallon (gal)) of coating solids deposited). |
| Combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation (for sources meeting the operating limits of § 63.3092(a) and (b)). | 0.060 kg (0.50 lb organic HAP/1iter (HAP/gal) of coating solids deposited). |
| Adhesives and sealers, other than glass bonding adhesive | 0.010 kg/kg (lb/lb) of material used. |
| Deadener | 0.010 kg/kg (lb/lb) of material used. |

We are proposing to limit organic HAP emissions from each existing automobile and light-duty truck surface coating facility using the emission limits in Table 3 of this preamble.

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES (MONTHLY AVERAGE)

| Operation | Limit |
|---|---|
| Combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation. | 0.072 kg (0.60 lb) organic HAP/liter (HAP/gal) of coating deposited. |
| Combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operation (for sources meeting the operating limits of § 63.3092(a) and (b)). | 0.132 kg (1.10 lb) organic HAP/liter (HAP/gal) of coating solids deposited. |
| Adhesives and sealers other than glass bonding adhesive | 0.010 kg/kg (lb/lb) of material used. |
| Deadener. | 0.010 lb/lb (kg/kg) of material used. |

You would calculate emissions from combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations, or from combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations using the procedures in the proposed rule, which account for variable organic HAP contents of the materials applied in each month, as well as transfer efficiency and overall efficiencies of any capture systems and control devices in use. You would average organic HAP contents of other materials used on a monthly basis to determine separately those emissions from sealers and adhesives (other than glass bonding adhesive), and deadeners.

*Operating limits.* If you use an emission capture and control system to reduce emissions, the proposed operating limits would apply to you. These proposed operating limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems, you would identify the parameter(s) to monitor and establish the limits and monitoring procedures. For thermal and catalytic oxidizers, you would establish temperature limits. For solvent recovery systems, you would

monitor the outlet concentration or carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. All operating limits must reflect operation of the capture and control system during a performance test that demonstrates achievement of the emission limit during representative operating conditions.

*Work practice standards.* You would have to develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in and waste materials generated by all coating operations for which emission limits are proposed. The plan would have to specify practices and procedures to ensure that, at a minimum, the following elements are implemented:

- All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.
- The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.
- Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.
- Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.
- Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

You would also have to develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are proposed. The plan would have to specify practices and procedures to ensure that emissions of HAP from the following operations are minimized:

- Vehicle body wiping;
- Coating line purging;
- Flushing of coating systems;
- Cleaning of spray booth grates;
- Cleaning of spray booth walls;
- Cleaning of spray booth equipment;
- Cleaning external spray booth areas; and
- Other housekeeping measures (*e.g.*, keeping solvent-laden rags in closed containers.)

*General Provisions.* The General Provisions (40 CFR part 63, subpart A) also would apply to you as outlined in table 2 of the proposed rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that you should be aware of. However, unless specifically overridden in table 2 of the proposed rule, all of the applicable General Provisions requirements would apply to you.

*F. What Are the Testing and Initial Compliance Requirements?*

*Compliance dates.* Existing affected sources would have to be in compliance with the final standards no later than 3 years after the effective date. The effective date is the date on which the final rule is published in the **Federal Register**. New and reconstructed sources would have to be in compliance upon startup of the affected source or by the effective date of the final rule, whichever is later.

Compliance with the emission limits is based on a monthly organic HAP emission rate. The initial compliance period, therefore, is the 1-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following month. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets all the requirements of the proposed rule to achieve the emission limit(s) and operating limits by the end of the initial compliance period, and that the facility is operated in accordance with the approved work practice plans. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance for that period. If it does not meet the applicable limit(s), then it is out of compliance for the entire initial compliance period.

*Emission limits.* Compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive, or the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive would be based on mass organic HAP emissions per volume of applied coating solids as calculated monthly using the procedures in the proposed rule. Compliance with the emission limits for adhesives and sealers (other than glass bonding adhesive) and deadener would be based on mass average organic HAP content of materials used each month.

*Electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive.* Compliance with this emission limit, or if eligible, with the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive, is based on the calculations in the proposed rule. You may also use the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22).

To determine the organic HAP content, the volume solids, and the density of the coatings and thinners, you could rely on manufacturer's data, results from the test methods listed below, or alternative test methods for which you get EPA approval on a case-by-case basis according to the NESHAP General Provisions in 40 CFR 63.7(f). However, if there is any inconsistency between the test results and manufacturer's data, the test results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP. If you choose this option, then use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use either ASTM Method D2697–86 (1968) or ASTM Method D6093–97.
- For density, use ASTM Method D1475–98 or information from the supplier or manufacturer of the material. For each emission capture and control system that you use, you would:
- Conduct an initial performance test to determine the overall control efficiency of the equipment (described below) and to establish operating limits to be achieved on a continuous basis (also described below). The performance test would have to be completed no later than the compliance date. You would also need to schedule it in time to

obtain the results for use in completing your initial compliance determination for the initial compliance period.

The overall control efficiency for a capture and control system would be demonstrated based on emission capture and reduction efficiency. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51; measure the capture efficiency using either EPA Method 204A through F of 40 CFR part 51 or appendix A of 40 CFR part 63, subpart KK; or use the panel test procedures in ASTM Method D5087–91 (1994), ASTM Method D6266–00a, or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22). If you have a permanent total enclosure and you route all exhaust gases from the enclosure to a control device, then you would assume 100 percent capture. For panel testing, the coatings used may be grouped based on similar appearance characteristics (*e.g.*, solid color or metallic), processing sequences, and dry film thicknesses. One coating from each group can be tested to represent all of the coatings in that group.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

You would be required to determine the transfer efficiency for primer-surfacer and topcoat materials using ASTM Method D5066–91 (2001) or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22). These guidelines include provisions for testing representative coatings instead of testing every coating. You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray.

The monthly emission rate, in terms of mass of organic HAP emitted per volume of coating solids deposited, is determined in accordance with the procedures in the proposed rule. These procedures incorporate the volume, organic HAP content, and volume solids content of each coating applied, as well as the transfer efficiency for the coatings and spray equipment used, and the overall control efficiency for controlled booths or bake ovens and other controlled emission points.

*Adhesives and sealers, and deadener.* Compliance with emissions limits for adhesives and sealers (other than windshield materials) would be based on the monthly mass average organic HAP content of all materials of this type used during the compliance period. Compliance with emission limits for deadener would be based on the monthly mass average organic HAP content of all materials of this type used during the compliance period.

*Operating limits.* As mentioned above, you would establish operating limits during the initial performance test of an emission capture and control system. The operating limit is defined as the minimum or maximum (as applicable) value achieved for a control device or process parameter during the most recent performance test that demonstrated compliance with the emission limit.

The proposed rule specifies the parameters to monitor for the types of control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3168 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test and for each 3-hour period, the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limit would be the average temperature increase across the catalyst bed during the performance test and for each 3-hour period, the average temperature increase would have to be at or above this limit. As an alternative for catalytic oxidizers, you may monitor the temperature immediately before the catalyst bed and develop and implement an inspection and maintenance plan.

If you use a solvent recovery system, then you would either: (1) Continuously monitor the outlet concentration of organic compounds, and the operating limit would be the average organic compound outlet concentration during the performance test (for each 3-hour period, the average concentration would have to be below this limit); or (2) monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration, in which case the operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a capture and control system to meet the proposed standards, you would have to meet operating limits for the capture system. If the emission capture system is a permanent total enclosure, you would be required to establish that the direction of flow was into the enclosure at all times. In addition, you would have to meet an operating limit of either an average facial velocity of at least 61 meters per minute (200 feet per minute) through all natural draft openings in the enclosure, or a minimum pressure drop across the enclosure of at least 0.018 millimeter water (0.007 inch water), as established by Method 204 of appendix M to 40 CFR part 51.

If the emission capture system was not a permanent total enclosure, you would have to establish either the average volumetric flow rate or the duct static pressure in each duct between the capture device and the add-on control device inlet during the performance test. Either the average volumetric flow rate would have to be maintained above the operating limit for each 3-hour period or the average duct static pressure would

have to be maintained above the operating limit for each 3-hour period.

*Work practice standards.* You would have to develop and implement two site-specific work practice plans. One plan would address practices to minimize organic HAP emissions from storage, mixing, and conveying of coatings, thinners, and cleaning materials used in operations for which emission limits are established, as well as the waste materials generated from these operations. A second site-specific work practice plan would address practices to minimize emissions from cleaning operations and purging of coating equipment.

The plans would have to address specific types of potential organic HAP emission points and are subject to approval of the Administrator. Deviations from approved work practice plans would be reported semiannually.

*G. What Are the Continuous Compliance Provisions?*

*Emission limits.* Continuous compliance with the emission limit for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive, or if eligible, the emission limit for combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive, would be based on monthly calculations following the procedures in the proposed rule. These procedures take into account the amount of each coating used, the organic HAP and volume solids content of each coating used, the transfer efficiency of each coating application system, and the organic HAP abatement from each capture and control system, and provide for calculating monthly mass organic HAP emissions per volume of coating solids deposited.

Continuous compliance with the emission limits for adhesives and sealers (other than components of the windshield adhesive system), and deadener is based on the monthly average mass organic HAP concentration of all materials applied in each category.

*Operating limits.* If you use an emission capture and control system, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the system is operating outside the range of values established during the performance test, then you have deviated from the established operating limits.

If you operate a capture and control system that allows emissions to bypass the control device, you would have to demonstrate that HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

(1) Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;

(2) Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;

(3) Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or

(4) Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the continuous control device bypass monitoring shows that the control device is bypassed, then you have deviated from the established operating limits.

*Operations during startup, shutdown, and malfunction.* When using an emission capture and control system for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan during periods of startup, shutdown, and malfunction of the capture and control system.

*Work practice standards.* You would be required to operate your facility in accordance with your approved site-specific work practice plans at all times.

*H. What Are the Notification, Recordkeeping, and Reporting Requirements?*

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying by using a capture and control system, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

*Initial notifications.* If the standards apply to you, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency at least 1 year before the compliance date for existing sources, and within 120 days after the date of initial startup for new and reconstructed sources, or 120 days after publication of the final rule in the **Federal Register**, whichever is later. That report notifies us and your State agency that you have an existing facility that is subject to the proposed standards or that you have constructed a new facility. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

*Notification of performance test.* If you demonstrate compliance by using a capture and control system for which you do not conduct a monthly liquid-liquid material balance, you would conduct a performance test no later than the compliance date for your affected source. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin as indicated in the General Provisions for the NESHAP.

*Notification of compliance status.* You would send us a notification of compliance status within 30 days after the end of the initial compliance demonstration. In the notification, you would certify whether the affected source has complied with the proposed standards; summarize the data and calculations supporting the compliance demonstration; describe how you will determine continuous compliance; and for capture and control systems for which you conduct performance tests, provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the source has achieved its operating limits during the initial compliance period.

*Recordkeeping requirements.* The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limit, operating limit, or work practice requirement. You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

You would have to keep the following records:

- A current copy of information provided by materials suppliers such as manufacturer's formulation data or test data used to determine organic HAP or VOC content, solids content, and quantity of the coatings and thinners applied.
- All documentation supporting initial notifications and notifications of compliance status.
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture and control system.
- All maintenance performed on the emission capture and control system.
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in your startup, shutdown, and malfunction plan.
- All information necessary to demonstrate conformance with your startup, shutdown, and malfunction plan when the plan procedures are followed.
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).
- All required measurements needed to demonstrate compliance with the standards.
- All results of performance tests.
- Data and documentation used to determine capture system efficiency or to support a determination that the system is a permanent total enclosure.
- Required work practice plans and documentation to support compliance with the provisions of these plans.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule, including but not limited to the emission limits, operating limits, and work practice standards, is not met.

If you use a capture and control system to reduce organic HAP emissions, you would have to make your startup, shutdown, and malfunction plan available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superceded versions on record for 5 years following the revision.

*Periodic reports.* Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would need to include them in the report as follows:

- Report each deviation from each applicable monthly emission limit.
- Report each deviation from the work practice plan.
- If you are complying by using a thermal oxidizer, report all times when a 3-hour average temperature is below the operating limit.
- If you are complying by using a catalytic oxidizer, report all times when a 3-hour average temperature increase across the catalyst bed is below the operating limit.
- If you are complying by using oxidizers or solvent recovery systems, report all times when the value of the site-specific operating parameter used to monitor the capture system performance was greater than or less than (as appropriate) the operating limit established for the capture system.
- Report other specific information on the periods of time the deviations occurred.

You would also have to send us explanations in each semiannual report if a change occurs that might affect your compliance status.

*Other reports.* You would be required to submit other reports, including those for periods of startup, shutdown, and malfunction of the emission capture and control system. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

## III. Rationale for Selecting the Proposed Standards

### *A. How Did We Select the Source Category?*

Automobile and light-duty truck surface coating is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 9.7 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new and existing major sources. Area sources are not being regulated under this proposed rule.

The automobile and light-duty truck surface coating source category as described in the listing includes any facility engaged in the surface coating of new automobile and light-duty truck bodies. Excluded from this source category are automobile customizers, body shops, and refinishers. For purposes of this proposed rule, we are defining the source category to include the application of electrodeposition primer, primer-surfacer, topcoat (including basecoat and clear coat), final repair, glass bonding primer, glass bonding adhesive, sealer, adhesive, and deadener; all storage containers and mixing vessels in which the above listed coatings, thinners, and cleaning materials associated with the above listed coatings are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and manual and automated equipment used for conveying waste materials generated by a coating operation.

We intend the source category to include facilities for which the surface coating of automobiles and light-duty trucks or automobile and light-duty truck bodies is either their principal activity or is an integral part of an automobile or light-duty truck assembly plant.

The initial listing for this source category included the surface coating of body parts for inclusion in new vehicles. As provided in the initial source category listing notice (57 FR 31576, July 16, 1992):

> . . . the Agency recognizes that these descriptions [in the initial list], like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category.

Some automobile assembly plants operate separate lines which apply coatings to parts such as bumpers, fascias, and brackets for attachment to separately coated vehicle bodies. However, since most plastic and metal parts that are attached to coated vehicle bodies are produced in separate facilities, we have decided that it makes more sense to regulate these off-line plastic and metal parts coating operations under separate NESHAP for surface coating of plastic parts and products and miscellaneous metal parts because of the substantially different equipment that may be used to coat these parts and for consistency with the NSPS and other air pollution control regulations affecting these coating operations.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations.

*B. How Did We Select the Regulated Pollutants?*

*Organic HAP.* Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from automobile and light-duty truck surface coating operations are toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene and methanol. These compounds account for over 95 percent of this category's nationwide organic HAP emissions. Because coatings used in automobile and light-duty truck surface coating contain many combinations of these and other organic HAP, it is not practical to regulate them individually. Therefore, the proposed standards would regulate emissions of all organic HAP.

*Inorganic HAP.* Based on information reported during the development of the proposed NESHAP, inorganic HAP contained in the coatings used by this source category include lead, manganese, and chromium compounds. There is limited opportunity for these HAP to be emitted into the ambient air. The lead compounds are present in the electrodeposition primers. This technique would not typically generate air emissions of these compounds which are in the coating solids. Once the coating solids are deposited on the substrate, they remain on the substrate and are not emitted during cure of the coating. Therefore, we conclude that there are limited or no air emissions of lead compounds. Based on information reported during the development of the proposed NESHAP, a small amount of chromium compounds are contained in a few of the coatings used by this source category. Because these inorganic compounds are in the coating solids, they are retained on the substrate to which they are applied, and the only opportunity for them to enter the ambient air is if they are spray-applied. Because of the atomization of the coating during spray application, inorganic compounds become airborne, and they are either deposited on the substrate, collected by the circulating water under the spray booth floor grates, adhere to the surrounding walls and other surfaces in the area, or enter the air and become susceptible to transport to other areas in the building or outside into the ambient air. The data available to EPA indicate that the facilities in this source category that use spray application techniques sometimes apply coatings that contain inorganic HAP compounds, including small quantities of chromium oxide. Overspray, including that containing inorganic HAP, is controlled to an extremely high level by down-draft impingement in circulating sub-grate water systems.

*C. How Did We Select the Affected Source?*

In selecting the affected sources for MACT standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category or subcategory being regulated. The affected source also serves to distinguish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR 60.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 60.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source. Some source categories are comprised of HAP-emitting equipment and activities that are independent, have no functional interactions at the process level, and are not related to each other in terms of emission control. In these cases, it is reasonable from a MACT implementation perspective to have separate, narrowly defined affected sources for purposes of focusing MACT applicability. An implication of a narrow definition of affected source is that new source MACT requirements could be triggered more frequently as equipment is replaced (potential ''reconstruction'') or facilities are expanded (potential ''construction'') than with a broader definition of affected source, such as some collection of equipment or even the entire facility. This approach is sometimes appropriate based on consideration of emission reductions, cost impacts, and implementation factors.

When a MACT standard is based on total facility emissions, we select an affected source based on the entire facility as well. This approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

The affected source in the automobile and light-duty truck surface coating source category for which MACT standards are being proposed is the equipment used for electrodeposition primer, primer-surfacer, topcoat (including basecoat and clear coat), final repair, glass bonding primer, glass bonding adhesive, sealer, adhesive, and deadener; as well as storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored and mixed; all manual and automated equipment for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation for which an emission limit is proposed. Standards for new sources apply to newly constructed or reconstructed paintshops. All of the organic HAP-emitting coating operations covered by this source category occur within the area of an automobile assembly plant referred to as the paint shop, except for the operations related to glass installation (glass bonding primer, glass bonding adhesive, and pre-installation cleaning) and certain off-line final repair operations. All existing affected sources are located at automobile assembly plants. Other collocated operations at automobile assembly plants may be subject to other NESHAP, including NESHAP currently under development for source categories such as miscellaneous metal parts coating and plastic parts and products coating.

Additional information on the operations at automobile and light-duty truck surface coating facilities that were selected for regulation and other operations that are conducted at automobile assembly plants are included in the docket for the proposed standards.

*D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?*

After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop MACT standards for each category or subcategory. Section 112 establishes a minimum baseline or ''floor'' for standards. For new sources in a category or subcategory, the standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source (section 112(d)(3)). The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for which the Administrator has emissions information (or the best-performing five sources for categories or

subcategories with fewer than 30 sources).

*Electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive.* All 59 facilities in the source category that were in operation in 1997 or 1998 responded to an information collection request (ICR). (Several facilities did not have operating paint shops during this period, but submitted information pertaining to their applications of sealers and adhesives in the assembly process.) Two facilities that presently track their usage and emissions on a line-by-line basis submitted two sets of data each. The responses contained data on the mass of organic HAP emissions per volume of coating solids deposited for each month of a calendar year for electrodeposition primer, primer-surfacer, and topcoat operations; and additional information on final repair, glass bonding primer, and glass bonding adhesive. Final repair and glass bonding materials are functionally tied to the electrodeposition primer, primer-surfacer, and topcoat materials. Final repair materials must be compatible with these other coatings and must provide an exact color and appearance match. Glass bonding materials also must be compatible with these other coatings. The choice of glass bonding materials is highly dependent on the performance characteristics of and interaction with these other coatings. Glass bonds must meet safety requirements issued by the National Highway Transportation Safety Administration. Therefore, we have included final repair, glass bonding primer, and glass bonding adhesive with electrodeposition primer, primer-surfacer, and topcoat.

In most cases, facilities calculated their monthly emissions from primer-surfacer and topcoat operations using a procedure that closely matched the procedure in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22). The calculations took into account the overall efficiency of capture systems and control devices, as well as the transfer efficiency of spray equipment used to apply coatings. In addition, the responses included the mass organic HAP content and the volume solids content of all materials added to the electrodeposition system on a monthly basis. Using the data, we ranked the facilities on the basis of mass of organic HAP emissions per volume of coating solids deposited on an annual basis. Several of the lowest emitting facilities did not apply full body primer-surfacer during the ICR reporting year (although these facilities as well as all other presently operating facilities do so currently). Since the data from these facilities did not represent the current and anticipated industry practices, we eliminated them from the ranking. We then identified the eight facilities with the lowest-organic-HAP emissions (from electrodeposition, primer-surfacer, and topcoat combined) per volume coating solids deposited. As four of the eight lowest emitting plants used a powder primer-surfacer application system which results in a much thicker film than a liquid application system, we adjusted the solids deposited volumes for the powder systems to reflect liquid primer surfacer thicknesses.

We then identified the month of the reporting year with the peak organic HAP emission rate for the eight facilities with the lowest annual emission rates. Since the proposed rule requires compliance each and every month, an emission limit based on the annual emissions would be unachievable by even the lowest emitting plants approximately 6 months of the year. Variations in colors or vehicles produced and the organic HAP contents of different basecoats and color-keyed primer-surfacers leads to unavoidable fluctuations in organic HAP emission rates, even with the same application equipment and capture and control devices in use. The average organic HAP emission rate for the peak month for the eight lowest emitting plants (as determined on an annual basis) was determined to be the MACT floor for a monthly compliance standard for combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations at existing plants.

We have also proposed a compliance demonstration option based on emissions from combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations for those plants with well controlled electrodeposition operations, or that use very low-organic-HAP materials in their electrodeposition primer operation. This was based on the emission rate from primer-surfacer and topcoat application at the eight lowest emitting plants. (The same plants as those with the lowest emission rates from electrodeposition, primer-surfacer, and topcoat combined.) The emission rate without electrodeposition is comparable to the proposed emission rate with electrodeposition when the lower-organic-HAP emissions per volume of coating solids deposited which result from including electrodeposition primer are considered.

The floor for new sources was based on the performance of the plant with the lowest annual emission rate. The peak monthly emission rate for this plant for the reporting year would represent the best consistently achievable emission rate for new sources.

Both the existing source MACT floor and the new source MACT floor are based on monthly compliance. All or nearly all automobile and light-duty truck surface coating facilities are subject to compliance with existing rules demonstrated by calculations based on monthly coating use. The ICR responses upon which the MACT determination was made provided data on a monthly basis. A 1-month time period is the shortest compliance period for which data are available to reliably determine MACT.

*Adhesives and sealers (other than glass binding adhesive), and deadeners.* All facilities in the source category submitted responses to an ICR. The responses contained data on the mass used, and the mass fraction of organic HAP in each of the materials used during the reporting year. The average mass organic HAP content of the materials used throughout the reporting year was determined for each facility. The eight facilities with the lowest-average-organic-HAP content in each group (*i.e.*, adhesives and sealers were considered separately from deadeners) were determined. These facilities used materials with an average mass fraction of organic HAP of less than 0.01 kilogram (kg)/kg (pound (lb)/lb. Because of imprecision in analytical methods at this level, and because the organic HAP reported as zero for some materials at some facilities may have contained traces of organic HAP that were not reported to the facility by the material supplier, the MACT floor mass organic HAP content was determined to be 0.01 kg/kg (lb/lb). This is the lowest level for both new and existing facilities for which compliance could be reliably demonstrated. The proposed rule would require compliance to be demonstrated monthly on the basis of a mass average organic HAP content of the materials used. A shorter compliance time interval would result in excessive recordkeeping with little or no additional reduction in organic HAP emissions. If each and every material used within a particular group of materials meets the monthly average emission limit on an individual basis, then no calculations are required to demonstrate compliance.

*Storage, mixing, and conveying of coatings, thinners, and cleaning*

*materials.* The proposed rule would regulate these operations in accordance with a site-specific work practice plan to be developed subject to approval by the Administrator and implemented by each new and existing source. We have no reliable data on the extent of emissions from these operations but believe them to be low.

*Cleaning and equipment purging emissions.* While the responses to the ICR contain extensive (though in some cases inconsistent) data pertaining to the volumetric use and organic HAP content of cleaning and purging materials, a substantial but unknown fraction of the organic HAP emissions from cleaning and purging operations are captured and controlled. We have no reliable data that would enable us to determine an emission limit for these operations that would represent MACT level control. The proposed rule would regulate these operations in accordance with a site-specific work practice plan to be developed subject to approval by the Administrator and implemented by each new and existing source.

After the floors have been determined for new and existing sources in a source category or subcategory, we must set MACT standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are ''beyond-the-floor,'' taking into account emission reduction, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new and existing sources because different MACT floors and separate standards may be established for new and existing sources.

The eight facilities with the lowest-organic-HAP emission rates from electrodeposition primer, primer-surfacer, and topcoat application employed a combination of various organic HAP emission limitation techniques, including the use of lower-organic-HAP electrodeposition primer materials, powder primer-surfacer, waterborne basecoats, lower-organic-HAP solvent based primer-surfacers, lower-organic-HAP solvent based basecoats and clearcoats, and improved capture and control systems. However, no single technology or combination of technologies representing a beyond-the-floor MACT was identified, nor did we identify any other available technologies which are not presently in use with the potential to decrease organic HAP emissions beyond-the-floor for either new or existing sources.

We expect that many existing plants will improve capture and control device efficiency as a means of compliance. Control options beyond-the-floor could involve even higher overall efficiencies. Because of the dilute nature of the organic HAP-containing streams available for capture, the cost of such a beyond-the-floor limit would exceed $40,000 per ton of incremental organic HAP controlled. We are not proposing beyond-the-floor limits at this time. Following a future analysis of residual risk, EPA may propose a beyond-the-floor emission limit, if it is found to be justified.

The facilities which presently use adhesives and sealers, and deadeners with the lowest-mass-organic-HAP contents would not be able to reliably demonstrate compliance with a standard more stringent than the floor level emission limit for these materials due to uncertainty in the analytical methods available and the expected inability or unwillingness of the suppliers of the materials to certify lower-organic-HAP contents.

A wide variety of techniques exist for reducing organic HAP emissions from mixing, storage, and conveying of coatings, thinners, and cleaning materials, and from cleaning and purging of equipment. Because we have no data upon which to establish a numerical organic HAP emission limit for these operations, we have proposed to regulate them through the development and implementation of site-specific work practice plans. The proposed rule identifies a number of potential emission control practices which must be considered, as applicable, in these work plans. Alternative practices which achieve equivalent or improved emission limitations are also permitted under the proposed rule. Because we are unable to reliably estimate the emissions reductions that will be achieved beyond the present baseline emissions from these operations, the work practices requirements may represent beyond-the-floor standards. We believe that the costs of implementing these work practices will be reasonable, as many of the same or equivalent practices would be required for control of VOC emissions under title V air permits.

In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established if: (1) A pollutant cannot be emitted through a conveyance or capture system, or (2) measurement is not practicable due to technological and economic limitations. All automobile and light-duty truck surface coating facilities use some type of work practice measures to reduce HAP emissions from mixing, storage, conveying, and cleaning and purging as part of their standard operating procedures. They use these measures to decrease solvent usage and minimize exposure to workers. However, data to quantify accurately the emissions reductions achievable by the work practice measures are unavailable, and it is not feasible to measure emissions or enforce a numerical standard for emissions from these operations.

We selected MACT floor level standards for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, glass bonding adhesive, sealer, and adhesive application, and deadener because we were unable to identify any specific technologies that would result in a lower level of emissions. We have proposed a more stringent emission limit for electrodeposition primer, primer-surfacer, and topcoat application for new sources. This more stringent limit is not appropriate for existing sources because of the difficulty, uncertainty, and in some cases, impossibility of retrofitting the best combination of emission limitation techniques to existing facilities, as well as the high cost associated with what would be a beyond-the-floor limit for existing facilities.

We believe the proposed standards for existing sources are achievable because they are presently being achieved by at least six existing sources. We believe the proposed standards for new sources are achievable because they are presently being achieved by the best performing facility in the source category.

We have proposed standards for which compliance would be demonstrated on a monthly basis. The data used to determine MACT for electrodeposition primer, primer-surfacer, and topcoat were based on organic HAP emission limits that were achieved by the best performing plants each month (during which production occurred) during the reporting year for the ICR responses. We used annual data to determine MACT for adhesives and sealers, and deadeners, but believe that monthly compliance is achievable because the standards are based on organic HAP per mass of material, or organic HAP per volume of material and we have no reason to believe that different materials are used at different times throughout the year.

### *E. How Did We Select the Format of the Proposed Standards?*

Numerical emission standards are required by section 112 of the CAA unless we can justify that it is not

feasible to prescribe or enforce an emission standard, in which case a design, equipment, work practice, or operational standard can be set (section 112(h) of the CAA).

*Formats considered.* We considered the following formats for allowable organic HAP emissions from the affected source: (1) Mass of organic HAP per unit weight or volume of coating, coating solids, or coating solids deposited; (2) mass of organic HAP per unit of production; (3) organic HAP concentration exiting a control device; (4) organic HAP emissions per unit surface area coated; and (5) percent reduction achieved by a capture system and control device. Each format is defined, and the major advantages and disadvantages are discussed below.

The first type of format considered would express the emission limitation as mass of organic HAP emissions per volume of coating, mass of coating solids, volume of coating solids, or volume of coating solids deposited. An advantage of this type of format is that it relates emissions to production levels, but in a more equitable way than one based on units of production. Also, an affected source would have flexibility in choosing among several compliance options to achieve a standard based on this type of format. This type of standard, when based on mass or volume of coating solids deposited, takes into account the transfer efficiency, *i.e.*, the fraction of coating solids used that actually adhere to the substrate.

A mass of HAP per volume of coating format (*i.e.*, kg HAP/liter (lb HAP/gallon (gal)) of coating) either for each coating or as an average across all coatings could be used. While this format is simple to understand and use, its main disadvantage is that it would not credit sources that switch to lower-emitting, higher-solids coatings. For example, a facility using a coating with a solids content of 40 percent and a HAP content of 3 lb/gal will use fewer pounds of HAP than a facility using a coating with a solids content of 20 percent and a HAP content of 2 lb/gal because the first facility will use 50 percent less coating than the second. A comparison of the emission potential of two coatings using a mass HAP per volume coating format cannot be made.

An alternative format is a mass HAP per volume of coating solids (*i.e.*, kg HAP/liter (lb HAP/gal) of coating solids). This format would adequately credit sources that converted conventional higher-HAP-solvent coatings to higher-solids coatings. The same is true for a format of mass HAP/mass of solids (*i.e.*, kg HAP/kg (lb HAP/lb) solids). For example, if a source were to increase the solids content of a coating and thereby decrease the quantity of coating used, either of these formats would properly credit the affected source's emissions reductions. However, there are potential drawbacks to the mass HAP/mass solids format. Such a standard does not take into account the sometimes considerable differences in coating solids densities. Either the mass HAP/mass solid or the mass HAP/volume solid formats can be restated to consider applied solids rather than solids contained in the coating to provide credit for application techniques with higher transfer efficiencies.

The second format considered is mass of organic HAP emissions per unit of production (*e.g.,* kg HAP per vehicle coated). Its major disadvantage is that the surface area of automobiles and light-duty trucks varies greatly.

The third format considered, a limit on the concentration of organic HAP in the exhaust from the control device would only apply to sources that use add-on control devices. This format for a standard is the easiest to enforce because direct emissions measurements can be made using Method 25 or 25A. However, the concentration of organic HAP emitted from the control device does not reflect total emissions because of the possibility of uncaptured emissions from the coating operation, nor does it limit total emissions because of the effect of varying the exhaust flow rates (*i.e.*, increasing dilution air). For example, two similar coating operations could produce the same amount of organic HAP yet have different inlet concentrations to the control device because of variations in capture of emissions from the coating operation and because of varying oven airflow rates. A standard based on outlet concentration would require the line with the higher concentration (lower airflow rate) to control more organic HAP emissions than the line with the lower inlet concentration. Because management of airflow rates is generally under the control of the operator, this format would not reflect the application of MACT for the coating operation. Furthermore, this format would limit the compliance options available to sources because it would not accommodate the use of either low-HAP content coatings and other materials, or the use of a combination of capture and control systems in conjunction with reduced-HAP coatings and other materials.

The fourth format, organic HAP emissions per unit surface area coated, provides flexibility in the selection of coating materials, the streams to be controlled, and the approach to capture and control. We requested surface area data for vehicles produced during the ICR reporting year and received data of this type from a number of respondents. The data that we received were incomplete, and the methods of estimating vehicle surface areas varied widely. In many cases, computer generated design drawings were analyzed to estimate surface areas. The algorithms used to make the estimates are unlikely to be consistent from manufacturer to manufacturer. While a standard in this format has some advantages, it would be difficult to establish MACT because of the inconsistent basis of the estimates.

The fifth format, percent reduction, would only apply to sources that use add-on control devices. This format is often the best choice when capture and control systems are widely used in the source category, and the achievable percent reduction over a wide range of operating conditions is predictable. The advantages of this format are that it would reflect MACT at all facilities, and the facilities would be allowed flexibility in the method selected for achieving the percent reduction. A disadvantage of the percent reduction format is that it does not credit improvements in the materials or processes. For example, reduction in the organic HAP content of a coating or in the amount of coating applied per unit of substrate manufactured would not be credited toward compliance. This might discourage development of low- or non-HAP coatings. Similar to the concentration format for a standard, this format also would not accommodate the use of either low-HAP content coatings and other materials or a combination of capture and control systems in conjunction with reduced-HAP coatings and other materials as a means of compliance.

*Format selected.* We selected mass of HAP emitted per volume of coating solids deposited as the format for the proposed emission limit for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive. All automobile and light-duty truck surface coating facilities presently calculate VOC emissions from primer-surfacer and topcoat application in this format and have recordkeeping systems in place to track coating usage, mass fraction of VOC, volume fraction of solids, and transfer efficiencies. Responses to the ICR were, for the most part, based on adaptions of these systems to calculate organic HAP emissions from both topcoat and primer

surfacer application. Only minor adjustments would be necessary to include electrodeposition coatings, as only two to four different materials are used for this process, and the transfer efficiency is essentially 100 percent. Such a format would be consistent with the information upon which MACT determination was based. This format gives credit for the use of low- or zero-organic-HAP coatings or high solids coatings in one or more application processes, as well as improved application techniques which result in higher transfer efficiencies for primer-surfacer and topcoat. This format would allow sources flexibility to use a combination of emission capture and control systems as well as low-HAP content coatings and other materials.

We selected mass of organic HAP per mass of coating as the format for the proposed standards for adhesives and sealers, and deadeners. These materials are applied with nearly 100 percent transfer efficiency in most cases and emissions from these materials are rarely, if ever, directed to add-on control devices.

*F. How Did We Select the Testing and Initial Compliance Requirements?*

We have proposed a compliance procedure for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive. The procedure takes into account the volume of each coating used, its mass organic HAP content, volume solids content, and density, as well as the transfer efficiency and the overall efficiency of any add-on control devices. The procedure is modeled after the procedure in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22), presently used to demonstrate compliance with VOC emission limits for topcoat and primer-surfacer application at automobile and light-duty truck surface coating facilities.

We have proposed a monthly average mass organic HAP content determination to demonstrate compliance with the emission limits for adhesives and sealers, and deadeners.

Method 311 of 40 CFR part 63, appendix A, is the method developed by EPA for determining the HAP content of coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed rule.

Method 24 of 40 CFR part 60, appendix A, is the method developed by EPA for determining the VOC content of coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past rules, VOC emission control measures have been implemented in the coatings industry with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed rule.

The proposed requirements for determining volume solids would allow you to choose between calculating the value using either ASTM Method D2697–86 (1988) or ASTM Method D6093–97.

You may use information provided by your coating supplier instead of conducting the HAP, solids, and density determinations yourself. The above specified test methods will take precedence if there is any discrepancy between the result of the methods and information provided by your suppliers.

*Capture and control systems.* If you use an emission capture and control system, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. The overall control efficiency would be combined with the monthly HAP content of the coatings and other materials used in the affected source to derive the monthly HAP emission rate to demonstrate compliance with the standard for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive.

If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed rule would require for the performance test have been required for many industrial surface coating sources under NSPS in 40 CFR part 60 and NESHAP in 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

*Work practices.* In the initial compliance report, you would certify that you have met the proposed work practice standards during the initial compliance period. You would also keep the records required to document your actions. These are minimal compliance requirements to ensure you are meeting the standards.

*G. How Did We Select the Continuous Compliance Requirements?*

To ensure continuous compliance with the proposed emission limits and operating limits, the proposed rule would require continuous parameter monitoring of capture systems, add-on control devices, and recordkeeping. We selected the following requirements based on: reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture and control systems commonly used in the industry. These monitoring parameters have been used in other standards for similar industries. The values of these parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture and control system.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected this averaging period to allow for normal variation of the parameter while ensuring that the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

To demonstrate continuous compliance with the monthly emission limits, you would also need records of the quantity of coatings and other materials used and the data and calculations supporting your determination of their HAP content.

To demonstrate continuous compliance with the work practice standards, you would keep the associated records specified in your work practice plan, as required by the proposed rule, and comply with the associated reporting requirements.

*H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?*

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed rule. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, reporting, and recordkeeping necessary to ensure compliance with, and effective enforcement of, the proposed standards.

*I. How Did We Select the Compliance Date?*

The proposed rule allows existing sources 3 years from the effective date of the final standards to demonstrate

compliance. This is the maximum compliance period permitted by the CAA. We believe that 3 years may be necessary for some affected sources to design, install, and test improved capture systems and control devices. Sources that adopt reformulated lower HAP coatings or powder coatings may also need 3 years to specify, adjust application equipment, and modify existing coating processes. New or reconstructed affected sources must comply immediately upon startup or the effective date of the proposed rule, whichever is later as required by the CAA.

## IV. Summary of Environmental, Energy, and Economic Impacts

### *A. What Are the Air Quality Impacts?*

The proposed rule would decrease HAP emissions from automobile and light-duty truck surface coating facilities from an estimated 10,000 tpy to 4,000 tpy. This represents a decrease of 6,000 tpy or 60 percent. The proposed rule would also decrease VOC by approximately 12,000 to 18,000 tpy. These values were calculated in comparison to baseline emissions reported to EPA by individual facilities for 1996 or 1997.

### *B. What Are the Cost Impacts?*

The estimated total capital costs of compliance, including the costs of monitors, is $670 million. This will result in an additional annualized capital cost of $75 million compared to a baseline total capital expenditure of $4 to $5 billion per year.

The projected total annual costs, including capital recovery, operating costs, monitoring, recordkeeping, and reporting is $154 million per year. This represents less than one-tenth of 1 percent of the baseline industry revenues of $290 billion and just over 1.0 percent of baseline industry pre-tax earnings of $14 billion.

The cost analysis assumed that each existing facility would use, in the order presented, as many of the following four steps as necessary to meet the proposed emission limit. First, if needed, facilities that did not already control their electrodeposition primer bake oven exhaust would install and operate such control at an average cost of $8,200 per ton of HAP controlled. Next, if needed, facilities would reduce the HAP-to-VOC ratio of their primer-surfacer and topcoat materials to 0.3 to 1.0 at an average cost of $540 per ton of HAP controlled. Finally, if needed, facilities would control the necessary amount of primer-surfacer and topcoat spray booth exhaust at an average cost of $40,000 per ton of HAP controlled. For all four steps combined, the average cost is about $25,000 per ton of HAP controlled.

New facilities and new paint shops would incur little additional cost to meet the proposed emission limit. These facilities would already include bake oven controls and partial spray booth exhaust controls for VOC control purposes. New facilities might need to make some downward adjustment in the HAP content of their materials to meet the proposed emission limit.

### *C. What Are the Economic Impacts?*

The EPA prepared an economic impact analysis to evaluate the primary and secondary impacts the proposed rule would have on the producers and consumers of automobiles and light-duty trucks, and society as a whole. The analysis was conducted to determine the economic impacts associated with the proposed rule at both the market and industry levels. Overall, the analysis indicates a minimal change in vehicle prices and production quantities.

Based on the estimated compliance costs associated with the proposed rule and the predicted changes in prices and production in the affected industry, the estimated annual social costs of the proposed rule is projected to be $161 million (1999 dollars). The social costs take into account changes in behavior by producers and consumers due to the imposition of compliance costs from the proposed rule. For this reason the estimated annual social costs differ from the estimated annual engineering costs of $154 million. Producers, in aggregate, are expected to bear $152 million annually in costs while the consumers are expected to incur the remaining $10 million in social costs associated with the proposed rule.

The economic model projects an aggregate price increase for the modeled vehicle classes of automobiles and light-duty trucks to be less than 1/100th of 1 percent as a result of the proposed standards. This represents at most an increase in price of $3.00 per vehicle. The model also projects that directly affected producers would reduce total production by approximately 1,400 vehicles per year. This represents approximately 0.01 percent of the 12.7 million vehicles produced by the potentially affected plants in 1999, the baseline year of analysis.

In terms of industry impacts, the automobile and light-duty truck manufacturers are projected to experience a decrease in pre-tax earnings of about 1 percent or $152 million. In comparison, total pre-tax earnings for the potentially affected plants included in the analysis exceeded $14 billion in 1999. The reduction in pre-tax earnings of 1 percent reflects an increase in production costs and a decline in revenues earned from a reduction in the quantity of vehicles sold. Through the market and industry impacts described above, the proposed rule would lead to a redistribution of profits within the industry. Some facilities (28 percent) are projected to experience a profit increase with the proposed rule; however, the majority (72 percent) that continue operating are projected to lose profits. No facilities are projected to close due to the proposed rule.

### *D. What Are the Non-Air Health, Environmental, and Energy Impacts?*

Solid waste and water impacts of the proposed rule are expected to be negligible. Capture of additional organic HAP-laden streams and control of these streams with regenerative thermal oxidizers is expected to require an additional 180 million kilowatt hours per year and an additional 4.9 billion standard cubic feet per year of natural gas.

### *E. Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?*

We have made every effort in developing this proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. We recognize, however, that the proposal may still require some facilities to take costly steps to further control emissions even though those emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than 1 in 1 million or exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of HAP. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

During the rulemaking process on a separate proposed NESHAP, representatives of the plywood and composite wood products industry provided EPA with descriptions of three approaches that they believed could be used to implement more cost-effective reductions in risk. These approaches could be effective in focusing regulatory controls on facilities that pose significant risks and avoiding the

imposition of high costs on facilities that pose little risk to public health or the environment, and we are seeking public comment on the utility of each of these approaches with respect to this rule. The docket for today's proposed rule contains ''white papers'' prepared by the plywood and composite wood products industry that outline their proposed approaches (*see* docket number A–2001–22).

One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the second approach, subcategorization and delisting, would be implemented under the authority of CAA section 112(c)(1) and (c)(9); and the third approach would involve the use of a concentration-based applicability threshold. We are seeking comment on whether these approaches are legally justified and, if so, we ask for information that could be used to support such approaches.

The MACT program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose less than a specified level of risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately rely on these provisions of CAA section 112. The two health-based approaches focus on assessing inhalation exposures or accounting for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal rationale, and implementation relevant to the identified approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether to include an approach in the final rule.

1. Industry HAP emissions and potential health effects

For the automobile and light-duty truck surface coating source category, seven HAP account for over 95 percent of the total HAP emitted. Those seven HAP are toluene, xylene, glycol ethers (including ethylene glycol monobutyl ether (EGBE)), MEK, MIBK, ethylbenzene, and methanol. Additional HAP which may be emitted by some automobile and light-duty truck surface coating operations are: Ethylene glycol, hexane, formaldehyde, chromium compounds, diisocyanates, manganese compounds, methyl methacrylate, methylene chloride, and nickel compounds.

Of the seven HAP emitted in the largest quantities by this source category, all can cause toxic effects following sufficient exposure. The potential toxic effects of these seven HAP include effects to the central nervous system, such as fatigue, nausea, tremors, and loss of motor coordination; adverse effects on the liver, kidneys, and blood; respiratory effects; and developmental effects. In addition, one of the seven predominant HAP, EGBE, is a possible carcinogen, although information on this compound is not currently sufficient to allow us to quantify its potency.

In accordance with CAA section 112(k), EPA developed a list of 33 HAP which present the greatest threat to public health in the largest number of urban areas. None of the predominant seven HAP is included on this list for EPA's Urban Air Toxics Program, although three of the other emitted HAP (formaldehyde, manganese compounds, and nickel compounds) appear on the list. In November 1998, EPA published ''A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants.'' None of the predominant seven HAP emitted by automobile and light-duty truck surface coating operations appears on the published list of compounds referred to in EPA's PBT strategy.

To estimate the potential baseline risks posed by the source category and the potential impact of applicability cutoffs, EPA performed a ''rough'' risk assessment for 56 of the approximately 60 facilities in the source category by using a model plant placed at the actual location of each plant and simulating impacts using air emissions data from the 1999 EPA Toxics Release Inventory (TRI). In addition to the seven predominant HAP, the following additional HAP were included in this rough risk assessment because they were reported in TRI as being emitted by facilities in the source category: ethylene glycol, hexane, formaldehyde, diisocyanates, manganese compounds, nickel compounds, and benzene. The benzene emissions and some of the nickel emissions are from non-surface coating activities which are not part of the source category. Of the HAP reported in TRI which are emitted from automobile and light-duty truck surface coating operations, three (formaldehyde, nickel compounds, and EGBE) are carcinogens that, at present, are not considered to have thresholds for cancer effects. Ethylene glycol monobutyl ether, however, may be a threshold carcinogen, as suggested by some recent evidence from animal studies, though EPA, at present, considers it to be a non-threshold carcinogen without sufficient information to quantify its cancer potency. Likewise, formaldehyde is a potential threshold carcinogen, and EPA is currently revising the dose-response assessment for formaldehyde. Most facilities in this source category emit some small quantity of formaldehyde. In the 1999 TRI, however, only two facilities in this source category reported formaldehyde emissions. No other facilities exceeded the TRI reporting threshold for formaldehyde in 1999.

The baseline cancer risk and subsequent cancer risk reductions were estimated to be minimal for this source category. Of the three carcinogens included in the assessment, emissions reductions attributable to the proposed standards could be estimated for only EGBE. However, since EGBE risks cannot currently be quantified, the cancer risk reductions associated with the proposed rule are estimated by this rough assessment to be minimal. However, noncancer risks are projected to be significantly reduced by the proposed rule. (Details of this assessment are available in the docket.)

2. Applicability Cutoffs for Threshold Pollutants Under CAA Section 112(d)(4)

The first approach is an ''applicability cutoff'' for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4) to establish standards for HAP which are ''threshold pollutants.'' A ''threshold pollutant'' is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emission standards. Specifically, section 112(d)(4) allows EPA to establish emission standards that are not based upon the MACT specified under section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Historically, EPA has interpreted section 112(d)(4) to allow categories of sources that emit only threshold pollutants to avoid further regulation if those emissions result in ambient levels that do not exceed the

threshold, with an ample margin of safety.[1]

A different interpretation would allow us to exempt individual facilities within a source category that meet the section 112(d)(4) requirements. There are three potential scenarios under this interpretation of the section 112(d)(4) provision. One scenario would allow an exemption for individual facilities that emit only threshold pollutants and can demonstrate that their emissions of threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT. A second scenario would allow the section 112(d)(4) provision to be applied to both threshold and non-threshold pollutants, using the 1 in 1 million cancer risk level for decisionmaking for non-threshold pollutants.

A third scenario would allow a section 112(d)(4) exemption at a facility that emits both threshold and non-threshold pollutants. For those emission points where only threshold pollutants are emitted and where emissions of the threshold pollutants would not result in air concentrations above the threshold levels, with an ample margin of safety, those emission points could be exempt from the MACT standards. The MACT standards would still apply to non-threshold emissions from other emission points at the source. For this third scenario, emission points that emit a combination of threshold and non-threshold pollutants that are co-controlled by MACT would still be subject to the MACT level of control. However, any threshold HAP eligible for exemption under section 112(d)(4) that are controlled by control devices different from those controlling non-threshold HAP would be able to use the exemption, and the facility would still be subject to the sections of the standards that control non-threshold pollutants or that control both threshold and non-threshold pollutants.

*Estimation of hazard quotients and hazard indices.* Under the section 112(d)(4) approach, EPA would have to determine that emissions of each of the threshold pollutants emitted by automobile and light-duty truck surface coating operations at the facility do not result in exposures which exceed the threshold levels, with an ample margin of safety.

The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a ''hazard quotient'' by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals.

The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest-or no-observed-adverse-effect level of a pollutant[2]. A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC and, therefore, presumed to be without appreciable risk of adverse health effects. A hazard quotient greater than one means that the exposure concentration of the pollutant is greater than the RfC. Further, EPA guidance for assessing exposures to mixtures of threshold pollutants recommends calculating a hazard index (HI) by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism[3]. The HI values would be interpreted similarly to hazard quotients; values below one would generally be considered to be without appreciable risk of adverse health effects, and values above one would generally be cause for concern.

For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA). Table 4 provides RfC, as well as unit risk estimates, for the HAP emitted by automobile and light-duty truck surface coating operations. A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 ug/m$^3$ in the air.

TABLE 4.—DOSE-RESPONSE ASSESSMENT VALUES FOR HAP REPORTED EMITTED BY THE AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING SOURCE CATEGORY

| Chemical name | CAS No. | Reference concentration[a] (mg/m$^3$) | Unit risk estimate[b] (1/(ug/m$^3$)) |
|---|---|---|---|
| Chromium (VI) compounds | 18540–29–9 | 1.0E–04 (IRIS) | 1.2E–02 (IRIS) |
| Chromium (VI) trioxide, chromic acid mist | 11115–74–5 | 8.0E–06 (IRIS) | |
| Ethyl benzene | 100–41–4 | 1.0E+00 (IRIS) | |
| Ethylene glycol | 107–21–1 | 4.0E–01 (CAL) | |
| Formaldehyde | 50–00–0 | 9.8E–03 (ATSDR) | 1.3E–05 (IRIS) |
| Diethylene glycol monobutyl ether | 112–34–5 | 2.0E–02 (HEAST) | |
| Ethylene glycol monobutyl ether | 111–76–2 | 1.3E+01 (IRIS) | |
| Hexamethylene-1, 6-diisocyanate | 822–06–0 | 1.0E–05 (IRIS) | |
| n-Hexane | 110–54–3 | 2.0E–01 (IRIS) | |
| Manganese compounds | 7439–96–5 | 5.0E–05 (IRIS) | |
| Methanol | 67–56–1 | 4.0E+00 (CAL) | |
| Methyl ethyl ketone | 78–93–3 | 1.0E+00 (IRIS) | |
| Methyl isobutyl ketone | 108–10–1 | 8.0E–02 (HEAST) | |
| Methyl methacrylate | 80–62–6 | 7.0E–01 (IRIS) | |
| Methylene chloride | 75–09–2 | 1.0E+00 (ATSDR) | 4.7E–07 (IRIS) |

[1] *See* 63 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP).

[2] ''Methods for Derivation of Inhalation reference Concentrations and Applications of Inhalation Dosimetry.'' EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[3] ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel,'' EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem_mix/chem_mix_08_2001.pdf.*

TABLE 4.—DOSE-RESPONSE ASSESSMENT VALUES FOR HAP REPORTED EMITTED BY THE AUTOMOBILE AND LIGHT-DUTY TRUCK SURFACE COATING SOURCE CATEGORY—Continued

| Chemical name | CAS No. | Reference concentration [a] (mg/m$^3$) | Unit risk estimate [b] (1/(ug/m$^3$)) |
|---|---|---|---|
| Methylene diphenyl diisocyanate | 101–68–8 | 6.0E–04 (IRIS) | |
| Nickel compounds | 7440–02–0 | 2.0E–04 (ATSDR) | |
| Nickel oxide | 1313–99–1 | 1.0E–04 (CAL) | |
| Toluene | 108–88–3 | 4.0E–01 (IRIS) | |
| 2,4/2,6-Toluene diisocyanate mixture (TDI) | 26471–62–5 | 7.0E–05 (IRIS) | 1.1E–05 (CAL) |
| Xylenes (mixed) | 1330–20–7 | 4.3E–01 (ATSDR) | |

[a] Reference Concentration: An estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups which include children, asthmatics, and the elderly) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from various types of human or animal data, with uncertainty factors generally applied to reflect limitations of the data used.

[b] Unit Risk Estimate: The upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 ug/m$^3$ in air. The interpretation of the Unit Risk Estimate would be as follows: if the Unit Risk Estimate = $1.5 \times 10^{-6}$ per ug/m$^3$, 1.5 excess tumors are expected to develop per 1,000,000 people if exposed daily for a lifetime to 1 ug of the chemical in 1 cubic meter of air. Unit Risk Estimates are considered upper bound estimates, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is likely to be less, but could be greater.

**Sources:** IRIS = EPA Integrated Risk Information System *(http://www.epa.gov/iris/subst/index.html)* ATSDR = U.S. Agency for Toxic Substances and Disease Registry *(http://www.atsdr.cdc.gov/mrls.html)* CAL = California Office of Environmental Health Hazard Assessment *(http://www.oehha.ca.gov/air/hot_spots/index.html)* HEAST = EPA Health Effects Assessment Summary Tables (#PB(=97–921199, July 1997).

To establish an applicability cutoff under section 112(d)(4), EPA would need to define ambient air exposure concentration limits for any threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient, which is the exposure concentration divided by the RfC.

The EPA's ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures'' suggests that the noncancer health effects associated with a mixture of pollutants ideally are assessed by considering the pollutants' common mechanisms of toxicity.[4] The guidance also suggests that when exposures to mixtures of pollutants are being evaluated, the risk assessor may calculate a HI. The recommended method is to calculate multiple hazard indices for each exposure route of interest and for a single specific toxic effect or toxicity to a single target organ. The default approach recommended by the guidance is to sum the hazard quotients for those pollutants that induce the same toxic effect or affect the same target organ. A mixture is then assessed by several HI, each representing one toxic effect or target organ. The guidance notes that the pollutants included in the HI calculation are any pollutants that show the effect being assessed, regardless of the critical effect upon which the RfC is based. The guidance cautions that if the target organ or toxic effect for which the HI is calculated is different from the RfC's critical effect, then the RfC for that chemical will be an overestimate, that is, the resultant HI potentially may be overprotective. Conversely, since the calculation of a HI does not account for the fact that the potency of a mixture of HAP can be more potent than the sum of the individual HAP potencies, a HI may potentially be underprotective in some situations.

*Options for establishing a HI limit.* One consideration in establishing a HI limit is whether the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed.[5] There are several options for establishing a HI limit for the section 112(d)(4) analysis that reflect, to varying degrees, public exposure.

One option is to allow the HI posed by all threshold HAP emitted from automobile and light-duty truck surface coating operations at the facility to be no greater than one. This approach is protective if no additional threshold HAP exposures would be anticipated from other sources at, or in the vicinity of, the facility or through other routes of exposure (*e.g.*, through dermal absorption).

A second option is to adopt a ''default percentage'' approach, whereby the HI limit of the HAP emitted by the facility is set at some percentage or fraction of one (*e.g.*, 20 percent or 0.2). This approach recognizes the fact that the facility in question is only one of many sources of threshold HAP to which people are typically exposed every day. Because noncancer risk assessment is predicated on total exposure or dose, and because risk assessments focus only on an individual source, establishing a HI limit of 0.2 would account for an assumption that 20 percent of an individual's total exposure is from that individual source. For the purposes of this discussion, we will call all sources of HAP, other than operations within the source category at the facility in question, ''background'' sources. If the affected source is allowed to emit HAP such that its own impacts could result in HI values of one, total exposures to threshold HAP in the vicinity of the facility could be substantially greater than one due to background sources, and this would not be protective of public health since only HI values below one are considered to be without appreciable risk of adverse health effects. Thus, setting the HI limit for the facility at some default percentage of one will provide a buffer which would help to ensure that total exposures to threshold HAP near the facility (*i.e.*, in combination with exposures due to background sources) will generally not exceed one and can generally be considered to be without appreciable risk of adverse health effects.

The EPA requests comment on using the ''default percentage'' approach and on setting the default HI limit at 0.2. The EPA is also requesting comment on whether an alternative HI limit, in some multiple of one, would be a more appropriate applicability cutoff.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP,

[4] Ibid.

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in ''A Legislative History of the Clean Air Act Amendments of 1990,'' Comm. Print S. Prt. 103–38 (1993) (''Legis. Hist.'') at 868.

possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from activities other than automobile and light-duty truck surface coating operations. For example, EPA's National-Scale Air Toxics Assessment (NATA)[6] and ATSDR's Toxicological Profiles[7] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from an affected source and from background emissions (as determined from the literature or studies) would then not be allowed to exceed a HI limit of 1.0. The EPA requests comment on the appropriateness of setting the HI limit at one for such an analysis.

A fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food, and soil encountered by the individuals exposed to emissions from this source category. In addition, we request comment on how such analyses should account for potential increases in exposures due to the use of a new HAP or the increased use of a previously emitted HAP, or the effect of other nearby sources that release HAP.

The EPA requests comment on the feasibility and scientific validity of each of these or other options. Finally, EPA requests comment on how we should implement the section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the title V permit process provide an appropriate mechanism?

*Tiered analytical approach for predicting exposure.* Establishing that a facility meets the cutoffs established under section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analysis for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk.

As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a HI limit to be exceeded.

A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific and resource-intensive tiers of analysis using EPA-approved modeling procedures in an attempt to demonstrate that exposure to emissions from the facility does not exceed the HI limit. Existing EPA guidance could provide the basis for conducting such a tiered analysis.[8]

The EPA requests comment on methods for constructing and implementing a tiered analysis for determining applicability of the section 112(d)(4) criteria to specific automobile and light-duty truck surface coating sources. Ambient monitoring data could possibly be used to supplement or supplant the tiered modeling analysis described above. We envision that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

*Accounting for dose-response relationships.* In the past, EPA routinely treated carcinogens as non-threshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and non-threshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment[9] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold.

The dose-response assessment for formaldehyde is currently undergoing revision by EPA. As part of this revision effort, EPA is evaluating formaldehyde as a potential non-linear carcinogen. The revised dose-response assessment will be subject to review by the EPA Science Advisory Board, followed by full consensus review, before adoption into the EPA's IRIS. At this time, EPA estimates that the consensus review will be completed by the end of 2003. The revision of the dose-response assessment could affect the potency factor of formaldehyde, as well as its status as a threshold or non-threshold pollutant. At this time, the outcome is not known. In addition to the current reassessment by EPA, there have been several reassessments of the toxicity and carcinogenicity of formaldehyde in recent years, including work by the World Health Organization and the Canadian Ministry of Health.

The EPA requests comment on how we should consider the state of the science as it relates to the treatment of threshold pollutants when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a non-threshold carcinogenic HAP at which it would be appropriate to allow a facility to use the scenarios discussed under the section 112(d)(4) approach.

*Risk assessment results.* The results of the human health risk assessments described below are based on approaches for quantifying exposure, risk, and cancer incidence that carry significant assumptions, uncertainties, and limitations. For example, in conducting these types of analyses, there are typically many uncertainties regarding dose-response functions, levels of exposure, exposed populations, air quality modeling applications, emission levels, and control effectiveness. Because the estimates derived from the various scoping approaches are necessarily rough, we are concerned that they not convey a false sense of precision. Any point estimates of risk reduction or benefits generated by these approaches should be considered as part of a range of potential estimates.

If the final rule is implemented as proposed at all automobile and light-duty truck surface coating facilities, the number of people exposed to HI values equal to, or greater than, one was estimated to be reduced from about 100 to about ten. The number of people exposed to HI values of 0.2 or greater was predicted to decrease from about

[6] *See http://www.epa.gov/ttn/atw/nata.*

[7] *See http://www.atsdr.cdc.gov/toxpro2.html.*

[8] "A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants." EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

[9] "Draft Revised Guidelines for Carcinogen Risk Assessment." NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf.*

3,500 to about 1,200. (Details of these analyses are available in the docket.)

Based on the results of this rough assessment, if the section 112(d)(4) approach is applied only to threshold pollutants, EPA estimates that none of the facilities in this source category could obtain an exemption from regulation, since all, or nearly all, facilities emit some amount of one or more non-threshold pollutants. This application of the section 112(d)(4) approach is estimated to produce minimal potential cost savings. If formaldehyde and EGBE are determined to be threshold carcinogens, these estimates could change.

The second scenario under the section 112(d)(4) provision would apply to both threshold and non-threshold pollutants. If this scenario is selected, EPA estimates, using a HI limit of one and treating $10^{-6}$ as a cancer risk threshold, that as many as 54 of the facilities in the source category may be exempt from the proposed rule. The EPA estimates in this case that the annualized cost of the proposed rule would be about $9 million per year, resulting in cost savings of about $145 million per year (as compared to establishing a MACT standard for all plants in the industry). Using a HI limit of 0.2 and treating $10^{-6}$ as a cancer risk threshold, EPA estimates that as many as 41 facilities may be exempt from the proposed rule. The EPA estimates in this case that the annualized cost of the proposed rule would be about $66 million per year, resulting in cost savings of about $88 million per year (as compared to establishing a MACT standard for all plants in the industry).

The EPA does not expect the third scenario, which would allow emission point exemptions, to be applicable for the automobile and light-duty truck surface coating source category because mixtures of threshold and non-threshold pollutants are co-emitted, and the same emission controls would apply to both.

The risk estimates from this rough assessment are based on typical facility configurations (*i.e.*, model plants) and, as such, they are subject to significant uncertainties, such that the actual risks at any one facility could be significantly higher or lower. Therefore, while these risk estimates assist in providing a broad picture of impacts across the source category, they should not be the basis for an exemption from the requirements of the proposed rule. Rather, any such exemption should be based on an estimate of the facility-specific risks which would require site-specific data and a more refined analysis.

For either of the first two approaches described above, the actual number of facilities that would qualify for an exemption would depend upon site-specific risk assessments and the specified HI limit (see earlier discussion of HI limit). If the section 112(d)(4) approach were adopted, the requirements of the proposed rule would not apply to any source that demonstrates, based on a tiered analysis that includes EPA-approved modeling of the affected source's emissions, that the anticipated HAP exposures do not exceed the specified HI limit.

3. Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

The EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that ''* * * no source in the category * * * emits (carcinogenic) air pollutants in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed to emissions of such pollutants from the source * * *''; (2) in the case of pollutants that cause adverse noncancer health effects, that ''* * * emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety * * *''; and (3) in the case of pollutants that cause adverse environmental effects, that ''no adverse environmental effect will result from emissions from any source. * * *''

Given these authorities and the suggestions from the white papers prepared by industry representatives and discussed previously (see docket A–2001–22), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger source category that would meet the risk-based criteria for delisting. Such criteria would likely include the same requirements as described previously for the second scenario under the section 112(d)(4) approach, whereby a facility would be in the low-risk subcategory if its emissions of threshold pollutants do not result in exposures which exceed the HI limits, and if its emissions of non-threshold pollutants do not result in exposures which exceed a cancer risk level of $10^{-6}$. The EPA requests comment on what an appropriate HI limit would be for a determination that a facility be included in the low-risk subcategory.

Since each facility in such a subcategory would be a low-risk facility (*i.e.*, each would meet these criteria), the subcategory could be delisted in accordance with section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting. The EPA estimates that the maximum potential of utilizing this approach would be the same as that of applying the section 112(d)(4) approach for threshold and non-threshold pollutants, though the actual impact is likely to be less. For example, with a HI value limit of one and treating $10^{-6}$ as a cancer risk threshold, as many as 54 of the facilities may be exempted under this approach. Alternatively, with a HI limit of 0.2 and treating $10^{-6}$ as a cancer risk threshold, as many as 41 facilities may be exempted under this approach.

Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. The EPA solicits comment on implementing a risk-based approach for establishing subcategories of automobile and light-duty truck surface coating facilities.

Establishing that a facility qualifies for the low-risk subcategory under section 112(c)(9) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would employ the same tiered analysis described earlier in the section 112(d)(4) discussion for these determinations.

One concern that EPA has with respect to the section 112(c)(9) approach is the effect that it could have on the MACT floors. If many of the facilities in the low-risk subcategory are well-controlled, that could make the MACT floor less stringent for the remaining facilities. One approach that has been suggested to mitigate this effect would be to establish the MACT floor now based on controls in place for the entire category and to allow facilities to become part of the low-risk subcategory in the future, after the MACT standards are established. This would allow low-risk facilities to use the section 112(c)(9) exemption without affecting the MACT

floor calculation. The EPA requests comment on this suggested approach.

Another scenario under the section 112(c)(9) approach would be to define a subcategory of facilities within the source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with section 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the source category.

If a section 112(c)(9) approach were adopted, the requirements of the proposed rule would not apply to any source that demonstrates that it belongs in a subcategory which has been delisted under section 112(c)(9).

*Consideration of criteria pollutants.* Finally, EPA projects that adoption of the MACT floor level of controls would result in increases in nitrogen oxide ($NO_X$) emissions. This pollutant is a precursor in the formation of ozone and fine particulate matter (PM). Ozone has been associated with a variety of adverse health effects such as reduced lung function, respiratory symptoms (*e.g.*, cough and chest pain) and increased hospital admissions and emergency room visits for respiratory causes. Fine PM has been associated with a variety of adverse health effects such as premature mortality, chronic bronchitis, and increased frequency of asthma attacks. The EPA requests comments on the extent to which consideration should be given to the adverse effects of the possible increase in $NO_X$ emissions from applying MACT technology, in the context of implementing our authority under section 112(c)(9) or other exemptions.

## V. How Will the Proposed Amendments to 40 CFR Parts 264 and 265, Subparts BB of the Hazardous Waste Regulations Be Implemented in the States?

### *A. Applicability of Federal Rules in Authorized States*

Under section 3006 of the RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the Federal program and to issue and enforce permits in the State. A State may receive authorization by following the approval process described under 40 CFR 271.21. *See* 40 CFR part 271 for the overall standards and requirements for authorization. The EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized State also continues to have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. The RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. (*See also* section 271.1(i)). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

### *B. Authorization of States for Today's Proposed Amendments*

Currently, the air emissions from the collection, transmission, and storage of purged paint and solvent at automobile and light-duty truck assembly plants are regulated under the authority of RCRA (see 40 CFR parts 264 and 265, subparts BB). The proposed amendments would exempt these wastes from regulation under RCRA and defer regulation to the CAA requirements of 40 CFR part 63, subpart IIII, which is also being proposed today. This exemption is considered to be less stringent than the existing RCRA regulations and, therefore, States are not required to adopt and seek authorization for today's proposed exemption. However, EPA will strongly encourage States to adopt today's proposed RCRA provisions and seek authorization for them to prevent duplication with the new NESHAP when final.

## VI. Solicitation of Comments and Public Participation

We welcome comments from interested persons on any aspect of the proposed standards and on any statement(s) in this preamble or in the referenced supporting documents. In particular, we request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule. For example, all automobile and light-duty truck assembly plants are subject to VOC regulations and some may perform coating activities which would be subject to the NESHAP for plastic parts coating or miscellaneous metal parts coating, both currently under development.

Supporting data and detailed analyses should be submitted with comments to allow us to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–2001–22 (see **ADDRESSES**). Comments on the proposed rule must be submitted on or before the date specified in **DATES**.

## VII. Administrative Requirements

### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined

that the proposed rule is a ''significant regulatory action'' because it could have an annual impact on the economy of over $100 million. Consequently, this action was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

As stipulated in Executive Order 12866, in deciding how or whether to regulate, EPA is required to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. To this end, EPA prepared a detailed benefit-cost analysis in the ''Regulatory Impact Analysis for the Proposed Automobile and Light-Duty Truck Coatings NESHAP,'' which is contained in the docket. The following is a summary of the benefit-cost analysis:

It is estimated that 5 years after implementation of the rule as proposed, HAP emissions will be reduced from 10,000 tpy to 4,000 tpy. This represents a 60 percent reduction (or 6,000 tpy) of toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. Based on scientific studies conducted over the past 20 years, the EPA has classified ethylene glycol monobutyl ether (EGBE), one of the glycol ethers, as a ''possible human carcinogen,'' while ethylbenzene, MEK, toluene, and xylenes are considered by the EPA as ''not classifiable as to human carcinogenicity.'' At this time, we are unable to provide a comprehensive quantification and monetization of the HAP-related benefits of this proposal.

Exposure to HAP can result in the incidence of respiratory irritation, chest constriction, gastric irritation, eye, nose, and throat irritation as well as neurological and blood effects. Specifically, exposure to EGBE may result in neurological and blood effects, including fatigue, nausea, tremor, and anemia. Though no reliable human epidemiological study is available to address the potential carcinogenicity of EGBE, a draft report of a 2-year rodent inhalation study reported equivocal evidence of carcinogenic activity in female rats and male mice. Exposure to MEK may lead to eye, nose, and throat irritation while methanol may lead to blurred vision, headache, dizziness, and nausea. Toluene may cause effects to the central nervous system, such as fatigue, sleepiness, headache, and nausea. In addition, chronic exposure to this HAP can lead to tremors, decreased brain size, involuntary eye movements, and impairment of speech, hearing, and vision. Xylenes, a mixture of three closely related compounds, may cause nose and throat irritation, nausea, vomiting, gastric irritation, headache, dizziness, fatigue, and tremors.

The control technology to reduce the level of HAP emitted from automobile and light-duty truck coating operations are also expected to reduce emissions of criteria pollutants, particularly VOC. Specifically, the proposed rule achieves a 12,000 to 18,000 tpy reduction in VOC. The VOC is a precursor to tropospheric (ground-level) ozone and a small percentage also precipitate in the atmosphere to form PM.

Although we have not estimated the monetary value associated with VOC reductions, the benefits can be substantial. Health and welfare effects from exposure to ground-level ozone are well documented. Elevated concentrations of ground-level ozone primarily may result in acute respiratory-related impacts such as coughing and difficulty breathing. Chronic exposure to ground-level ozone may lead to structural damage to the lungs, alterations in lung capacity and breathing frequency, increased sensitivity of airways, eye, nose, and throat irritation, malaise, and nausea. Adverse ozone welfare effects include damage to agricultural crops, ornamental plants, and materials damage. Though only a small fraction of VOC forms PM, exposure to PM can result in human health and welfare effects including excess deaths, morbidity, soiling and materials damage, as well as reduced visibility. To the extent that reduced exposure to HAP and VOC reduces the instances of the above described health effects, benefits from the proposed rule are realized by society through an improvement in environmental quality.

Benefit-cost comparison (net benefits) is a tool used to evaluate the reallocation of society's resources used to address the pollution externality created by the coatings operations at automobile and light-duty truck plants. The additional costs of internalizing the pollution produced at major sources of emissions from automobile and light-duty truck manufacturing facilities can be compared to the improvement in society's well-being from a cleaner and healthier environment. Comparing benefits of the proposed rule to the costs imposed by the alternative methods to control emissions optimally identifies a strategy that results in the highest net benefit to society. In the case of the proposed automobiles and light-duty trucks coating NESHAP, we are proposing only one option, the minimum level of control mandated by the CAA or the MACT floor.

Based on estimated compliance costs associated with this proposed rule and the predicted change in prices and production in the affected industry, the estimated social costs of this proposed rule are $161 million (1999 dollars).

*B. Executive Order 13132, Federalism*

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 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. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It 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. Pursuant to the terms of Executive Order 13132, it has been determined that the proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Although section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed regulation.

*C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR

67249, November 9, 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate automobile and light-duty truck surface coating facilities. Thus, Executive Order 13175 does not apply to the proposed rule.

*D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' This proposed rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The proposed rule affects the automobile and light-duty truck manufacturing industries. There is no crude oil, fuel, or coal production from these industries, therefore there is no direct effect on such energy production related to implementation of the rule as proposed. In addition, the cost of energy distribution should not be affected by this proposal at all since this proposed rule does not affect energy distribution facilities.

The proposed rule is projected to trigger an increase in energy use due to the installation and operation of additional pollution control equipment. The estimated increase in energy consumption is 4.9 billion standard cubic feet per year of natural gas and 180 million kilowatt hours per year of electricity nationwide. The nationwide cost of this increased energy consumption is estimated at $26 million per year.

The increase in energy costs does not reflect changes in energy prices, but rather an increase in the quantity of electricity and natural gas demanded. Given that the existing electricity generation capacity in the United States was 785,990 megawatts in 1999 [10] and that 23,755 billion cubic feet of natural gas was produced domestically in the same year,[11] the proposed rule is not likely to have any significant adverse impact on energy prices, distribution, availability, or use.

*F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared a written statement (titled ''Unfunded Mandates Reform Act Analysis for the Proposed Automobiles and Light-Duty Trucks Coating NESHAP'') under section 202 of the UMRA which is summarized below.

1. Statutory Authority

The statutory authority for this rulemaking is section 112 of the CAA, enacted to reduce nationwide air toxic emissions. In compliance with UMRA section 205(a), we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these

[10] U.S. Department of Energy. 1999. Electric Power Annual, Volume I. Table A2: Industry Capability by Fuel Source and Industry Sector, 1999 and 1998 (Megawatts).

[11] U.S. Department of Energy. 1999. Natural Gas Annual. Table 1: Summary Statistics for Natural Gas in the United States, 1995–1999.

regulatory alternatives is presented in the docket. The regulatory alternative upon which the proposed rule is based represents the MACT floor for automobile and light-duty truck coating operations and, as a result, is the least costly and least burdensome alternative.

2. Social Costs and Benefits

The RIA prepared for the proposed rule, including EPA's assessment of costs and benefits, is detailed in the ''Regulatory Impact Analysis for the Automobiles and Light-Duty Trucks Coating NESHAP'' in the docket. Based on the estimated compliance costs associated with the proposed rule and the predicted changes in prices and production in the affected industry, the estimated annual social costs of the proposed rule is projected to be $161 million (1999 dollars).

It is estimated that 5 years after implementation of the rule as proposed, HAP will be reduced from 10,000 tpy to 4,000 tpy. This represents a 60 percent reduction (6,000 tpy) of toluene, xylene, glycol ethers, MEK, MIBK, ethylbenzene, and methanol. Based on scientific studies conducted over the past 20 years, EPA has classified EGBE as a ''possible human carcinogen,'' while ethylbenzene, MEK, toluene, and xylenes are considered by the Agency as ''not classifiable as to human carcinogenicity.'' The studies upon which these classifications are based have worked toward the determination of a relationship between exposure to these HAP and the onset of cancer. However, there are several questions remaining on how cancers that may result from exposure to these HAP can be quantified in terms of dollars. Therefore, EPA is unable to provide a monetized estimate of the benefits of HAP reduced by the proposed rule at this time. Exposure to HAP can result in the incidence of respiratory irritation, chest constriction, gastric irritation, eye, nose, and throat irritation, as well as neurological and blood effects, including fatigue, nausea, tremor, and anemia.

The control technology to reduce the level of HAP emitted from automobile and light-duty truck coating operations is also expected to reduce emissions of criteria pollutants, particularly VOC. Specifically, this proposed rule achieves a 12,000 to 18,000 tpy reduction in VOC. The VOC is a precursor to tropospheric (ground-level) ozone and a small percentage also precipitate in the atmosphere to form PM.

Although we have not estimated the monetary value associated with VOC reductions, the benefits can be substantial. Health and welfare effects from exposure to ground-level ozone are well documented. Elevated concentrations of ground-level ozone primarily may result in acute respiratory-related impacts such as coughing and difficulty breathing. Chronic exposure to ground-level ozone may lead to structural damage to the lungs, alterations in lung capacity and breathing frequency, increased sensitivity of airways, eye, nose, and throat irritation, malaise, and nausea. Adverse ozone welfare effects include damage to agricultural crops, ornamental plants, and materials damage. Though only a small fraction of VOC forms PM, exposure to PM can result in human health and welfare effects, including excess deaths, morbidity, soiling and materials damage, as well as reduced visibility.

To the extent that reduced exposure to HAP and VOC reduces the instances of the above described health effects, benefits from the proposed rule would be realized by society through an improvement in environmental quality.

3. Future and Disproportionate Costs

The UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by the proposed rule and any disproportionate budgetary effects. We do not believe that there will be any disproportionate budgetary effects of the proposed rule on any particular areas of the country, State, or local governments, types of communities (*e.g.*, urban, rural), or particular industry segments.

4. Effects on the National Economy

The UMRA requires that we estimate the effect of the proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of the proposed rule is presented in the ''Regulatory Impact Analysis for the Automobiles and Light-Duty Trucks Coating NESHAP.'' That analysis provides estimates of the effect of the proposed rule on some of the categories mentioned above.

The estimated direct cost to the automobile and light-duty truck manufacturing industry of compliance with the proposed rule is approximately $154 million (1999 dollars) annually. Indirect costs of the proposed rule to industries other than the automobile and light-duty truck manufacturing industry, governments, tribes, and other affected entities are expected to be minor. The estimated annual costs is minimal when compared to the nominal gross domestic product of $9,255 billion reported for the Nation in 1999. The proposed rule is expected to have little impact on domestic productivity, economic growth, full employment, energy markets, creation of productive jobs, and the international competitiveness of United States goods and services.

5. Consultation With Government Officials

Although this proposed rule does not affect any State, local, or tribal governments, EPA has consulted with State and local air pollution control officials. The EPA has held meetings on the proposed rule with many of the stakeholders from numerous individual companies, environmental groups, consultants and vendors, and other interested parties. The EPA has added materials to the docket to document these meetings.

*G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601, et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the automobile and light-duty truck surface coating industry, a small entity is defined as: (1) A small business according to Small Business Administration size standards for companies identified by NAICS codes 33611 (automobile manufacturing) and 33621 (light-duty truck and utility vehicle manufacturing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Based on the above definition, there are no small entities presently engaged in automobile and light-duty truck surface coating.

After considering the economic impacts of today's proposed rule on small entities, I certify that the proposed

rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the observation that the proposed rule affects no small entities since none are engaged in the surface coating of automobiles and light-duty trucks.

*H. Paperwork Reduction Act*

The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An ICR document has been prepared by EPA (ICR No. 2045.01) and a copy may be obtained from Susan Auby by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be 33,436 labor hours per year at a total annual cost of $982,742. This estimate includes a one-time performance test and report (with repeat tests where needed) for those affected sources that choose to comply through the installation of new capture systems and control devices; one-time purchase and installation of CPMS for those affected sources that choose to comply through the installation of new capture systems and control devices; preparation and submission of work practice plans; one-time submission of a startup, shutdown, and malfunction plan with semiannual reports for any event when the procedures in the plan were not followed; semiannual excess emission reports; maintenance inspections; notifications; and recordkeeping. There are no additional capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR. The monitoring related operation and maintenance costs over this same period are estimated at $7,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 ((202) 566–1700); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 24, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 23, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed rulemaking involves technical standards. The EPA cites the following standards in the proposed rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204A through F, and 311. The search and review results have been documented and are placed in the docket for the proposed rule (docket A–2001–22).

The six VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of the proposed rule.

The VCS ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the proposed rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10, is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' are cited in the proposed rule as acceptable alternatives to EPA Method 24 to determine the volume solids content of coatings. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. The two VCS standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

The VCS ASTM D5066–91 (2001), ''Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints-Weight Basis,'' is cited in the proposed rule as an acceptable procedure to measure transfer efficiency of spray coatings. Currently, no EPA method is available to measure transfer efficiency.

The two VCS, ASTM D6266–00a, ''Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement)'' and ASTM D5087–91 (1994), ''Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement),'' are cited in the proposed rule as acceptable procedures to measure solvent loading (similar to capture efficiency) for the heated flash zone for waterborne basecoats and for bake ovens. Currently, no EPA method is available to measure solvent release potential from automobile and light-duty truck coatings in order to determine the potential solvent loading from the coatings used.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

In addition to the VCS EPA proposes to use, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 10 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, EPA does not intend to adopt these standards for this purpose. (See docket A–2001–22 for further information on the methods.)

Four of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; ISO/DIS 12039, ''Stationary Source Emissions-Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; and ISO/PWI 17895, ''Paints and Varnishes-Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24.

Sections 63.3161 and 63.3166 to the proposed standards list the EPA testing methods included in the proposed rule. Under § 63.7(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

During the development of the proposed rulemaking, EPA searched for VCS that might be applicable and included ASTM test methods as appropriate for determination of volume fraction of coating solids.

**List of Subjects**

*40 CFR Part 63*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 264*

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

*40 CFR Part 265*

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Dated: November 26, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, parts 63, 264, and 265 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart IIII to read as follows:

## Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

Sec.

**What This Subpart Covers**

63.3080 What is the purpose of this subpart?
63.3081 Am I subject to this subpart?
63.3082 What parts of my plant does this subpart cover?
63.3083 When do I have to comply with this subpart?

**Emission Limitations**

63.3090 What emission limits must I meet for a new or reconstructed affected source?
63.3091 What emission limits must I meet for an existing affected source?
63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?
63.3093 What operating limits must I meet?
63.3094 What work practice standards must I meet?

**General Compliance Requirements**

63.3100 What are my general requirements for complying with this subpart?
63.3101 What parts of the General Provisions apply to me?

**Notifications, Reports, and Records**

63.3110 What notifications must I submit?
63.3120 What reports must I submit?
63.3130 What records must I keep?
63.3131 In what form and for how long must I keep my records?

**Compliance Requirements for Adhesive, Sealer, and Deadener**

63.3150 By what date must I conduct the initial compliance demonstration?
63.3151 How do I demonstrate initial compliance with the emission limitations?
63.3152 How do I demonstrate continuous compliance with the emission limitations?

**Compliance Requirements for the Combined Electrodeposition Primer, Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates**

63.3160 By what date must I conduct performance tests and other initial compliance demonstrations?
63.3161 How do I demonstrate initial compliance?
63.3162 [Reserved]
63.3163 How do I demonstrate continuous compliance with the emission limitations?
63.3164 What are the general requirements for performance tests?
63.3165 How do I determine the emission capture system efficiency?
63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

63.3167 How do I establish the add-on control device operating limits during the performance test?
63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

**Compliance Requirements for the Combined Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates and the Separate Electrodeposition Primer Emission Rates**

63.3170 By what date must I conduct performance tests and other initial compliance demonstrations?
63.3171 How do I demonstrate initial compliance?
63.3172 [Reserved]
63.3173 How do I demonstrate continuous compliance with the emission limitations?

**Other Requirements and Information**

63.3175 Who implements and enforces this subpart?
63.3176 What definitions apply to this subpart?

**Tables to Subpart IIII of Part 63**

Table 1 to Subpart IIII of Part 63—Operating Limits for Capture Systems and Add-On Control Devices
Table 2 to Subpart IIII of Part 63—Applicability of General Provisions to Subpart IIII of Part 63
Table 3 to Subpart IIII of Part 63—Default Organic HAP Mass Fraction for Solvents and Solvent Blends
Table 4 to Subpart IIII of Part 63—Default Organic HAP Mass Fraction for Petroleum Solvent Groups

## Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

### What This Subpart Covers

#### § 63.3080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for facilities which surface coat new automobile or light-duty truck bodies or collections of body parts for new automobiles or new light-duty trucks. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

#### § 63.3081 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is automobile and light-duty truck surface coating.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3082, that is located at a facility which surface coats new automobile or new light-duty truck bodies or collections of body parts for new automobiles or new light-duty trucks, and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating, surface preparation, or cleaning activities that meet the criteria of paragraph (c)(1) or (2) of this section.

(1) Surface coating subject to any other NESHAP in this part as of [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], including plastic parts and products surface coating [1] and miscellaneous metal parts surface coating .[2]

(2) Surface coating that occurs at research or laboratory facilities or that is part of janitorial, building, and facility maintenance operations, including maintenance spray booths used for painting production equipment, furniture, signage, etc., for use within the plant.

#### § 63.3082 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of new automobile or light-duty truck bodies or collections of body parts for new automobiles or new light-duty trucks:

(1) All coating operations as defined in § 63.3176;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after December 24, 2002, and the construction is of a completely new automobile and light-duty truck assembly plant where previously no automobile and light-duty truck assembly plant had existed, or a completely new automobile and light-duty truck paint shop where previously no automobile and light-duty truck assembly plant had existed.

(d) An affected source is reconstructed if it contains a paint shop that has undergone replacement of components to such an extent that:

(1) The fixed capital cost of the new components exceeded 50 percent of the fixed capital cost that would be required to construct a new paint shop; and

(2) It was technologically and economically feasible for the reconstructed source to meet the relevant standards established by the Administrator pursuant to section 112 of the Clean Air Act (CAA).

(e) An affected source is existing if it is not new or reconstructed.

#### § 63.3083 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstrations described in §§ 63.3150, 63.3160 and 63.3170.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the

[1] Proposed December 4, 2002 (67 FR 72275).
[2] Proposed August 13, 2002 (67 FR 52780).

compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(d) You must meet the notification requirements in § 63.3110 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

## Emission Limitations

### § 63.3090 What emission limits must I meet for a new or reconstructed affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive application to no more than 0.036 kilogram (kg)/liter (0.30 pound (lb)/gallon (gal)) of coating solids deposited during each month, determined according to the requirements in § 63.3161.

(b) If you meet the operating limits of § 63.3092(a) and (b), you must either meet the emission limits of paragraph (a) of this section or limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171. If you do not have an electrodeposition primer system, you must limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application to no more than 0.060 kg/liter (0.50 lb/gal) of applied coating solids used during each month, determined according to the requirements in § 63.3171.

(c) You must limit average organic HAP emissions from all adhesive and sealer materials other than materials used as components of glass bonding systems to no more than 0.010 kg/kg (lb/lb) of adhesive and sealer material used during each month.

(d) You must limit average organic HAP emissions from all deadener materials to no more than 0.010 kg/kg (lb/lb) of deadener material used during each month.

### § 63.3091 What emission limits must I meet for an existing affected source?

(a) Except as provided in paragraph (b) of this section, you must limit combined organic HAP emissions to the atmosphere from electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application to no more than 0.072 kg/liter 0.60 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3161.

(b) If you meet the operating limits of § 63.3092(a) and (b), you must either meet the emission limits of paragraph (a) of this section or limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application to no more than 0.132 kg/liter (1.10 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3171. If you do not have an electrodeposition primer system, you must limit combined organic HAP emissions to the atmosphere from primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application to no more than 0.132 kg/liter (1.10 lb/gal) of coating solids deposited during each month, determined according to the requirements in § 63.3171.

(c) You must limit average organic HAP emissions from all adhesive and sealer materials other than materials used as components of glass bonding systems to no more than 0.010 kg/kg (lb/lb) of adhesive and sealer material used during each month.

(d) You must limit average organic HAP emissions from all deadener materials to no more than 0.010 kg/kg (lb/lb) of deadener material used during each month.

### § 63.3092 How must I control emissions from my electrodeposition primer system if I want to comply with the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive emission limit?

If your electrodeposition primer system meets the requirements of either paragraph (a) or (b) of this section, you may choose to comply with the emission limits of § 63.3090(b) or § 63.3091(b) instead of the emission limits of § 63.3090(a) or § 63.3091(a).

(a) Each individual material added to the electrodeposition primer system contains no more than:

(1) 1.0 percent by weight of any organic HAP; and

(2) 0.10 percent by weight of any organic HAP which is an Occupational Safety and Health Administration (OSHA)—defined carcinogen as specified in 29 CFR 1910.1200(d)(4).

(b) Emissions from all bake ovens used to cure electrodeposition primers must be captured and ducted to a control device having a control efficiency of at least 95 percent.

### § 63.3093 What operating limits must I meet?

(a) You are not required to meet any operating limits for any coating operation(s) without add-on controls.

(b) For any controlled coating operation(s), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and add-on control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.3167. You must meet the operating limits at all times after you establish them.

(c) If you choose to meet the emission limitations of § 63.3092(b) and the emission limits of § 63.3090(b) or § 63.3091(b), then you must operate the capture system and add-on control device used to capture and control emissions from your electrodeposition primer bake oven(s) so that they meet the operating limits specified in Table 1 to this subpart.

(d) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

### § 63.3094 What work practice standards must I meet?

(a) [Reserved]

(b) You must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d). The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) The risk of spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels, other than day tanks equipped with continuous agitation systems, which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) You must develop and implement a work practice plan to minimize organic HAP emissions from cleaning and from purging of equipment associated with all coating operations for which emission limits are established under § 63.3090(a) through (d) or § 63.3091(a) through (d).

(1) The plan shall, at a minimum, address each of the operations listed in paragraphs (c)(1)(i) through (viii) of this section in which you use organic HAP-containing materials or in which there is a potential for emission of organic HAP.

(i) The plan must address vehicle body wipe emissions through one or more of the techniques listed in paragraphs (c)(1)(i)(A) through (E) of this section, or an approved alternative.

(A) Use of solvent-moistened wipes.

(B) Keeping solvent containers closed when not in use.

(C) Keeping wipe disposal/recovery containers closed when not in use.

(D) Use of tack-wipes.

(E) Use of solvents containing less than 1 percent organic HAP by weight.

(ii) The plan must address coating line purging emissions through one or more of the techniques listed in paragraphs (c)(1)(ii)(A) through (D) of this section, or an approved alternative.

(A) Air/solvent push-out.

(B) Capture and reclaim or recovery of purge materials (excluding applicator nozzles/tips).

(C) Block painting to the maximum extent feasible.

(D) Use of low-HAP or no-HAP solvents for purge.

(iii) The plan must address emissions from flushing of coating systems through one or more of the techniques listed in paragraphs (c)(1)(iii)(A) through (D) of this section, or an approved alternative.

(A) Keeping solvent tanks closed.

(B) Recovering and recycling solvents.

(C) Keeping recovered/recycled solvent tanks closed.

(D) Use of low-HAP or no-HAP solvents.

(iv) The plan must address emissions from cleaning of spray booth grates through one or more of the techniques listed in paragraphs (c)(1)(iv)(A) through (E) of this section, or an approved alternative.

(A) Controlled burn-off.

(B) Rinsing with high-pressure water (in place).

(C) Rinsing with high-pressure water (off line).

(D) Use of spray-on masking or other type of liquid masking.

(E) Use of low-HAP or no-HAP content cleaners.

(v) The plan must address emissions from cleaning of spray booth walls through one or more of the techniques listed in paragraphs (c)(1)(v)(A) through (E) of this section, or an approved alternative.

(A) Use of masking materials (contact paper, plastic sheet, or other similar type of material).

(B) Use of spray-on masking.

(C) Use of rags and manual wipes instead of spray application when cleaning walls.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vi) The plan must address emissions from cleaning of spray booth equipment through one or more of the techniques listed in paragraphs (c)(1)(vi)(A) through (E) of this section, or an approved alternative.

(A) Use of covers on equipment (disposable or reusable).

(B) Use of parts cleaners (off-line submersion cleaning).

(C) Use of spray-on masking or other protective coatings.

(D) Use of low-HAP or no-HAP content cleaners.

(E) Controlled access to cleaning solvents.

(vii) The plan must address emissions from cleaning of external spray booth areas through one or more of the techniques listed in paragraphs (c)(1)(vii)(A) through (F) of this section, or an approved alternative.

(A) Use of removable floor coverings (paper, foil, plastic, or similar type of material).

(B) Use of manual and/or mechanical scrubbers, rags, or wipes instead of spray application.

(C) Use of shoe cleaners to eliminate coating track-out from spray booths.

(D) Use of booties or shoe wraps.

(E) Use of low-HAP or no-HAP content cleaners.

(F) Controlled access to cleaning solvents.

(viii) The plan must address emissions from housekeeping measures not addressed in paragraphs (c)(1)(i) through (vii) of this section through one or more of the techniques listed in paragraphs (c)(1)(viii)(A) through (C) of this section, or an approved alternative.

(A) Keeping solvent-laden articles (cloths, paper, plastic, rags, wipes, and similar items) in covered containers when not in use.

(B) Storing new and used solvents in closed containers.

(C) Transferring of solvents in a manner to minimize the risk of spills.

(2) Notwithstanding the requirements of paragraphs (c)(1)(i) through (viii) of this section, if the type of coatings used in any facility with surface coating operations subject to the requirements of this section are of such a nature that the need for one or more of the practices specified under paragraphs (c)(1)(i) through (viii) is eliminated, then the plan may include approved alternative or equivalent measures that are applicable or necessary during cleaning of storage, conveying, and application equipment.

(d) As provided in § 63.6(g), we, EPA, may choose to grant you permission to use an alternative to the work practice standards in this section.

## General Compliance Requirements

### § 63.3100 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in §§ 63.3090 and 63.3091 at all times, as determined on a monthly basis.

(b) The coating operations must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3093 at all times except during periods of startup, shutdown, and malfunction.

(c) You must be in compliance with the work practice standards in § 63.3094 at all times.

(d) You must always operate and maintain your affected source including all air pollution control and monitoring equipment you use for purposes of complying with this subpart according to the provisions in § 63.6(e)(1)(i).

(e) You must maintain a log detailing the operation and maintenance of the emission capture systems, add-on control devices, and continuous parameter monitors (CPM) during the period between the compliance date specified for your affected source in § 63.3083 and the date when the initial

emission capture system and add-on control device performance tests have been completed, as specified in § 63.3160.

(f) If your affected source uses emission capture systems and add-on control devices, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control devices.

### § 63.3101 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

## Notifications, Reports, and Records

### § 63.3110 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.3160 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (12) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.3160 that applies to your affected source.

(4) Identification of the compliance option specified in § 63.3090(a) or (b) or § 63.3091(a) or (b) that you used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet any of the applicable emission limits in § 63.3090 or § 63.3091, include all the calculations you used to determine the applicable emission rate or applicable average organic HAP content for the emission limit(s) that you failed to meet. You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) All data and calculations used to determine the monthly average mass of organic HAP emitted per volume of applied coating solids from:

(i) The combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations if you were eligible for and chose to comply with the emission limits of § 63.3090(b) or § 63.3091(b); or

(ii) The combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations.

(8) All data and calculations used to determine compliance with the separate limits for electrodeposition primer in § 63.3092(a) or (b) if you were eligible for and chose to comply with the emission limits of § 63.3090(b) or § 63.3091(b).

(9) All data and calculations used to determine the monthly mass average HAP content of materials subject to the emission limits of § 63.3090(c) and (d) or § 63.3091(c) and (d).

(10) All data and calculations used to determine the transfer efficiency for primer-surfacer and topcoat coatings.

(11) You must include the information specified in paragraphs (c)(11)(i) through (iii) of this section.

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the procedure followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports unless requested.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(12) A statement of whether or not you developed and implemented the work practice plans required by § 63.3094(b) and (c).

### § 63.3120 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the CAA, as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3160 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR

71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (iv) of this section, and the information specified in paragraphs (a)(4) through (9) and (c)(1) of this section that are applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31.

(iv) Identification of the compliance option specified in § 63.3090(b) or § 63.3091(b) that you used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive application in the affected source during the initial compliance period.

(4) *No deviations.* If there were no deviations from the emission limitations, operating limits, or work practices in §§ 63.3090, 63.3091, 63.3092, 63.3093, and 63.3094 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used control devices to comply with the emission limits, and there were no periods during which the continuous parameter monitoring systems (CPMS) were out of control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out of control during the reporting period.

(5) *Deviations: adhesive, sealer, and deadener.* If there was a deviation from the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) The beginning and ending dates of each month during which the monthly average organic HAP content exceeded the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d).

(ii) The volume and organic HAP content of each material used that is subject to the applicable organic HAP content limit.

(iii) The calculation used to determine the average monthly organic HAP content for the month in which the deviation occurred.

(iv) The reason for the deviation.

(6) *Deviations: combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer and glass bonding adhesive, or combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive.* If there was a deviation from the applicable emission limits in § 63.3090(a) or (b) or § 63.3091(a) or (b), the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (xiv) of this section.

(i) The beginning and ending dates of each month during which the monthly organic HAP emission rate from combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive exceeded the applicable emission limit in § 63.3090(a) or § 63.3091(a); or the monthly organic HAP emission rate from combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive exceeded the applicable emission limit in § 63.3090(b) or § 63.3091(b).

(ii) The calculation used to determine the monthly organic HAP emission rate in accordance with § 63.3161 or § 63.3171. You do not need to submit the background data supporting these calculations, for example information provided by materials suppliers or manufacturers, or test reports.

(iii) The date and time that any malfunctions of the capture system or add-on control devices used to control emissions from these operations started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date and time period that each CPMS was out of control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration and the percent of the total source operating time of the deviations from each operating limit in Table 1 to this subpart and the bypass of each add-on control device during the semiannual reporting period.

(x) A breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration and the percent of the total source operating time of the downtime for each CPMS during the semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control devices since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(7) *Deviations: separate electrodeposition primer organic HAP content limit.* If you used the separate electrodeposition primer organic HAP content limits in § 63.3092(a), and there was a deviation from these limits, the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (iii) of this section.

(i) Identification of each material used that deviated from the emission limit,

and the dates and time periods each was used.

(ii) The determination of mass fraction of each organic HAP for each material identified in paragraph (a)(7)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(8) *Deviations: separate electrodeposition primer bake oven capture and control limitations.* If you used the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b), and there was a deviation from these limitations, the semiannual compliance report must contain the information in paragraphs (a)(8)(i) through (xii) of this section.

(i) The beginning and ending dates of each month during which there was a deviation from the separate electrodeposition primer bake oven capture and control limitations in § 63.3092(b).

(ii) The date and time that any malfunctions of the capture systems or control devices used to control emissions from the electrodeposition primer bake oven started and stopped.

(iii) A brief description of the CPMS.

(iv) The date of the latest CPMS certification or audit.

(v) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vi) The date, time, and duration that each CPMS was out of control, including the information in § 63.8(c)(8).

(vii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of each bypass of an add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(viii) A summary of the total duration and the percent of the total source operating time of the deviations from each operating limit in Table 1 to this subpart and the bypasses of each add-on control device during the semiannual reporting period.

(ix) A breakdown of the total duration of the deviations from each operating limit in Table 1 to this subpart and bypasses of each add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(x) A summary of the total duration and the percent of the total source operating time of the downtime for each CPMS during the semiannual reporting period.

(xi) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control devices since the last semiannual reporting period.

(xii) A statement of the cause of each deviation.

(9) *Deviations: work practice plans.* If there was a deviation from an applicable work practice plan developed in accordance with § 63.3094(b) or (c), the semiannual compliance report must contain the information in paragraphs (a)(9)(i) through (iii) of this section.

(i) The time period during which each deviation occurred.

(ii) The nature of each deviation.

(iii) The corrective action(s) taken to bring the applicable work practices into compliance with the work practice plan.

(b) *Performance test reports.* If you use add-on control devices, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, and malfunction reports.* If you used add-on control devices and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

**§ 63.3130 What records must I keep?**

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP, the density and the volume fraction of coating solids for each coating, the mass fraction of organic HAP and the density for each thinner, and the mass fraction of organic HAP for each cleaning material. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. If you use the results of an analysis conducted by an outside testing lab, you must keep a copy of the test report. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each month, the records specified in paragraphs (c)(1) through (5) of this section.

(1) For each coating material used for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations, a record of the volume used in each month, the mass fraction organic HAP content, the density, and the volume fraction of solids.

(2) For each coating material used for deadener, sealer, or adhesive, a record of the mass used in each month and the mass organic HAP content.

(3) A record of the calculation of the organic HAP emission rate for electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive for each month if subject to the emission rate limit of § 63.3090(a) or § 63.3091(a).

(4) A record of the calculation of the organic HAP emission rate for primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive for each month if subject to the emission rate limit of § 63.3090(b) or § 63.3091(b), and a record of the weight fraction of each organic HAP in each material added to the electrodeposition primer system if subject to the limitations of § 63.3092(a).

(5) A record, for each month, of the calculation of the average monthly mass organic HAP content of:

(i) Sealers and adhesives; and

(ii) Deadeners.

(d) A record of the name and volume of each cleaning material used during each month.

(e) A record of the mass fraction of organic HAP for each cleaning material used during each month.

(f) A record of the density for each cleaning material used during each month.

(g) A record of the date, time, and duration of each deviation, and for each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(h) The records required by § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(i) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent.

(j) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in § 63.3164, including the records specified in paragraphs (j)(1) through (4) of this section that apply to you.

(1) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH), as measured by Method 204A or F of appendix M to 40 CFR part 51, for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(2) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system, as measured by Method 204B or C of appendix M to 40 CFR part 51, at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(3) *Records for panel tests.* Records needed to document a capture efficiency determination using a panel test as described in § 63.3165(e), including a copy of the test report and calculations performed to convert the panel test results to percent capture efficiency values.

(4) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol, if applicable.

(k) The records specified in paragraphs (k)(1) and (2) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3166.

(1) Records of each add-on control device performance test conducted according to §§ 63.3164 and 63.3166.

(2) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(l) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3167 and to document compliance with the operating limits as specified in Table 1 to this subpart.

(m) Records of the data and calculations you used to determine the transfer efficiency for primer-surfacer and topcoat application.

(n) A record of the work practice plans required by § 63.3094(b) and (c) and documentation that you are implementing the plan on a continuous basis.

### § 63.3131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

## Compliance Requirements for Adhesive, Sealer, and Deadener

### § 63.3150 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3151. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass average organic HAP content of the materials used each month for each group of materials for which an emission limitation is established in § 63.3090(c) and (d) or § 63.3091(c) and (d). The initial compliance demonstration includes the calculations according to § 63.3151 and supporting documentation showing that during the initial compliance period, the mass average organic HAP content for each group of materials was equal to or less than the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d).

### § 63.3151 How do I demonstrate initial compliance with the emission limitations?

You must separately calculate the mass average organic HAP content of the materials used during the initial compliance period for each group of materials for which an emission limit is established in § 63.3090(c) and (d) or § 63.3091(c) and (d). If every individual material used within a group of materials meets the emission limit for that group of materials, you may demonstrate compliance with that emission limit by documenting the name and the organic HAP content of each material used during the initial compliance period. If any individual material used within a group of materials exceeds the emission limit for that group of materials, you must determine the mass average organic HAP content according to the procedures of paragraphs (d) and (e) of this section.

(a) *Determine the mass fraction of organic HAP for each material used.*

You must determine the mass fraction of organic HAP for each material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.7638 truncates to 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When neither test data nor manufacturer's data for solvent blends are available, you may use the default values for the mass fraction of organic HAP in the solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence.

(b) *Determine the density of each material used.* Determine the density of each material used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(c) *Determine the volume of each material used.* Determine the volume (liters) of each material used during each month by measurement or usage records.

(d) *Determine the mass average organic HAP content for each group of materials.* Determine the mass average organic HAP content of the materials used during the initial compliance period for each group of materials for which an emission limit is established in § 63.3090(c) and (d) or § 63.3091(c) and (d), using Equations 1 and 2 of this section.

(1) Calculate the mass average organic HAP content of adhesive and sealer materials other than components of the glass bonding system used in the initial compliance period using Equation 1 of this section:

$$C_{avg,as} = \frac{\sum_{j=1}^{r}\left(Vol_{as,j}\right)\left(D_{as,j}\right)\left(W_{as,j}\right)}{\sum_{j=1}^{r}\left(Vol_{as,j}\right)\left(D_{as,j}\right)} \qquad \text{(Eq. 1)}$$

Where:

$C_{avg,as}$ = mass average organic HAP content of adhesives and sealers used, kg/kg.

$Vol_{as,j}$ = volume of adhesive or sealer j used, liters.

$D_{as,j}$ = Density of adhesive or sealer j used, kg per liter.

$W_{as,j}$ = mass fraction of organic HAP in adhesive or sealer, j, kg/kg.

r = number of adhesives and sealers used.

(2) Calculate the mass average organic HAP content of deadener used in the initial compliance period using Equation 2 of this section:

$$C_{avg,d} = \frac{\sum_{m=1}^{s}\left(Vol_{d,m}\right)\left(D_{d,m}\right)\left(W_{d,m}\right)}{\sum_{m=1}^{s}\left(Vol_{d,m}\right)\left(D_{d,m}\right)} \qquad \text{(Eq. 2)}$$

Where:

$C_{avg,d}$ = mass average organic HAP content of deadener used, kg/kg.

$Vol_{d,m}$ = volume of deadener, m, used, liters.

$D_{d,m}$ = density of deadener, m, used, kg per liter.
$W_{d,m}$ = mass fraction of organic HAP in deadener, m, kg/kg.
s = number of deadener materials used.

(e) *Compliance demonstration.* The mass average organic HAP content for the compliance period must be less than or equal to the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operations were in compliance with the emission limitations during the initial compliance period because the mass average organic HAP content was less than or equal to the applicable emission limits in § 63.3090(c) and (d) or § 63.3091(c) and (d), determined according to this section.

**§ 63.3152 How do I demonstrate continuous compliance with the emission limitations?**

(a) To demonstrate continuous compliance, the mass average organic HAP content for each compliance period, determined according to § 63.3151(a) through (c), must be less than or equal to the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3150 is a compliance period consisting of that month.

(b) If the mass average organic HAP emission content for any compliance period exceeds the applicable emission limit in § 63.3090(c) and (d) or § 63.3091(c) and (d), this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(5).

(c) You must maintain records as specified in §§ 63.3130 and 63.3131.

## Compliance Requirements for the Combined Electrodeposition Primer, Primer-Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates

**§ 63.3160 By what date must I conduct performance tests and other initial compliance demonstrations?**

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct a performance test of each capture system and add-on control device according to §§ 63.3164 and 63.3166 and establish the operating limits required by § 63.3093 no later than 180 days after the applicable compliance date specified in § 63.3083.

(2) You must develop and begin implementing the work practice plans required by § 63.3094(b), (c), and (e) no later than the compliance date specified in § 63.3083.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3161. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass of organic HAP emissions and volume of coating solids deposited in the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3164 and 63.3166; supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.3090(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3168; and documentation of whether you developed and implemented the work practice plans required by § 63.3094(b), (c), and (e).

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3093 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and CPM during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3083. You must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3164 and 63.3166 and establish the operating limits required by § 63.3093 no later than the compliance date specified in § 63.3083.

(2) You must develop and begin implementing the work practice plans required by § 63.3094(b), (c), and (e) no later than the compliance date specified in § 63.3083.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3161. The initial compliance period begins on the applicable compliance date specified in § 63.3083 and ends on the last day of the month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. You must determine the mass of organic HAP emissions and volume of coating solids deposited during the initial compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3164 and 63.3166; supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limits in § 63.3091(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3168; and documentation of whether you developed and implemented the work practice plans required by § 63.3094(b), (c), and (e).

**§ 63.3161 How do I demonstrate initial compliance?**

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093,

using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (o) of this section to demonstrate compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a). You may also use the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22) in making this demonstration.

(e) *Determine the mass fraction of organic HAP, density and volume used.* Follow the procedures specified in § 63.3151(a) through (c) to determine the mass fraction of organic HAP and the density and volume of each coating and thinner used during each month.

(f) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liter of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (f)(1) and (2) of this section. If test results obtained according to paragraph (f)(1) of this section do not agree with the information obtained under paragraph (f)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86(1998) or D6093–97.* You may use ASTM Method D2697–86(1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(g) *Determine the transfer efficiency for each coating.* You must determine the transfer efficiency for each primer-surfacer and topcoat coating using ASTM Method D5066–91(2001) or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22). Those guidelines include provisions for testing representative coatings instead of testing every coating. You may assume 100 percent transfer efficiency for electrodeposition primer coatings, glass bonding primers, and glass bonding adhesives. For final repair coatings, you may assume 40 percent transfer efficiency for air atomized spray and 55 percent transfer efficiency for electrostatic spray and high volume, low pressure spray.

(h) *Calculate the total mass of organic HAP emissions before add-on controls.* Calculate the total mass of organic HAP emissions before consideration of add-on controls from all coatings and thinners used during each month in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations using Equation 1 of this section:

$$H_{BC} = A + B \qquad \text{(Eq. 1)}$$

Where:

$H_{BC}$ = total mass of organic HAP emissions before consideration of add-on controls during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

(1) Calculate the kg organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the month.

(2) Calculate the kg of organic HAP in the thinners used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the month.

(i) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions captured by the emission capture system and destroyed or removed by the add-on control device. Use the procedures in paragraph (j) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (k) of this section to calculate the organic HAP emission reduction.

(j) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the mass of organic HAP emission reduction for the controlled coating operation during the month using Equation 2 of this section. The calculation of mass of organic HAP emission reduction for the controlled coating operation during the month applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3163(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. Equation 2 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_C = \left(A_C + B_C - H_{UNC}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \quad \text{(Eq. 2)}$$

Where:

$H_C$ = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

$A_C$ = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 2A of this section.

$B_C$ = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 2B of this section.

$H_{unc}$ = total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3163(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 2C of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3164 and 63.3165 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3164 and 63.3166 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 2A of this section.

$$A_C = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \quad \text{(Eq. 2A)}$$

Where:

$A_C$ = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 2B of this section.

$$B_C = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \quad \text{(Eq. 2B)}$$

Where:

$B_C$ = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the mass of organic HAP in the coatings and thinners used in the controlled coating operation during deviations specified in § 63.3163(c) and (d), using Equation 2C of this section:

$$H_{unc} = \sum_{h=1}^{q}\left(Vol_h\right)\left(D_h\right)\left(W_h\right) \quad \text{(Eq. 2C)}$$

Where:

$H_{unc}$ = total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3163(c) and (d) that occurred during the month in the controlled coating operation, kg.

$Vol_h$ = total volume of coating or thinner, h, used in the controlled coating operation during deviations, liters.

$D_h$ = density of coating or thinner, h, kg per liter.

$W_h$ = mass fraction of organic HAP in coating or thinner, h, kg organic HAP per kg coating.

q = number of different coatings or thinners.

(k) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings and thinners used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (k)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (k)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (k)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3151(b).

(5) Measure the volume of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 3 of this section:

$$R_v = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i WV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j}} \qquad \text{(Eq. 3)}$$

Where:

$R_V$ = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

$M_{VR}$ = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

$Vol_i$ = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

$D_i$ = density of coating, i, kg per liter.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

$Vol_j$ = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

$D_j$ = density of thinner, j, kg per liter.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 4 of this section:

$$H_{CSR} = (A_{CSR} + B_{CSR})\left(\frac{R_v}{100}\right) \qquad \text{(Eq. 4)}$$

Where:

$H_{CSR}$ = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

$A_{CSR}$ = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 4A of this section.

$B_{CSR}$ = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 4B of this section.

$R_V$ = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 3 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 4A of this section.

$$A_{CSR} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 4A)}$$

Where:

$A_{CSR}$ = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, using Equation 4B of this section.

$$B_{CSR} = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 4B)}$$

Where:

$B_{CSR}$ = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(l) *Calculate the total volume of coating solids deposited.* Determine the total volume of coating solids deposited, liters, in the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations using Equation 5 of this section:

$$V_{sdep} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right)\left(TE_{c,i}\right) \qquad \text{(Eq. 5)}$$

Where:

$V_{sdep}$ = total volume of coating solids deposited during the month, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = transfer efficiency of coating, i, determined according to § 63.3161(g).

m = number of coatings used during the month.

(m) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 6 of this section.

$$H_{HAP} = H_{BC} - \sum_{i=1}^{q} \left(H_{C,i}\right) - \sum_{j=1}^{r} \left(H_{CSR,j}\right) \qquad \text{(Eq. 6)}$$

Where:

$H_{HAP}$ = total mass of organic HAP emissions for the month, kg.

$H_{BC}$ = total mass of organic HAP emissions before add-on controls

from all the coatings and thinners used during the month, kg, determined according to paragraph (h) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 2 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 4 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(n) *Calculate the organic HAP emission rate for the month.* Determine the organic HAP emission rate for the month compliance period, kg organic HAP per liter coating solids deposited, using Equation 7 of this section:

$$H_{rate} = (H_{HAP}) / (V_{sdep}) \qquad \text{(Eq. 7)}$$

Where:

$H_{rate}$ = organic HAP emission rate for the month compliance period, kg organic HAP per liter coating solids deposited.

$H_{HAP}$ = mass of organic HAP emissions for the month, kg, determined according to Equation 6 of this section.

$V_{sdep}$ = total volume of coating solids deposited during the month, liters, from Equation 5 of this section.

(o) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined electrodeposition primer, primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations must meet the applicable emission limitation in § 63.3090(a) or § 63.3091(a). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a) and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

**§ 63.3162 [Reserved]**

**§ 63.3163 How do I demonstrate continuous compliance with the emission limitations?**

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3090(a) or § 63.3091(a), the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3161, must be equal to or less than the applicable emission limit in § 63.3090(a) or § 63.3091(a). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3160 is a compliance period consisting of that month. You must perform the calculations in § 63.3161 on a monthly basis.

(b) If the organic HAP emission rate for any 1 month compliance period exceeded the applicable emission limit in § 63.3090(a) or § 63.3091(a), this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3093 that applies to you, as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation.

(d) You must meet the requirements for bypass lines in § 63.3168(b) for control devices other than solvent recovery systems for which you conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in § 63.3110(c)(6) and 63.3120(a)(6). For the purposes of completing the compliance calculations specified in § 63.3161(k), you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3094. If you did not develop a work practice plan, if you did not implement the plan, or if you did not keep the records required by § 63.3130(n), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(f) If there were no deviations from the emission limitations, submit a statement as part of the semiannual compliance report that you were in compliance with the emission rate limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3090(a) or § 63.3091(a), and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.3100(f).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3130 and 63.3131.

**§ 63.3164 What are the general requirements for performance tests?**

(a) You must conduct each performance test required by § 63.3160 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating

conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3165. You must conduct each performance test of an add-on control device according to the requirements in § 63.3166.

### § 63.3165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3160.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings and thinners used in the coating operation are applied within the capture system, and coating solvent flash-off and coating curing and drying occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the four procedures described in paragraphs (c) through (f) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings and thinners used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

$TVH_i$ = mass fraction of TVH in coating or thinner, i, used in the coating operation during the capture efficiency test run, kg TVH per kg material.

$Vol_i$ = total volume of coating or thinner, i, used in the coating operation during the capture efficiency test run, liters.

$D_i$ = density of coating or thinner, i, kg material per liter material.

n = number of different coatings and thinners used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run.

To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{used}$ = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Panel testing to determine the capture efficiency of flash-off or bake oven emissions.* You may determine the capture efficiency of flash-off or bake oven emissions using ASTM Method D5087-91(1994), ASTM Method D6266–00a, or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001-22). The results of these panel testing procedures are in units of mass of VOC per volume of coating solids deposited. These results must be converted to percent capture efficiency values using Equation 4 of this section:

$$CE_i = \left(P_i\right)\left(V_{sdep,i}\right)/\left(VOC_i\right) \qquad \text{(Eq. 4)}$$

Where:

$CE_i$ = capture efficiency for coating i for the flash-off area or bake oven for which the panel test is conducted, percent.

$P_i$ = panel test result for coating i, kg of VOC per liter of coating solids deposited.

$V_{sdep,i}$ = total volume of coating solids deposited for coating i during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, liters, from Equation 5 of this section.

$VOC_i$ = total mass of VOC in coating i used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, kg, from Equation 6 of this section.

(1) Calculate the total volume of coating solids deposited for each coating used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted using equation 5 of this section:

$$V_{sdep,i} = \left(Vol_{c,i}\right)\left(V_{s,i}\right)\left(TE_{c,i}\right) \qquad \text{(Eq. 5)}$$

Where:

$V_{sdep,i}$ = total volume of coating solids deposited for coating i during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3161(f).

$TE_{c,i}$ = transfer efficiency of coating, i, in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted determined according to § 63.3161(g).

(2) Calculate the total mass of VOC in each coating used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, kg, using Equation 6 of this section:

$$VOC_i = (Vol_{c,i})(D_{c,i})(Wvoc_{c,i}) \quad \text{(Eq. 6)}$$

Where:

$VOC_i$ = total mass of VOC in coating i used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, kg.

$Vol_{c,i}$ = total volume of coating i used during the month in the spray booth(s) for the flash-off area or bake oven for which the panel test is conducted, liters.

DC = density of coating i, kg coating per liter coating, determined according to § 63.3151(b).

$Wvoc_{c,i}$ = mass fraction of VOC in coating i, kg organic HAP per kg coating, determined by Method 24 (appendix A to 40 CFR part 60) or the guidelines presented in ''Protocol for Determining Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations,'' EPA–450/3–88–018 (docket A–2001–22).

(f) *Alternative capture efficiency procedure.* As an alternative to the procedures specified in paragraphs (c) through (e) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

### § 63.3166 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3160. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. The ASME PTC 19.10–1981 may be used as an alternative to Method 3B.

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million by volume (ppmv) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppmv or less at the control device outlet.

(3) Use Method 25A if the add-control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)(10^{-6}) \quad \text{(Eq. 1)}$$

Where:

$M_f$ = total gaseous organic emissions mass flow rate, kg/per hour (h).

$C_c$ = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmv, dry basis.

$Q_{sd}$ = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m$^3$) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}}(100) \quad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

$M_{fi}$ = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

$M_{fo}$ = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

### § 63.3167 How do I establish the add-on control device operating limits during the performance test?

During the performance test required by § 63.3160 and described in §§ 63.3164 and 63.3166, you must establish the operating limits required by § 63.3193 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3193.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once

every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the oxidizer manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjustment of the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed and conduct a new performance test to determine destruction efficiency according to § 63.3166.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3165(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.3160 and described in §§ 63.3164 and 63.3165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

**§ 63.3168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at

all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3120.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used to treat desorbed concentrate streams from concentrators or carbon adsorbers), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a)(1) through (6) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent, capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature (as expressed in degrees Fahrenheit) recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a)(1) through (6) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature (expressed in degrees Fahrenheit) recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or

rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a)(1) through (6) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a)(1) through (6) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a)(1) through (6) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a)(1) through (6) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure tap(s) in a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

## Compliance Requirements for the Combined Primer Surfacer, Topcoat, Final Repair, Glass Bonding Primer, and Glass Bonding Adhesive Emission Rates and the Separate Electrodeposition Primer Emission Rates

### § 63.3170 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of § 63.3160.

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of § 63.3160.

### § 63.3171 How do I demonstrate initial compliance?

(a) You must meet all of the requirements of this section to demonstrate initial compliance. To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); and the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b).

(b) *Compliance with operating limits.* Except as provided in § 63.3160(a)(4), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3093, using the procedures specified in §§ 63.3167 and 63.3168.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plans required by § 63.3094(b) and (c) during the initial compliance period, as specified in § 63.3130.

(d) *Compliance with emission limits.* You must follow the procedures in § 63.3161(e) through (n), excluding materials used in electrodeposition primer operations, to demonstrate compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b). You must follow the procedures in paragraph (e) of this section to demonstrate compliance with the emission limit in § 63.3092(a), or paragraphs (f) through (g) of this section to demonstrate compliance with the emission limitations in § 63.3092(b).

(e) *Determine the mass fraction of each organic HAP in each material used in the electrodeposition primer operation.* You must determine the mass fraction of each organic HAP for each material used in the electrodeposition primer operation during the compliance period by using one of the options in paragraphs (e)(1) through (3) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of each organic HAP.

(2) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1) and (2) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If there is a disagreement between such information and results of a test conducted according to paragraph (e)(1) or (2) of this section, then the test method results will take precedence.

(f) *Capture of electrodeposition bake oven emissions.* You must show that the electrodeposition bake oven meets the criteria in sections 5.3 through 5.5 of Method 204 of appendix M to 40 CFR part 51 and directs all of the exhaust gases from the bake oven to an add-on control device.

(g) *Control of electrodeposition bake oven emissions.* Determine the efficiency of each control device on each electrodeposition bake oven using the procedures in §§ 63.3164 and 63.3166.

(h) *Compliance demonstration.* To demonstrate initial compliance, the organic HAP emissions from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations must meet the applicable emission limitation in § 63.3090(b) or § 63.3091(b); the organic HAP emissions from the electrodeposition primer operation must meet the applicable emissions limitations in § 63.3092(a) or (b). You must keep all records as required by §§ 63.3130 and 63.3131. As part of the Notification of Compliance Status required by § 63.3110, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate from the combined primer-surfacer, topcoat, final repair, glass bonding primer, and glass bonding adhesive operations was less than or equal to the applicable emission limit in § 63.3090(b) or § 63.3091(b), and the organic HAP emissions from the electrodeposition primer operation met the applicable emissions limitations in § 63.3092(a) or (b), and you achieved the operating limits required by § 63.3093 and the work practice standards required by § 63.3094.

### § 63.3172 [Reserved]

### § 63.3173 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3090(b) or § 63.3091(b), the organic HAP emission rate for each compliance period determined according to the procedures in § 63.3171 must be equal to or less than the applicable emission limit in § 63.3090(b) or § 63.3091(b). A compliance period consists of 1 month. Each month after the end of the initial compliance period described in § 63.3170 is a compliance period consisting of that month. You must perform the calculations in § 63.3171 on a monthly basis.

(b) If the organic HAP emission rate for any 1 month compliance period exceeded the applicable emission limit in § 63.3090(b) or § 63.3091(b), this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3110(c)(6) and 63.3120(a)(6).

(c) You must meet the requirements of § 63.3163(c) through (j).

## Other Requirements and Information

### § 63.3175 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards in § 63.3094 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.3176 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

*Add-on control device* means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

*Add-on control device efficiency* means the ratio of the emissions collected or destroyed by an add-on air pollution control device to the total emissions that are introduced into the control device, expressed as a percentage.

*Adhesive* means any chemical substance that is applied for the purpose of bonding two surfaces together.

*Anti-chip coating* means a specialty type of coating designed to reduce stone chipping damage. It is applied on selected vehicle surfaces that are exposed to impingement by stones and other road debris. It is typically applied after the electrodeposition primer and before the topcoat coating materials (may be used as a type of primer-surfacer). Anti-chip coatings are included in the primer-surfacer operation.

*As applied* means the condition of a coating material after any dilution as it is being applied to the substrate.

*As supplied* means the condition of the coating material as provided by the manufacturer to the user, either before or after reducing for application.

*Automobile* means a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property. *See also Light-duty truck.*

*Automobile and/or light-duty truck assembly plant* means facilities involved primarily in assembly of automobiles and light-duty trucks, including coating facilities and processes.

*Basecoat/clearcoat* means a topcoat system applied to exterior and selected interior vehicle surfaces primarily to provide an aesthetically pleasing appearance and acceptable durability performance. It consists of a layer of pigmented basecoat color coating, followed directly by a layer of a clear or semitransparent coating. It may include multiple layers of color coats or tinted clear materials.

*Blackout coating* means a type of specialty coating applied on selected vehicle surfaces (including areas of the engine compartment visible through the grill, and window and pillar trim) to provide a cosmetic appearance. Typically black or dark gray color. Blackout coating may be included in either the primer-surfacer or topcoat operations.

*Capture device* means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

*Capture efficiency or capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

*Capture system* means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings, both at the point of application and at subsequent points where emissions from the coatings occur, such as flash-off, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

*Catalytic oxidizer* means a device for oxidizing pollutants or waste materials via flame and heat incorporating a catalyst to aid the combustion at lower operating temperature.

*Cleaning material* means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried (*e.g.,* depainting) or wet coating from a substrate before or after coating application; or from equipment associated with a coating operation, such as spray booths, spray guns, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

*Coating* means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, primers, deadeners, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

*Coating operation* means equipment used to apply coating to a substrate (coating application) and to dry or cure the coating after application. A single coating operation always includes at least the point at which a coating is applied and all subsequent points in the affected source where organic HAP emissions from that coating occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, marking pens, or pinstriping equipment is not a coating operation for the purposes of this subpart.

*Coating solids* means the nonvolatile portion of the coating that makes up the dry film.

*Continuous parameter monitoring system (CPMS)* means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart; used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

*Controlled coating operation* means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

*Day tank* means tank with agitation and pumping system used for mixing and continuous circulation of coatings from the paint storage area to the spray booth area of the paintshop.

*Deadener* means a specialty coating applied to selected vehicle underbody surfaces for the purpose of reducing the sound of road noise in the passenger compartment.

*Deposited solids* means the solids component of the coating remains on the substrate or object being painted.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit or operating limit or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Electrodeposition primer or electrocoating primer* means a process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas.

It is a dip coating method that uses an electrical field to apply or deposit the conductive coating material onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Also referred to as E-Coat, Uni-Prime, and ELPO Primer.

*Emission limitation* means an emission limit, operating limit, or work practice standard.

*Final repair* means the operations performed and coating(s) applied outside of the paint shop to completely-assembled motor vehicles or in low-bake off-line operations within the paint shop to correct damage or imperfections in the coating.

*Flash-off area* means the portion of a coating process between the coating application station and the next coating application station or drying oven where solvent begins to evaporate from the coated vehicle.

*Glass bonding adhesive* means an adhesive used to bond windshield or other glass to an automobile or light-duty truck body.

*Glass bonding primer* means a primer applied to windshield or other glass, or to body openings to prepare the glass or body openings for the application of glass bonding adhesive, or the installation of adhesive bonded glass.

*Guide coat* means *Primer-surfacer.*

*In-line repair operation* means the process of surface preparation and application of coatings on the paint line in the paint shop to correct damage or imperfections in the coating finish. Also referred to as high bake repair or high bake reprocess.

*Light-duty truck* means vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 lbs or less.

*Manufacturer's formulation data* means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in §§ 63.3151 and 63.3161. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

*Mass fraction of organic HAP* means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

*Month* means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

*Organic HAP content* means the mass of organic HAP per mass of coating material.

*Paint shop* means that area of an automobile assembly plant in which vehicle bodies are cleaned, phosphated, and coatings (including electrodeposition primer, primer-surfacer, topcoat, and deadener) are applied.

*Permanent total enclosure (PTE)* means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

*Primer-surfacer* means an intermediate protective coating applied on the electrodeposition primer and under the topcoat. It provides adhesion, protection, and appearance properties to the total finish. Also called a guide coat or surfacer.

*Purge/clean operation* means the process of flushing paint out and cleaning the spray lines when changing colors or to remove undesired material. It includes use of air and solvents to clean the lines.

*Purge capture* means the capture of purge solvent and materials into a closed collection system immediately after purging the system. It is used to

prevent the release of organic HAP emissions and includes the disposal of the captured purge material.

*Purge material* means the coating and associated cleaning solvent materials expelled from the spray system during the process of cleaning the spray lines and applicators when color-changing or to maintain the cleanliness of the spray system.

*Protective oil* means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

*Research or laboratory facility* means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Spraybooth* means a ventilated structure housing automatic and/or manual spray application equipment for coating operations. Includes facilities for the capture and entrapment of particulate overspray.

*Startup, initial* means the first time equipment is brought online in a facility.

*Surface preparation* means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called ''depainting.''

*Surfacer* means *Primer-surfacer.*

*Tack-wipe* means solvent impregnated cloth used to remove dust from surfaces prior to application of coatings.

*Temporary total enclosure* means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

*Thermal oxidizer* means a device for oxidizing air pollutants or waste materials via flame and heat.

*Thinner* means an organic solvent that is added to a coating after the coating is received from the supplier.

*Topcoat* means the final coating system applied to provide the final color and/or a protective finish. May be a Monocoat color or Basecoat/Clearcoat system.

*Total volatile hydrocarbon (TVH)* means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

*Transfer efficiency* means the ratio of the amount of coating solids deposited onto the surface of the object to the total amount of coating solids sprayed while applying the coating to the object.

*Uncontrolled coating operation* means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

*Volatile organic compound (VOC)* means any compound defined as VOC in 40 CFR 51.100(s).

*Volume fraction of coating solids* means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

**Tables to Subpart IIII of Part 63**

TABLE 1 TO SUBPART IIII OF PART 63.—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES

[If you are required to comply with operating limits by § 63.3093, you must comply with the applicable operating limits in the following table]

| For the following device . . . | You must meet the following operating limit . . . | And you must demonstrate continuous compliance with the operating limit by |
|---|---|---|
| 1. thermal oxidizer ..... | a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3167(a). | i. collecting the combustion temperature data according to § 63.3168(c);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average combustion temperature at or above the temperature limit. |
| 2. catalytic oxidizer ..... | a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.3167(b); and either. | i. collecting the temperature data according to § 63.3168(c);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit. |
| | b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.3167(b)(2); or. | i. collecting the temperature data according to § 63.3168(c);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit; or |
| | c. develop and implement an inspection and maintenance plan according to § 63.3167(b)(4). | i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.3167(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations. |

TABLE 1 TO SUBPART IIII OF PART 63.—OPERATING LIMITS FOR CAPTURE SYSTEMS AND ADD-ON CONTROL DEVICES—Continued

[If you are required to comply with operating limits by § 63.3093, you must comply with the applicable operating limits in the following table]

| For the following device . . . | You must meet the following operating limit . . . | And you must demonstrate continuous compliance with the operating limit by |
|---|---|---|
| 3. carbon adsorber ..... | a. the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.3167(c). | i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.3168(d); and<br>ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit. |
| | b. the temperature of the carbon bed after completing each regeneration and any cooling cycle must not exceed the carbon bed temperature limit established according to § 63.3167(c). | i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.3168(d); and<br>ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit. |
| 4. condenser ..... | a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.3167(d). | i. collecting the condenser outlet (product side) gas temperature according to § 63.3168(e);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit. |
| 5. concentrators, including zeolite wheels and rotary carbon adsorbers. | a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.3167(e). | i. collecting the temperature data according to § 63.3168(f);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average temperature at or above the temperature limit. |
| | b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.3167(e). | i. collecting the pressure drop data according to § 63.3168(f); and<br>ii. reducing the pressure drop data to 3-hour block averages; and<br>iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit. |
| 6. emission capture system that is a PTE. | a. the direction of the air flow at all times must be into the enclosure; and either. | i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.3168(g)(1) or the pressure drop across the enclosure according to § 63.3168(g)(2); and<br>ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times. |
| | b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or. | i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.3168(g)(1) or the pressure drop across the enclosure according to § 63.3168(g)(2); and<br>ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times. |
| | c. the pressure drop across the enclosure must be at least 0.007 inch water, as established in Method 204 of appendix M to 40 CFR part 51. | i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.3168(g)(1) or the pressure drop across the enclosure according to § 63.3168(g)(2); and<br>ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times. |
| 7. emission capture system that is not a PTE. | a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3167(f). | i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3168(g);<br>ii. reducing the data to 3-hour block averages; and<br>iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit. |

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

[You must comply with the applicable General Provisions requirements according to the following table]

| Citation | Subject | Applicable to subpart IIII | Explanation |
|---|---|---|---|
| § 63.1(a)(1)–(14) | General Applicability | Yes | |
| § 63.1(b)(1)–(3) | Initial Applicability Determination | Yes | Applicability to subpart IIII is also specified in § 63.3181. |
| § 63.1(c)(1) | Applicability After Standard Established | Yes | |
| § 63.1(c)(2)–(3) | Applicability of Permit Program for Area Sources | No | Area sources are not subject to or subpart IIII. |
| § 63.1(c)(4)–(5) | Extensions and Notifications | Yes | |
| § 63.1(e) | Applicability of Permit Program Before Relevant Standard is Set. | Yes | |
| § 63.2 | Definitions | Yes | Additional definitions are specified in § 63.3176. |
| § 63.3(a)–(c) | Units and Abbreviations | Yes | |
| § 63.4(a)(1)–(5) | Prohibited Activities | Yes | |
| § 63.4(b)–(c) | Circumvention/Severability | Yes | |
| § 63.5(a) | Construction/Reconstruction | Yes | |
| § 63.5(b)(1)–(6) | Requirements for Existing, Newly Constructed, and Reconstructed Sources. | Yes | |
| § 63.5(d) | Application for Approval of Construction/Reconstruction. | Yes | |
| § 63.5(e) | Approval of Construction/Reconstruction | Yes | |
| § 63.5(f) | Approval of Construction/Reconstruction Based on Prior State Review. | Yes | |
| § 63.6(a) | Compliance With Standards and Maintenance Requirements—Applicability. | Yes | |
| § 63.6(b)(1)–(7) | Compliance Dates for New and Reconstructed Sources. | Yes | § 63.3083 specifies the compliance dates. |
| § 63.6(c)(1)–(5) | Compliance Dates for Existing Sources | Yes | § 63.3083 specifies the compliance dates. |
| § 63.6(e)(1)–(2) | Operation and Maintenance | Yes | |
| § 63.6(e)(3) | Startup, Shutdown, and Malfunction Plan | Yes | Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans. |
| § 63.6(f)(1) | Compliance Except During Startup, Shutdown, and Malfunction. | Yes | Applies only to sources using an add-on control device to comply with the standards. |
| § 63.6(f)(2)–(3) | Methods for Determining Compliance | Yes | |
| § 63.6(g)(1)–(3) | Use of an Alternative Standard | Yes | |
| § 63.6(h) | Compliance With Opacity/Visible Emission Standards. | No | Subpart IIII does not establish opacity standards and does not require continuous opacity monitoring systems (COMS). |
| § 63.6(i)(1)–(16) | Extension of Compliance | Yes | |
| § 63.6(j) | Presidential Compliance Exemption | Yes | |
| § 63.7(a)(1) | Performance Test Requirements—Applicability | Yes | Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3164 and 63.3166. |
| § 63.7(a)(2) | Performance Test Requirements—Dates | Yes | Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. § 63.3160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2). |
| § 63.7(a)(3) | Performance Tests Required By the Administrator | Yes | |
| § 63.7(b)–(e) | Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing Conditions During Test. | Yes | Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards. |
| § 63.7(f) | Performance Test Requirements—Use of Alternative Test Method. | Yes | Applies to alltest methods except those used to determine capture system efficiency. |
| § 63.7(g)–(h) | Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test. | Yes | Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards. |
| § 63.8(a)(1)–(3) | Monitoring Requirements—Applicability | Yes | Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.3168. |
| § 63.8(a)(4) | Additional Monitoring Requirements | No | Subpart IIII does not have monitoring requirements for flares. |
| § 63.8(b) | Conduct of Monitoring | Yes | |

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

| Citation | Subject | Applicable to subpart IIII | Explanation |
|---|---|---|---|
| § 63.8(c)(1)–(3) | Continuous Monitoring Systems (CMS) Operation and Maintenance. | Yes | Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.3168. |
| § 63.8(c)(4) | CMS | No | § 63.3168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply with the standards. |
| § 63.8(c)(5) | COMS | No | Subpart IIII does not have opacity or visible emission standards. |
| § 63.8(c)(6) | CMS Requirements | No | § 63.3168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply with the standards. |
| § 63.8(c)(7) | CMS Out-of-Control Periods | No | |
| § 63.8(c)(8) | CMS Out-of-Control Periods Reporting | No | § 63.3120 requires reporting of CMS out-of-control periods. |
| § 63.8(d)–(e) | Quality Control Program and CMS Performance Evaluation. | No | Subpart IIII does not require the use of continuous emissions monitoring systems. |
| § 63.8(f)(1)–(5) | Use of an Alternative Monitoring Method | Yes | |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test | No | Subpart IIII does not require the use of continuous emissions monitoring systems. |
| § 63.8(g)(1)– | Data Reduction | No | §§ 63.3167 and (5) 63.3168 specify monitoring data reduction. |
| § 63.9(a)–(d) | Notification Requirements | Yes | |
| § 63.9(e) | Notification of Performance Test | Yes | Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards. |
| § 63.9(f) | Notification of Visible Emissions/ Opacity Test | No | Subpart IIII does not have opacity or visible emission standards. |
| § 63.9(g)(1)–(3) | Additional Notifications When Using CMS | No | Subpart IIII does not require the use of continuous emissions monitoring systems. |
| § 63.9(h) | Notification of Compliance Status | Yes | § 63.3110 specifies the dates for submitting the notification of compliance status. |
| § 63.9(i) | Adjustment of Submittal Deadlines | Yes | |
| § 63.9(j) | Change in Previous Information | Yes | |
| § 63.10(a) | Recordkeeping/Reporting —Applicability and General Information. | Yes | |
| § 63.10(b)(1) | General Recordkeeping Requirements | Yes | Additional are requirements specified in §§ 63.3130 and 63.3131. |
| § 63.10(b)(2)(i)–(v) | Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS. | Yes | Requirements for startup, shutdown, and malfunction records only apply to capture systems and add-on control devices used to comply with the standards. |
| § 63.10(b)(2)(vi)–(xi) | | Yes | |
| § 63.10(b)(2)(xii) | Records | Yes | |
| § 63.10(b)(2)(xiii) | | No | Subpart IIII does not require the use of continuous emissions monitoring systems. |
| § 63.10(b)(2)(xiv) | | Yes | |
| § 63.10(b)(3) | Recordkeeping Requirements for Applicability Determinations. | Yes | |
| § 63.10(c)(1)–(6) | Additional Recordkeeping Requirements for Sources with CMS. | Yes | |
| § 63.10(c)(7)–8) | | No | The same records are required in § 63.3120(a)(6). |
| § 63.10(c)(9)–(15) | | Yes | |
| § 63.10(d)(1) | General Reporting Requirements | Yes | Additional requirements are specified in § 63.3120. |
| § 63.10(d)(2) | Report of Performance Test Results | Yes | Additional requirements are specified in § 63.3120(b). |
| § 63.10(d)(3) | Reporting Opacity or Visible Emissions Observations. | No | Subpart IIII does not require opacity or visible emissions observations. |
| § 63.10(d)(4) | Progress Reports for Sources With Compliance Extensions. | Yes | |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports | Yes | Applies only to capture systems and add-on control devices used to comply with the standards. |

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

| Citation | Subject | Applicable to subpart IIII | Explanation |
|---|---|---|---|
| § 63.10(e)(1)–(2) | Additional CMS Reports | No | Subpart IIII does not require the use of continuous emissions monitoring systems. |
| § 63.10(e)(3) | Excess Emissions/CMS Performance Reports | No | § 63.3120(b) specifies the contents of periodic compliance reports. |
| § 63.10(e)(4) | COMS Data Reports | No | Subpart IIII does not specify requirements for opacity or COMS. |
| § 63.10(f) | Recordkeeping/Reporting Waiver | Yes | |
| § 63.11 | Control Device Requirements/Flares | No | Subpart IIII does not specify use of flares for compliance. |
| § 63.12 | State Authority and Delegations | Yes | |
| § 63.13 | Addresses | | Yes |
| § 63.14 | Incorporation by Reference | Yes | |
| § 63.15 | Availability of Information/Confidentiality | Yes | |

TABLE 3 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

| Solvent/Solvent blend | CAS. No. | Average organic HAP mass fraction | Typical organic HAP, percent by mass |
|---|---|---|---|
| 1. Toluene | 108–88–3 | 1.0 | Toluene. |
| 2. Xylene(s) | 1330–20–7 | 1.0 | Xylenes, ethylbenzene. |
| 3. Hexane | 110–54–3 | 0.5 | n-hexane. |
| 4. n-Hexane | 110–54–3 | 1.0 | n-hexane. |
| 5. Ethylbenzene | 100–41–4 | 1.0 | Ethylbenzene. |
| 6. Aliphatic 140 | | 0 | None. |
| 7. Aromatic 100 | | 0.02 | 1% xylene, 1% cumene. |
| 8. Aromatic 150 | | 0.09 | Naphthalene. |
| 9. Aromatic naphtha | 64742–95–6 | 0.02 | 1% xylene, 1% cumene. |
| 10. Aromatic solvent | 64742–94–5 | 0.1 | Naphthalene. |
| 11. Exempt mineral spirits | 8032–32–4 | 0 | None. |
| 12. Ligroines (VM & P) | 8032–32–4 | 0 | None. |
| 13. Lactol spirits | 64742–89–6 | 0.15 | Toluene. |
| 14. Low aromatic white spirit | 64742–82–1 | 0 | None. |
| 15. Mineral spirits | 64742–88–7 | 0.01 | Xylenes. |
| 16. Hydrotreated naphtha | 64742–48–9 | 0 | None. |
| 17. Hydrotreated light distillate | 64742–47–8 | 0.001 | Toluene. |
| 18. Stoddard solvent | 8052–41–3 | 0.01 | Xylenes. |
| 19. Super high-flash naphtha | 64742–95–6 | 0.05 | Xylenes. |
| 20. Varsol® solvent | 8052–49–3 | 0.01 | 0.5% xylenes, 0.5% ethylbenzene. |
| 21. VM & P naphtha | 64742–89–8 | 0.06 | 3% toluene, 3% xylene. |
| 22. Petroleum distillate mixture | 68477–31–6 | 0.08 | 4% naphthalene, 4% biphenyl. |

TABLE 4 TO SUBPART IIII OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

| Solvent type | Average organic HAP mass fraction | Typical organic HAP, percent by mass |
|---|---|---|
| Aliphatic [b] | 0.03 | 1% Xylene, 1% Toluene, and 1% Ethylbenzene. |
| Aromatic [c] | 0.06 | 4% Xylene, 1% Toluene, and 1% Ethylbenzene. |

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart, and you only know whether the blend is aliphatic or aromatic.

[b] *e.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *e.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

## PART 264—[AMENDED]

1. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

2. Section 264.1050 is amended by adding paragraph (h) to read as follows:

### § 264.1050 Applicability.

* * * * *

(h) Purged coatings and solvents from automobile and light-duty truck, separate non-body plastic parts, and separate non-body metal parts surface coating operations at facilities subject to the national emission standards for hazardous air pollutants (NESHAP) at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

* * * * *

## PART 265—[AMENDED]

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

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

2. Section 265.1050 is amended by adding paragraph (g) to read as follows:

### § 265.1050 Applicability.

* * * * *

(g) Purged coatings and solvents from automobile and light-duty truck, separate non-body plastic parts, and separate non-body metal parts surface coating operations at facilities subject to the national emission standards for hazardous air pollutants (NESHAP) at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

[FR Doc. 02–31420 Filed 12–23–02; 8:45 am]

BILLING CODE 6560–50–P

# Reader Aids

**Federal Register**

Vol. 67, No. 247

Tuesday, December 24, 2002

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, DECEMBER

71443–71796 ..... 2
71797–72088 ..... 3
72089–72362 ..... 4
72363–72550 ..... 5
72551–72826 ..... 6
72827–75798 ..... 9
75799–76102 .....10
76103–76292 .....11
76293–76670 .....12
76671–76980 .....13
76981–77146 .....16
77147–77398 .....17
77399–77644 .....18
77645–77906 .....19
77907–78120 .....20
78121–78320 .....23
78321–78664 .....24

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7631 .....72089
7632 .....72551
7633 .....76103
7634 .....76669
7635 .....77905
**Administrative Orders:**
Memorandums:
Memorandum of November 27, 2002 .....71795
Memorandum of November 6, 2002 .....75799
**Executive Orders:**
11246 (Amended by EO 13279) .....77143
13278 .....76671
13279 .....77141
13280 .....77145
13281 .....78319
**Presidential Determinations:**
No. 99–13 (See Presidential Determination No. 2003–06 .....78123
No. 2003–04 .....72363
No. 2003–05 .....78121
No. 2003–06 .....78123
No. 2003–07 .....77645
No. 2003–08 .....78125

**5 CFR**

1800 .....78321

**7 CFR**

27 .....77147
301 .....78127
331 .....76908
718 .....71797
905 .....71798
989 .....71803
1806 .....78321
1822 .....78321
1924 .....78321
1925 .....78321
1927 .....78321
1930 .....78321
1940 .....78321
1942 .....77907
1944 .....78321
1948 .....78321
1950 .....78321
1951 .....78321
1955 .....78321
1965 .....78321
1980 .....78128, 78321
2200 .....76105
3550 .....78321
4279 .....78128
**Proposed Rules:**
46 .....77002
246 .....71774
319 .....77940
916 .....77003
917 .....77003

**8 CFR**

103 .....71443, 76256
212 .....71443
214 .....71443, 76256
235 .....71443
248 .....76256
264 .....71443
274a .....76256
286 .....71443
299 .....71443

**9 CFR**

93 .....72827, 78332
94 .....77148
98 .....78332
121 .....76908
**Proposed Rules:**
71 .....77004
82 .....77004
94 .....77004

**10 CFR**

Ch. 1 .....72091
1 .....77651
19 .....77651
20 .....77651
21 .....77651
32 .....77651
34 .....77651
39 .....77651
50 .....78332
51 .....77651, 78130
55 .....77651
61 .....78130
70 .....78130
72 .....78130, 78332
73 .....77651, 78130
74 .....78130
75 .....78130
76 .....78130
81 .....77651
150 .....78130
431 .....72274
**Proposed Rules:**
50 .....71490

**11 CFR**

100 .....76962
110 .....76962
111 .....76962
113 .....76962

**12 CFR**

223 .....76560
250 .....76560
502 .....78150
505 .....78150
506 .....76293, 77909, 78150

516....78150
541....78150
545....78150
550....76293
551....76293
557....78150
559....77909, 78150
560....76304
561....78150
562....75809, 77909
563....77909, 78150
563e....78150
563g....78150
575....78150
590....76304
591....76304
**Proposed Rules:**
223....76618
226....72618
701....72444
791....72113

**13 CFR**

**Proposed Rules:**
120....72622

**14 CFR**

21....72830
23....77399
25....76652
39....71450, 71452, 71455, 71808, 71810, 71812, 71816, 72091, 72553, 75809, 75812, 76106, 76109, 76111, 76673, 76981, 76982, 77401, 77404, 77405, 77653, 77666, 78153, 78156
71....71457, 71458, 71459, 71460, 71815, 72365, 72441, 76306, 78352
91....72830
95....78352
97....71816, 72553, 76675, 76677
119....72726
121....72726, 72830
125....72830
129....72726, 72830
135....72726
183....72726
1260....77667
1274....77667
**Proposed Rules:**
1....77326
23....71490
39....71493, 71495, 71497, 71500, 71503, 71505, 71904, 72115, 72119, 75819, 75822, 75824, 76120, 76702, 76704, 77442, 77444, 78393, 78394
71....71507, 71508, 71509, 71906, 75826, 76320, 77326, 78397
91....76624, 77326
95....77326
97....77326
119....76624
121....71908, 76624, 77326, 78196
125....76624, 77326
129....77326
135....76624, 77326
255....72869
399....72396, 72869
1260....72121

**15**

50....72095
303....77407

**17 CFR**

4....77409
275....77620
279....77620
420....77411
**Proposed Rules:**
4....77446
205....71670
210....76780
228....77594
229....77594
240....71909, 76780, 77594
249....76780
270....71915
274....76780, 77594

**18 CFR**

284....72098
**Proposed Rules:**
35....76122, 76321, 77007
284....72870

**19 CFR**

**Proposed Rules:**
101....71510
122....71510, 71512
123....71512

**20 CFR**

260....77152
320....77152
**Proposed Rules:**
206....77447
217....77448
404....78196
416....78196
429....77942
604....72122

**21 CFR**

5....71461
16....71461
101....71461
314....77668
320....77668
336....72555
338....72555
341....72555, 78158
500....78172
510....72365, 78354
520....71819, 72365, 78354, 78356
522....72366, 72367, 78354, 78357
524....78354
556....72367, 78356
558....71820, 71821, 72368, 72369, 72370
868....76678
878....77675
**Proposed Rules:**
870....76706
878....77698
1020....76056

**22 CFR**

40....77158
41....55159
42....77160
45....76681
62....76307
507....76112
**Proposed Rules:**
41....76711

**23 CFR**

627....75902
635....75902
636....75902
637....75902
710....75902

**24 CFR**

941....76096

**25 CFR**

21....77677
256....77919
**Proposed Rules:**
Ch. 1....75828

**26 CFR**

1....71821, 72274, 76985, 77678, 78174, 78358, 78367, 78371
301....77416, 77418, 77419, 77678, 78371
602....77678, 78174, 78371
**Proposed Rules:**
1....75899, 76123, 77450, 77701, 78202, 78398

**27 CFR**

9....72834, 77922

**28 CFR**

540....77161, 77425
541....77427

**29 CFR**

500....76985
1611....72373
1904....77165
4011....71470
4022....71470, 76682
4044....71472, 76682
**Proposed Rules:**
1915....76214

**30 CFR**

48....76658
75....76658, 78044
915....72375
924....71826
948....71832

**31 CFR**

103....78383
352....78384
**Proposed Rules:**
10....77724

**33 CFR**

100....71840, 76986
117....71473, 71474, 71840, 72099, 72100, 72559, 72560, 76116, 76116, 76988, 76989
165....71475, 71840, 72561, 72840, 76989, 76991, 77428, 77924, 78385
175....72100
177....72100
179....72100
181....72100
183....72100
**Proposed Rules:**
52....76142
117....71513, 72126, 77949
165....71513, 75831, 77008

**34 CFR**

200....71710

**36 CFR**

1200....72101, 77133
**Proposed Rules:**
111....77726
215....77451
219....72770, 72816

**37 CFR**

201....78176
253....77170
259....71477
**Proposed Rules:**
201....77951

**38 CFR**

21....72563
**Proposed Rules:**
1....77737
3....76322

**39 CFR**

111....78178
255....75814
501....71843
**Proposed Rules:**
111....72626

**40 CFR**

52....72379, 72573, 72574, 72576, 72579, 72842, 72844, 76316, 76993, 77430, 77926, 78179, 78181
61....72579
62....76116
63....72330, 72580, 77687
81....76450
82....77927
86....72821
70....71479
131....71843
141....73011–74047
142....73011–74047
180....71847, 72104, 72585, 72846
270....77687
271....76995
300....76683
721....72854
1065....72724
**Proposed Rules:**
52....71515, 72874, 76326, 77010, 77196, 77204, 77212, 77463, 77955
62....76150
63....72276, 72875, 77562, 77828, 77830, 78046, 78274, 78614
81....77196, 77204, 77212
86....72818
141....71520, 78203
264....78614
265....78614
271....77010
300....72888
451....71523
764....71524
1610....72890

**41 CFR**

101-6....76882

101-18....76882
101-19....76882
101-20....76882
101-33....76882
101-47....76882
102-71....76820
102-72....76820
102-73....76820
102-74....76820
102-75....76820
102-76....76820
102-78....76820
102-79....76820
102-80....76820
102-81....76820
102-83....76820

**42 CFR**

**Proposed Rules:**
54....77350
54a....77350
73....71528, 76886
405....76684
1001....72892, 72894
1003....72896, 76886

**43 CFR**

**Proposed Rules:**
4....77011
4100....77011
5000....77011

**44 CFR**

64....72593
65....71482

**Proposed Rules:**
208....77628

**45 CFR**

50....77692

**Proposed Rules:**
31....72128
96....77350
260....77362
1050....77368

**46 CFR**

2....72100
10....72100
15....72100
24....72100
25....72100
26....72100
30....72100
70....72100
90....72100
114....72100
169....72100
175....72100
188....72100
199....72100

**47 CFR**

1....77173
11....77174
22....77175
24....77175
32....77432
64....71861
73....71891, 71892, 71893, 71894, 76318, 76998, 78191, 78192, 78193, 78386, 78387
76....78387
90....76697

**Proposed Rules:**
0....77220
1....76628
2....75968
22....78209
24....78209
25....75968, 78399
27....78209
43....77220
63....77220
64....77220
73....71924, 71925, 71926, 77220, 77374, 78215, 78400, 78401, 78402
76....77374
87....75968

**48 CFR**

208....77936
219....77936
225....77937
252....77937

**Proposed Rules:**
Ch. 10....76150
213....77955

**49 CFR**

1....72383
199....78388
241....75938
571....77193
573....72384
577....72384

**Proposed Rules:**
10....78403
23....76327
171....72034
172....72034
173....72034
175....72034
176....72034
178....72034
180....72034
219....75966
533....77015

**50 CFR**

17....76030, 78570
222....71895
223....71895, 78388
229....71900, 75817
300....72110, 72394
622....71901, 71902, 72112, 77193
635....71487, 77433, 77434
648....71488, 72867, 76318, 76701
679....71489, 72595, 76998, 77439

**Proposed Rules:**
17....71529, 72396, 72407, 75834, 76156, 77464, 77466
600....76329, 77957
635....72629, 78404
648....72131
679....76344, 76362

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT DECEMBER 24, 2002

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

California; published 10-25-02

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:

Florfenicol; published 12-24-02

Lincomycin hydrochloride soluble powder; published 12-24-02

Oxytetracycline; implantation or injectable dosage; published 12-24-02

Sponsor name and address changes—

American Cyanamid; published 12-24-02

Phoenix Scientific, Inc.; published 12-24-02

Trenbolone and estradiol; published 12-24-02

**SPECIAL COUNSEL OFFICE**

Prohibited personnel practice or other prohibited activity, complaints and information disclosures filing; technical amendments; published 12-24-02

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Principal residence sale or exchange; exclusion of gain; published 12-24-02

Trust treated as part of estate; election; published 12-24-02

**TREASURY DEPARTMENT**

Counter money laundering requirements:

Bank Secrecy Act; implementation—

Foreign shell banks; correspondent accounts; and foreign banks, correspondent accounts recordkeeping and termination; published 12-24-02

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Meats, prepared meats, and meat products; certification and standards:

Federal meat grading and certification services; fee changes; comments due by 12-31-02; published 11-1-02 [FR 02-27766]

**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

Loan and purchase programs:

Farm and Ranch Lands Protection Program; comments due by 12-30-02; published 10-29-02 [FR 02-26888]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; comments due by 12-30-02; published 10-30-02 [FR 02-27566]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Debarment and suspension; order placement and option exercise; comments due by 1-3-03; published 11-4-02 [FR 02-27268]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act), natural gas companies (Natural Gas Act), and oil pipeline companies (Interstate Commerce Act):

Asset retirement obligations; accounting, financial reporting, and rate filing requirements; comments due by 1-3-03; published 11-19-02 [FR 02-28294]

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 1-2-03; published 12-2-02 [FR 02-30468]

Solid wastes:

Waste management system; testing and monitoring activities; methods innovation; comments due by 12-30-02; published 10-30-02 [FR 02-26441]

Water supply:

National primary and secondary drinking water regulations—

Chemical and microbiological contaminants; analytical methods approval; Colitag method; comments due by 1-2-03; published 12-2-02 [FR 02-30467]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:

Michigan; comments due by 12-30-02; published 12-3-02 [FR 02-30508]

North Carolina; comments due by 12-30-02; published 12-3-02 [FR 02-30510]

Texas; comments due by 12-30-02; published 12-3-02 [FR 02-30506]

Television stations; table of assignments:

Maine; comments due by 1-3-03; published 11-21-02 [FR 02-29577]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Debarment and suspension; order placement and option exercise; comments due by 1-3-03; published 11-4-02 [FR 02-27268]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicare:

Hospital outpatient prospective payment system (2003 CY); comments due by 12-31-02; published 11-1-02 [FR 02-27548]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

Blackburn's sphinx moth; comments due by 12-30-02; published 8-26-02 [FR 02-21702]

Blackburn's sphinx moth; comments due by 12-30-02; published 10-10-02 [FR 02-25722]

Findings on petitions, etc.—

Western gray squirrel; comments due by 12-30-02; published 10-29-02 [FR 02-27297]

Fishery conservation and management:

Critical habitat designations—

Blackburn's sphinx moth; comments due by 12-30-02; published 11-15-02 [FR 02-29049]

**LABOR DEPARTMENT**

**Mine Safety and Health Administration**

Independent laboratories and non-MSHA product safety standards; testing and evaluation; alternate requirements; comments due by 12-31-02; published 10-17-02 [FR 02-25879]

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Safety and health standards, etc.:

Standards improvement project (Phase II); comments due by 12-30-02; published 10-31-02 [FR 02-27541]

**LEGAL SERVICES CORPORATION**

Freedom of Information Act; implementation; comments due by 1-2-03; published 11-18-02 [FR 02-29123]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Debarment and suspension; order placement and option exercise; comments due by 1-3-03; published 11-4-02 [FR 02-27268]

**SECURITIES AND EXCHANGE COMMISSION**

Securities:

Broker-dealer exemption from sending financial information to customers; comments due by 1-2-03; published 12-3-02 [FR 02-30664]

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Merchant marine officers and seamen:

Passenger ships on international voyages; personnel training and qualifications; comments due by 12-30-02; published 10-30-02 [FR 02-27376]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 1-3-03; published 12-4-02 [FR 02-30654]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 12-30-02; published 10-31-02 [FR 02-27315]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 12-30-02; published 10-30-02 [FR 02-27557]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Boeing; comments due by 12-30-02; published 11-15-02 [FR 02-29005]

Bombardier; comments due by 1-2-03; published 12-2-02 [FR 02-30347]

Cessna; comments due by 12-30-02; published 10-21-02 [FR 02-26662]

Eurocopter France; comments due by 1-3-03; published 11-4-02 [FR 02-27789]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Hartzell Propeller, Inc.; comments due by 1-3-03; published 11-4-02 [FR 02-27739]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Honeywell; comments due by 12-31-02; published 11-1-02 [FR 02-27433]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

McDonnell Douglas; comments due by 1-2-03; published 11-18-02 [FR 02-29118]

Raytheon; comments due by 1-2-03; published 10-25-02 [FR 02-27196]

SOCATA-Groupe Aerospatiale; comments due by 1-3-03; published 11-15-02 [FR 02-29004]

Airworthiness standards:

Special conditions—

Air Tractor Inc.; comments due by 1-2-03; published 12-2-02 [FR 02-30325]

Sikorsky Aircraft Corp. Model S-92A helicopters; comments due by 12-30-02; published 10-29-02 [FR 02-27378]

Class D airspace; comments due by 1-2-03; published 12-2-02 [FR 02-30328]

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:

Traffic control devices on Federal-aid and other streets and highways; standards; comments due by 12-30-02; published 10-30-02 [FR 02-27608]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Hydraulic and electric brake systems—

Vehicles over 10,000 pounds; minimum performance requirements, etc.; comments due by 12-30-02; published 10-30-02 [FR 02-27526]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation—

Tire safety information; comments due by 1-2-03; published 11-18-02 [FR 02-28682]

**TREASURY DEPARTMENT**

**Alcohol, Tobacco and Firearms Bureau**

Alcohol; viticultural area designations:

Red Hill, Douglas County, OR; comments due by 12-30-02; published 10-30-02 [FR 02-27444]

Red Hills, Lake County, CA; comments due by 12-30-02; published 10-30-02 [FR 02-27443]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Relative values of optional forms of benefit; disclosure; comments due by 1-2-03; published 10-7-02 [FR 02-25338]

**VETERANS AFFAIRS DEPARTMENT**

Disabilities rating schedule:

Skin

Multiple scars evaluation; comments due by 12-30-02; published 10-29-02 [FR 02-27408]

## LIST OF PUBLIC LAWS

This completes the listing of public laws enacted during the second session of the 107th Congress. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html* and *http://hydra.gsa.gov/archives/publaws-l.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

**H.R. 3048/P.L. 107–362**

Russian River Land Act (Dec. 19, 2002; 116 Stat. 3021)

**H.R. 3747/P.L. 107–363**

Bainbridge Island Japanese-American Memorial Study Act of 2002 (Dec. 19, 2002; 116 Stat. 3024)

**H.R. 3909/P.L. 107–364**

Gunn McKay Nature Preserve Act (Dec. 19, 2002; 116 Stat. 3026)

**H.R. 3954/P.L. 107–365**

Caribbean National Forest Wild and Scenic Rivers Act of 2002 (Dec. 19, 2002; 116 Stat. 3027)

**H.R. 4129/P.L. 107–366**

To amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment. (Dec. 19, 2002; 116 Stat. 3030)

**H.R. 4638/P.L. 107–367**

To reauthorize the Mni Wiconi Rural Water Supply Project. (Dec. 19, 2002; 116 Stat. 3033)

**H.R. 4664/P.L. 107–368**

National Science Foundation Authorization Act of 2002 (Dec. 19, 2002; 116 Stat. 3034)

**H.R. 4682/P.L. 107–369**

Allegheny Portage Railroad National Historic Site Boundary Revision Act (Dec. 19, 2002; 116 Stat. 3069)

**H.R. 4750/P.L. 107–370**

Big Sur Wilderness and Conservation Act of 2002 (Dec. 19, 2002; 116 Stat. 3071)

**H.R. 4874/P.L. 107–371**

To direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey. (Dec. 19, 2002; 116 Stat. 3076)

**H.R. 4883/P.L. 107–372**

To reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes. (Dec. 19, 2002; 116 Stat. 3078)

**H.R. 4944/P.L. 107–373**

Cedar Creek and Belle Grove National Historical Park Act (Dec. 19, 2002; 116 Stat. 3104)

**H.R. 4953/P.L. 107–374**

To direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road. (Dec. 19, 2002; 116 Stat. 3111)

**H.R. 5099/P.L. 107–375**

To extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San

Juan River Basins. (Dec. 19, 2002; 116 Stat. 3113)

**H.R. 5436/P.L. 107–376**
To extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon. (Dec. 19, 2002; 116 Stat. 3114)

**H.R. 5472/P.L. 107–377**
Protection of Family Farmers Act of 2002 (Dec. 19, 2002; 116 Stat. 3115)

**Last List December 20, 2002**

**Note:** This list will resume when bills are enacted into public law during the next session of Congress. A cumulative list of Public Laws will be published in the **Federal Register** on January 31, 2003.

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

**SUBSCRIBE PUBLAWS-L**
Your Name.

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.