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Federal Register

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 842, 843, 844, and 847

RIN 3206–AJ72

Retirement Coverage and Service Credit Elections Available to Current and Former Nonappropriated Fund Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the civilian retirement provisions of the National Defense Authorization Act for Fiscal Year 2002. These regulations establish procedures whereby Federal employees may elect to use service they performed for a Nonappropriated Fund Instrumentality (NAFI) of the Department of Defense or Coast Guard to qualify for an immediate retirement under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). These regulations also establish the methodology for computing the CSRS or FERS annuity when employees elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

DATES: Interim rules effective December 28, 2001, comments must be received on or before March 17, 2003.

ADDRESSES: Send or deliver comments to Mary Ellen Wilson, Chief, Retirement Policy Center; Retirement and Insurance Service; Office of Personnel Management; 1900 E Street NW., Washington DC 20415–3200, FAX (202) 606–0990, or e-mail them to *combox@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Giuseppe, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

1. Overview

The President signed into law the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, on December 28, 2001. Sections 1131 and 1132 of that law amend existing provisions of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) relating to service with a Department of Defense (DoD) or Coast Guard Nonappropriated Fund Instrumentality (NAFI). Section 1131 amends rules relating to portability of retirement coverage when employees move from NAFI positions to civil service positions and vice versa. Section 1132 amends rules relating to service credit for NAFI service under CSRS and FERS.

These interim regulations amend current regulations that define a qualifying move from DoD or Coast Guard NAFI positions to civil service positions and vice versa. In addition, these interim regulations add two subparts to 5 CFR part 847. Subpart H describes how employees may elect to credit NAFI service to qualify for immediate CSRS or FERS retirement. Subpart I describes how such an election will affect the computation of the CSRS or FERS annuity benefit.

A qualifying move from a DoD or Coast Guard NAFI position to a civil service position allows an employee to elect to continue NAFI retirement coverage in the civil service position. Similarly, a qualifying move from a civil service position to a DoD or Coast Guard NAFI position allows an employee to elect to continue civil service retirement coverage in the NAFI position. As originally defined, for a move to be considered qualifying, among other requirements, employees had to be vested in the retirement plan of the position they were leaving. Section 1131 of Public Law 107–107 eliminates that vesting requirement for moves that occur on or after December 28, 2001.

Section 1132 of Public Law 107–107 allows CSRS and FERS employees to use NAFI service to qualify for immediate retirement. However, crediting NAFI service under Public Law 107–107 will not result in higher annuity benefits. The annuities of employees electing to use NAFI service to qualify for immediate retirement must be reduced to ensure that there will be no long-term cost to the Retirement Fund. The annuities payable after this reduction will be actuarially equivalent to the present value of the deferred annuities employees would receive if they simply left Government service and didn't use the NAFI time to qualify for an immediate retirement.

Section 1132 has no effect on previous laws that allow credit for certain NAFI service. Public Law 104–106, approved February 10, 1996, allowed certain FERS employees to elect retirement credit for their NAFI service. Public Law 99–638, enacted on November 10, 1986, allowed CSRS employees to credit certain NAFI service performed between June 19, 1952, and December 31, 1965. NAFI service creditable under either of those laws remains creditable under the provisions of those laws.

2. Qualifying Moves

We have amended 5 CFR 847.202 to reflect the new definition of a qualifying move. An employment move on or after December 28, 2001, from a covered NAFI position to a covered civil service position is a qualifying move allowing the employee to elect to continue the NAFI retirement coverage if:

- The employee has not had a prior opportunity to elect to continue NAFI retirement coverage;
- The employee has moved from a covered NAFI position within DoD or the Coast Guard to any covered civil service position; and
- The employee has moved to the covered civil service position not more than 1 year after separating from the covered NAFI position.

Likewise, an employment move on or after December 28, 2001, from a covered civil service position to a covered NAFI position is a qualifying move allowing the employee to elect to continue CSRS, CSRS Offset, or FERS retirement coverage if:

- The employee has not had a prior opportunity to elect to continue CSRS, CSRS Offset, or FERS retirement;
- The employee has moved from any covered civil service position to a covered NAFI position within DoD or the Coast Guard; and
- The employee has moved to the covered NAFI position not more than 1 year after separating from the covered civil service position.

3. Electing NAFI Credit for Retirement Eligibility

A new subpart H in 5 CFR part 847 outlines the rules relating to electing NAFI credit to qualify for immediate CSRS or FERS retirement.

CSRS or FERS employees leaving Federal service on or after December 28, 2001, who have DoD or Coast Guard NAFI service not otherwise creditable under CSRS or FERS, may use that service to qualify for immediate retirement. To be able to use their NAFI service in this way, employees must already be eligible for CSRS or FERS deferred retirement benefits based on their non-NAFI service. Employees already eligible for immediate retirement benefits based on their non-NAFI service cannot make an election under 5 CFR part 847, subpart H, to credit their NAFI service for CSRS or FERS retirement purposes.

Employees may elect to credit any service they performed as an employee paid from nonappropriated funds of an instrumentality of DoD or Coast Guard. This includes NAFI service that was covered by an NAFI retirement plan as well as NAFI service that was not covered by an NAFI plan. FERS employees may even elect to credit NAFI service performed after 1988. Employees cannot pay CSRS or FERS deposits to cover the NAFI service, and NAFI retirement deductions withheld for any of the NAFI service cannot be transferred to the CSRS or FERS retirement fund.

There is one limitation affecting elections to credit NAFI service to qualify for immediate CSRS or FERS retirement. NAFI service used to qualify for CSRS or FERS immediate retirement cannot also be used under an NAFI retirement system for any purpose.

Employees must elect complete periods of service with an NAFI employer. For example, a CSRS employee who worked 6 years under a covered appointment for a DoD NAFI must elect to credit the entire 6 years even if the employee only needs 2 years of service to qualify for an immediate CSRS retirement.

A complete period of service with an NAFI employer is the period from the date of appointment to the date of separation. If an employee moves directly from an NAFI appointment excluded from NAFI retirement coverage to an appointment subject to NAFI retirement coverage with the same NAFI employer, the move from non-covered employment to covered employment is considered to be a separation. For example, a CSRS employee needs 2 years of service to qualify for an immediate CSRS retirement. The employee has 6 consecutive years of NAFI service—2 years under an appointment excluded from NAFI retirement coverage and 4 years under an appointment covered by an NAFI retirement plan. The 2 years of NAFI service not subject to NAFI retirement coverage is considered a complete period of service, and the employee may elect to credit only that 2 years of NAFI service for CSRS retirement purposes.

Employees wanting to elect to credit NAFI service to qualify for immediate CSRS or FERS retirement must do so when they retire. They need to submit their election, on a form specified by OPM, to their employing agency before their actual retirement date. They must also notify the appropriate NAFI retirement plan of their election and obtain verification of their NAFI employment from the NAFI retirement system.

4. Computing the Annuity When NAFI Service Is Used for Retirement Eligibility

A new subpart I in 5 CFR part 847 outlines the rules OPM will use to compute the annuity of employees who elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

Electing to credit NAFI service to qualify for immediate CSRS or FERS retirement will not increase the amount of the annuity. The amount of annuity including NAFI service must be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the deferred annuity that would be payable to the employee assuming the employee:

- Separated from service on the actual date of retirement; and
- Elected not to credit the NAFI service to qualify for immediate retirement.

Present value is a financial term. As used in retirement, present value is the sum of money required at the present time to fund a future stream of payments. It is computed using an actuarial model that incorporates appropriate assumptions as to inflation and interest rates.

To ensure that the present value of the immediate annuity with credit for NAFI service equals the present value of the deferred annuity without credit for NAFI service, the gross monthly rate of the immediate annuity must be reduced by an amount derived using the following formula:

(the present value of the immediate annuity minus the present value of the deferred annuity) divided by the present value factor corresponding to the employee's age at retirement.

The present value of an immediate annuity is the sum of money required at the commencing date of the annuity to fund the annuity. It is calculated by multiplying the monthly rate of annuity by the present value factor corresponding to the employee's age as of the commencing date of the annuity. A present value factor is a factor calculated by OPM's actuary using generally accepted actuarial standards and on the basis of assumptions used by the Board of Actuaries of the Civil Service Retirement System.

The present value of a deferred annuity is the sum of money required at the commencing date of the immediate annuity to fund the future deferred annuity. It is calculated by multiplying the monthly rate of the deferred annuity by the present value factor corresponding to the employee's age as of the commencing date of the deferred annuity, and then multiplying the result by a discount factor. The discount factor is a factor derived from the assumed rate of investment return earned by the Civil Service Retirement and Disability Fund, and the amount of time between the commencing dates of the immediate and deferred annuities.

(Currently, the rate of investment return on the Civil Service Retirement and Disability Fund is 7 percent. However, on May 9, 2002, OPM published a notice in the **Federal Register** announcing a change in the FERS normal cost percentages. In that notice, OPM also announced that the rate of investment return on the Civil Service Retirement and Disability Fund will change to 6.75 percent beginning October 1, 2002.)

The gross monthly rates of annuity used in the present value calculations are computed under the appropriate annuity formula applying the proper reductions for age, survivor elections, unpaid deposits and redeposits, and alternative annuity elections. In computing the gross monthly rate of the deferred annuity, interest on any deposit or redeposit balances does not accrue beyond the commencing date of the immediate annuity. In addition, the present value factors used in the reductions for unpaid redeposit and alternative annuity election correspond to the employee's age as of the commencing date of the deferred annuity.

If a FERS employee has at least 10 years of creditable (non-NAFI) service, the gross monthly rate of the deferred annuity is computed as of the first day of the month after the employee reaches

the minimum retirement age. Using that commencing date for the deferred annuity maximizes the present value of the deferred annuity.

5. FERS Annuity Supplement

An FERS annuity supplement is not payable to FERS employees who elect to use NAFI service to qualify for an immediate FERS retirement.

6. Reemployment

If a retiree who elected to credit NAFI service to qualify for an immediate retirement returns to work for the Government, the following rules will apply to any benefit earned as the result of the reemployment.

- If the retiree qualifies for a supplemental annuity under 5 CFR part 837, the supplemental annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I.
- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the redetermined annuity. The reduction under 5 CFR part 847, subpart I, will be recomputed based on the retiree's age as of the commencing date of the redetermined annuity. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.
- If the retiree qualifies for a redetermined annuity under 5 CFR part 837, the redetermined annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I, if the retiree qualifies for the redetermined annuity without crediting the NAFI service. If the retiree elects the redetermined annuity, the election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will be computed with the reduction outlined in 5 CFR part 847, subpart I, if the retiree needs to credit NAFI service to qualify for the new annuity. The retiree must submit a new election to credit the NAFI service in accordance with 5 CFR part 847, subpart H.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a new immediate annuity when the reemployment ends, the new annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I, if the retiree qualifies for the new annuity without crediting the NAFI service. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree qualifies for a deferred annuity, but not a new immediate annuity when the reemployment ends, the deferred annuity will not be subject to the reduction outlined in 5 CFR part 847, subpart I. The election the retiree made to credit the NAFI service under 5 CFR part 847, subpart H, when the retiree originally retired, will not remain in effect.
- If the retiree's annuity terminated upon reemployment, and if the retiree does not qualify for either a new immediate annuity or a deferred annuity when the reemployment ends, the old annuity will be reinstated. The retiree does not need to make a new election to credit NAFI service under 5 CFR part 847, subpart H. The original election will remain in effect.

7. Survivor Annuity Rate

The amount of the survivor annuity provided by a retiring employee who elects to credit NAFI service under 5 CFR part 847, subpart H, to qualify for immediate CSRS or FERS retirement is also subject to reduction. The reduction is computed in the same way that the reduction to the employee's annuity rate is computed. The present value of the initial survivor rate generated by the immediate annuity computation (with credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the commencing date of the immediate annuity. The present value of the initial survivor rate generated by the deferred annuity computation (without credit for NAFI service) equals the initial survivor rate multiplied by the present value factor corresponding to the employee's age as of the deferred annuity date, multiplied by the discount factor corresponding to the amount of time between the immediate annuity commencing date and the deferred annuity date. The difference between the two present values is then divided by the present value factor corresponding to the employee's age as of the immediate annuity commencing date. The result, rounded up to the higher dollar, equals the reduction that applies to the initial survivor rate generated by the immediate annuity computation.

Waiver of Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective December 28, 2001, the date the President signed the statute. The statute requires OPM to establish by regulation the procedure for computing an annuity when NAFI service is used to qualify for an immediate retirement. Delaying implementation of these regulations would unnecessarily delay the availability of the benefits of the new law.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Parts 831, 837, 842, 843, 844, and 847

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 843, 844 and 847 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174, 112 Stat. 58; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under sections 7(b) and 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under section 102(e) of Pub. L. 104–

8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under section 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.301 also issued under section 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and section 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125; subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart C—Credit for Service

2. In § 831.305, paragraph (d) is added to read as follows:

§ 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

* * * * *

(d) *Crediting other service in a nonappropriated fund instrumentality.* Service not creditable under this section may become creditable for retirement eligibility purposes under the provisions outlined in 5 CFR part 847, subpart H.

Subpart G—Computation of Annuities

3. Section 831.704 is revised to read as follows:

§ 831.704 Annuities including credit for service with a nonappropriated fund instrumentality.

(a) An annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) An annuity that includes credit for service with a nonappropriated fund instrumentality based on an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 837—REEMPLOYMENT OF ANNUITANTS

4. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468 and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

Subpart E—Retirement Benefits on Separation

5. Section 837.506 is revised to read as follows:

§ 837.506 Computation of redetermined annuity for former employees of nonappropriated fund instrumentalities.

(a) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS coverage under 5 CFR part 847, subpart D, is recomputed under 5 CFR part 847, subpart F.

(b) The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS retirement credit under 5 CFR part 847, subpart H, is recomputed under 5 CFR part 847, subpart I.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105–174, 112 Stat. 58, as amended by section 651 of Pub. L. 106–58, 113 Stat. 430; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388; subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under section 636 of H.R. 5658, incorporated by reference in Pub. L. 106–554, 114 Stat. 2763, and published as Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–125.

Subpart C—Credit for Service

7. In § 842.304, paragraph (d) is revised to read as follows:

§ 842.304 Civilian service.

* * * * *

(d) *Credit for service performed as an employee of a nonappropriated fund instrumentality.* (1) Credit for service with a nonappropriated fund instrumentality is allowed in accordance with an election under 5 CFR part 847, subpart D or H.

(2) Service under FERS for which the employee withdrew all deductions is creditable in accordance with an election made under 5 CFR part 847, subpart D.

(3) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart D, or refunded service under paragraph (d)(2) of this section is computed under 5 CFR part 847, subpart F.

(4) An annuity that includes credit for service with a nonappropriated fund instrumentality under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

8. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

9. Section 843.314 is revised to read as follows:

§ 843.314 Amount of survivor annuity where service includes credit for service with a nonappropriated fund instrumentality.

(a) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

(b) The survivor annuity based on service that includes service with a nonappropriated fund instrumentality made creditable by an election under 5 CFR part 847, subpart H, is computed under 5 CFR part 847, subpart I.

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

10. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461; § 844.201 also issued under 5 U.S.C. 1104.

Subpart A—General Provisions

11. Section 844.106 is revised to read as follows:

§ 844.106 Disability annuities which include credit for service with a nonappropriated fund instrumentality.

A disability annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under 5 CFR part 847, subpart D, is computed under 5 CFR part 847, subpart F.

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

12. The authority citation for part 847 is revised to read as follows:

Authority: 5 U.S.C. 8332(b)(17) and 8411(b)(6) and sections 1131 and 1132 of Pub. L. 107–107, December 28, 2001, 115 Stat 1242; 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb.10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

13. In § 847.101, paragraph (a) is revised to read as follows:

§ 847.101 Purpose and scope.

(a) This part contains the regulations issued by the Office of Personnel Management (OPM) to implement the statutory election rights of certain current and former NAFI employees under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, section 1043 of the National Defense Authorization Act for Fiscal Year 1996, and sections 1131 and 1132 of the National Defense Authorization Act for Fiscal Year 2002.

14.–15. In § 847.102, new paragraphs (a)(8) and (a)(9) are added and paragraph (c)(4) is revised to read as follows:

§ 847.102 Regulatory structure.

(a) * * *

(8) Subpart H of this part contains information about elections to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

(9) Subpart I of this part contains information about how benefits are computed when employees elect to credit NAFI service to qualify for immediate retirement under section 1132 of Public Law 107–107, the National Defense Authorization Act for Fiscal Year 2002.

* * * * *

(c) * * *

(4) Part 870 of this chapter contains information about the Federal Employees' Group Life Insurance Program.

* * * * *

16. In § 847.103, paragraph (b), the definition of *Deficiency* is revised to read as follows:

§ 847.103 Definitions.

* * * * *

(b) * * *

Deficiency means the remainder of the actuarial present value of crediting NAFI service, after subtracting the amount credited to the employee from a transfer to the Fund under subpart E of this part, and earnings under § 847.507 on the transferred amount.

* * * * *

17. In § 847.104, paragraph (c) is added to read as follows:

§ 847.104 OPM responsibilities.

* * * * *

(c) OPM will determine if an employee who wishes to make an election under 5 CFR part 847, subpart H, is eligible to make such an election, and OPM's determination is subject to reconsideration under 5 CFR part 831, subpart A, or 5 CFR part 841, subpart C.

18. Section 847.105 is revised to read as follows:

§ 847.105 Agency responsibilities.

(a) Each agency is responsible for notifying its employees of the opportunity to make an election under this part and for determining if an employee who wishes to make an election under subparts B and D of this part is qualified to do so, and for counseling employees in accordance with guidance issued by OPM.

(b) If an agency determines that an employee is not eligible to make an election under subparts B and D of this part, the agency shall issue a final decision to the employee that meets the requirements of § 847.106, including notice of the right to appeal under § 847.107.

19. In § 847.106, paragraph (a) is revised to read as follows:

§ 847.106 Agency decision concerning eligibility.

(a) If the agency determines that the employee is not eligible to make an election under subpart B or D of this part, it must issue a final decision to the employee.

* * * * *

20. In § 847.107, paragraph (b) is revised to read as follows:

§ 847.107 Appeals to MSPB.

* * * * *

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under subparts B and D of this part. An agency decision must not allow review under any employee grievance procedures, including those established by 5 U.S.C. chapter 71, and 5 CFR part 771.

Subpart B—Election To Continue Retirement Coverage After a Qualifying Move

21. Section 847.202 is revised to read as follows:

§ 847.202 Definition of qualifying move.

(a) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all of the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage.

(2) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI, and

(3) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(b) A qualifying move occurring on or after December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(3) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(c) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(d) A qualifying move occurring on or after August 10, 1996, and before December 28, 2001, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term ''vested participant'' is defined by that retirement system) prior to the move to a CSRS- or FERS-covered position;

(3) The employee must have moved from an NAFI to a civil service position subject to CSRS or FERS coverage; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(e) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under CSRS or FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to an NAFI;

(3) The employee must have moved from a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard to a retirement-covered position with an NAFI; and

(4) The employee must begin employment in a retirement-covered position in an NAFI no later than 4 days after separation from CSRS- or FERS-covered employment.

(f) A qualifying move occurring between January 1, 1987, and August 9, 1996, that would allow an opportunity to elect to continue retirement coverage under an NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term ''vested participant'' is defined by that retirement system) prior to the move to the civil service;

(3) The employee must have moved from an NAFI to a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 4 days after separation from retirement-covered NAFI employment.

(g) A qualifying move under paragraphs (a), (b), (c), and (d) of this section is considered to occur on the date the individual enters into the new position, not at the time of separation from the prior position.

(h) A retroactive election opportunity under subpart D of this part (pertaining to elections of CSRS, FERS, or NAFI retirement coverage) is not considered a prior opportunity to elect retirement coverage under this section.

22. In § 847.203, paragraph (a) is revised to read as follows:

§ 847.203 Election of CSRS coverage.

(a) An employee who completes a qualifying move (under § 847.202(a), (c), or (e)) from a CSRS-covered position to an NAFI may elect to continue CSRS coverage.

* * * * *

23. In § 847.204, paragraph (a) is revised to read as follows:

§ 847.204 Election of FERS coverage.

(a) An employee who completes a qualifying move under § 847.202(a), (c) or (e) from an FERS-covered position to an NAFI may elect to continue FERS coverage.

* * * * *

24. In § 847.205, paragraph (a) is revised to read as follows:

§ 847.205 Elections of NAFI retirement system coverage.

(a) An employee who completes a qualifying move under § 847.202(b), (d), or (f), from an NAFI position to a CSRS- or FERS-covered position may elect to continue coverage under the NAFI retirement system.

* * * * *

Subpart D—Elections of Coverage Under the Retroactive Provisions

25. In § 847.402, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 847.402 Definition of qualifying move.

(a) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

(b) * * *

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(e) or (f);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(e) or (f);

* * * * *

26. In § 847.421, paragraph (a)(2) is revised to read as follows:

§ 847.421 Election requirements.

(a) * * *

(2) A FERS employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

27. In § 847.431, paragraph (a)(2) is revised to read as follows:

§ 847.431 Election requirements.

(a) * * *

(2) An NAFI employee who has had a previous opportunity to elect retirement coverage under § 847.202(e) or (f) is not excluded from making this election.

* * * * *

28. Add subpart H to read as follows:

Subpart H—Electing To Credit NAFI Service for CSRS and FERS Retirement Eligibility

Sec.

847.801 What information is in this subpart?
847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?
847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?
847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?
847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?
847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?
847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?
847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?
847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

Subpart H—Electing to Credit NAFI Service for CSRS and FERS Retirement Eligibility

§ 847.801 What information is in this subpart?

This subpart contains OPM's regulations on the procedures, eligibility requirements, and time limits for elections under 5 U.S.C. 8332(b)(17) and 5 U.S.C. 8411(b)(6).

§ 847.802 Who may elect to use NAFI service to qualify for immediate retirement under CSRS or FERS?

CSRS and FERS employees may elect to credit NAFI service for retirement purposes under this subpart if:

(a) They separate for retirement on or after December 28, 2001;

(b) They do not otherwise qualify for immediate retirement; and

(c) They have enough otherwise creditable civilian service to qualify for deferred retirement.

§ 847.803 When do employees make the election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees about to retire must make their election to credit NAFI service under this subpart no later than the date of separation on which their retirement is based.

§ 847.804 How do employees make an election to use their NAFI service to qualify for an immediate retirement under CSRS or FERS?

Employees electing to credit NAFI service under this subpart must:

(a) Inform the NAFI retirement plan that they are electing to credit NAFI service for CSRS or FERS retirement eligibility;

(b) Document the election on a form prescribed by OPM; and

(c) Submit the election with their application for immediate retirement.

§ 847.805 What NAFI service can employees elect to credit toward retirement eligibility under CSRS or FERS?

(a) Employees may elect to credit under this subpart any NAFI service that isn't already creditable under 5 U.S.C. 8332(b)(16), or under 5 CFR part 847, subpart D.

(b) NAFI service used to qualify for an immediate annuity based on an election in paragraph (a) of this section cannot be credited in a NAFI retirement plan for any purpose including eligibility and calculations of NAFI benefits.

§ 847.806 How much NAFI service must employees elect to use to qualify for an immediate CSRS or FERS retirement?

(a) Employees must elect complete periods of NAFI service under this subpart.

(b) A complete period of NAFI service in paragraph (a) of this section consists of the period from the date of appointment with an NAFI employer to the date of termination.

§ 847.807 Do employees have to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS?

Employees are not required to pay CSRS or FERS deposits for the NAFI service they use to qualify for immediate retirement under CSRS or FERS. In fact, deposits cannot be made for any NAFI service employees elect to credit for immediate retirement under this subpart.

§ 847.808 Is money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS, transferred to the Civil Service Retirement and Disability Fund?

Money in the NAFI retirement fund covering NAFI service that an employee elects to use for immediate retirement under CSRS or FERS under this subpart cannot be transferred to the Civil Service Retirement and Disability Fund.

§ 847.809 What effect will NAFI service used to qualify for an immediate retirement have on the amount of the CSRS or FERS annuity?

The annuity of a CSRS or FERS employee who elects to credit NAFI service under this subpart will be reduced under the provisions outlined in subpart I of this part.

29. Add subpart I to read as follows:

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service to Qualify for an Immediate CSRS or FERS Retirement

Sec.

847.901 What information is in this subpart?
847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?
847.903 How is the monthly reduction to the retirement annuity computed?
847.904 What are Present Value Factors?
847.905 How is the present value of an immediate annuity with credit for NAFI service computed?
847.906 How is the present value of a deferred annuity without credit for NAFI service computed?
847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?
847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?
847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?
847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?
847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?
847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

Subpart I—Computing the Retirement Annuity for Employees Who Elect To Use NAFI Service To Qualify for an Immediate CSRS or FERS Retirement

§ 847.901 What information is in this subpart?

This subpart contains OPM's regulations describing the computation of a CSRS or FERS retirement annuity when an employee elects to use NAFI service to qualify for immediate retirement under subpart H of this part.

§ 847.902 How does an election to credit NAFI service for immediate CSRS or FERS retirement under subpart H of this part affect the computation of the CSRS or FERS retirement annuity?

The retirement annuity of an employee who elects to use NAFI service to qualify for an immediate CSRS or FERS retirement benefit will be reduced to ensure the present value of the benefits payable will be actuarially equivalent to those that would have been payable if the employee had separated on the same date, but without credit for the NAFI service.

§ 847.903 How is the monthly reduction to the retirement annuity computed?

(a) The reduction equals:

(1) The difference in the present value of the immediate annuity with credit for NAFI service and the deferred annuity without credit for NAFI service, divided by

(2) The present value factor for the retiree's attained age (in full years) at the time of retirement.

(b) The reduction computed in paragraph (a) of this section is rounded to the next higher dollar.

§ 847.904 What are Present Value Factors

Present value factors have the same meaning in this subpart as they do in 5 CFR 847.602.

§ 847.905 How is the present value of an immediate annuity with credit for NAFI service computed?

(a) OPM will determine the present value of the immediate annuity including service credit for NAFI service by multiplying the monthly annuity rate as of the commencing date of the annuity by the present value factor for the retiree's age on that date.

(b) The monthly annuity rate under paragraph (a) of this section for CSRS and CSRS Offset retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(c) The monthly annuity rate under paragraph (a) of this section for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.906 How is the present value of a deferred annuity without credit for NAFI service computed?

(a) The present value of a deferred annuity equals the present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date discounted for interest to that date.

(b) The present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date equals the retiree's monthly annuity without credit for the NAFI service as of the deferred annuity date times the present value factor for the retiree's age on that date.

(c) The present value under paragraph (b) of this section is discounted for interest by dividing that amount by a factor equal to the value of the exponential function in which—

(1) The base is one plus the assumed interest rate under 5 CFR part 841, subpart D, on the commencing date of the retiree's immediate annuity, and

(2) The exponent is one-twelfth of the number of months between the commencing date of the retiree's immediate annuity and the deferred annuity date.

§ 847.907 How is the monthly annuity rate used to compute the present value of the deferred annuity without credit for NAFI service determined?

(a) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for CSRS retirees equals the monthly annuity otherwise payable under 5 U.S.C. chapter 83, subchapter III, including all reductions provided under that subchapter.

(b) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for CSRS Offset retirees is computed as described in paragraph (a) of this section, except that the reduction under section 5 U.S.C. 8349 does not apply.

(c) The monthly annuity rate used to compute the present value of the deferred annuity under § 847.906 of this subpart for FERS retirees equals the monthly rate of annuity otherwise payable under 5 U.S.C. chapter 84, subchapter II, including all reductions provided under that subchapter.

§ 847.908 If a retiree who elected to credit NAFI service under subpart H of this part earns a supplemental annuity under 5 CFR part 837, how will that supplemental annuity be computed?

This subpart does not affect supplemental annuities under 5 CFR part 837. Supplemental annuities will be computed in accordance with the provisions of that part.

§ 847.909 If a retiree who elected to credit NAFI service under subpart H of this part earns a right to a redetermined annuity under 5 CFR part 837, how will the redetermined annuity be computed?

(a) A redetermined annuity will not be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree qualifies for an immediate retirement without credit for the NAFI service.

(b) A redetermined annuity will be subject to a reduction under this subpart if, on the date reemployment with the Government ends, the retiree does not qualify for immediate retirement without credit for the NAFI service.

(c) The reduction in paragraph (b) of this section is computed as in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.910 If a retiree who elected to credit NAFI service for CSRS immediate retirement returns to work for the Government under conditions that terminate the annuity, how will the retirement annuity be computed when the employee's service with the Government ends?

(a) If an individual whose annuity terminates upon reemployment with the Government elects to credit NAFI service under subpart B of this part to qualify for a new immediate retirement when the reemployment ends, the annuity will be subject to a reduction under this subpart.

(b) If an individual whose annuity terminates upon reemployment with the Government qualifies for a new immediate retirement when the reemployment ends without crediting NAFI service, the new annuity will not be subject to a reduction under this subpart.

(c) If an individual whose annuity terminates upon reemployment with the Government qualifies for a deferred annuity when the reemployment ends, the deferred annuity will not be subject to a reduction under this subpart.

(d) The reduction in paragraph (a) of this section is computed in accordance with § 847.903 of this subpart as if the individual was retiring for the first time.

§ 847.911 Is an employee who elects to credit NAFI service to qualify for an immediate FERS retirement under subpart H of this part eligible for an FERS annuity supplement under 5 CFR 842 subpart E?

An FERS Annuity Supplement is not payable to a retiree who elects to credit NAFI service under subpart H of this part.

§ 847.912 If an employee who elects to credit NAFI service under subpart H of this part elects a survivor annuity will the monthly survivor annuity rate be subject to reduction?

(a) The monthly survivor annuity benefit of an employee who elects to credit NAFI service under subpart H of this part will be subject to reduction.

(b) The reduction under paragraph (a) of this section equals:

(1) The difference in the present value of the initial survivor annuity generated from the immediate annuity computation with credit for NAFI service and the initial survivor annuity generated from the deferred annuity computation without credit for NAFI service, divided by

(2) The present value factor for the retiree's age (in full years) at the time of retirement.

(c) The present value of the survivor annuity generated from the immediate annuity with credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.905 of this subpart.

(d) The present value of the initial survivor annuity generated from the deferred annuity without credit for NAFI service in paragraph (b)(1) of this section is computed under the provisions of § 847.906 of this subpart.

(e) The ages of the employee as of the commencing date of the immediate retirement and the commencing date of the deferred retirement are used to compute the present value of the survivor benefits under paragraphs (c) and (d) of this section.

[FR Doc. 03–819 Filed 1–15–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. SW012; Special Condition No. 29–012–SC]

Special Conditions: ST 2017RC–R, Installation of Pratt & Whitney Canada PT6–67D on Global Helicopter Technology, Inc. (GHTI), Restricted Category Model UH–1H, TC R00002RC, With Full Authority Digital Engine Control (FADEC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for Supplemental Type Certificate (STC), Project # ST2017RC–R, the installation of a Pratt and Whitney PT6–67D Turbine Engine on Global Helicopter Technology Inc. (GHTI), Restricted Category, U.S. Army military surplus helicopter, Model UH–1H, type certificated under TC R00002RC. The installation of the PT6–67D on the Restricted Category UH–1H will have a novel or unusual design feature associated with the installation of the Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards to protect systems that perform critical functions from the effects of a high-intensity radiated field (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: The effective date of this special condition is January 8, 2003. Comments must be received on or before March 17, 2003.

ADDRESSES: Comments on this special condition may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Regional Counsel, Attention: Rules Docket No. SW012, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Regional Counsel at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Docket No. SW012. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m. The Rules Docket for special conditions is maintained at the Federal Aviation Administration, Rotorcraft Directorate, 2601 Meacham Blvd., Room 448, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Bob McCallister, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone 817–222–5121, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of this special condition has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making this special condition effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, views, or data. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. We will consider all comments we receive on or before the closing date for comments. We may change this special condition in light of the comments we receive. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you want the FAA to acknowledge receipt of your mailed comments on this special condition, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 29, 2000, Global Helicopter Technology, Inc. (GHTI) applied for an STC for the installation of a Pratt & Whitney PT6–67D Turbine Engine on the GHTI, U.S. Army UH–1H, Restricted Category Helicopter, type certificated under Type Certificate R00002RC. The UH–1H Restricted Category helicopter is a utility/heavy lift helicopter with a two-bladed teetering main rotor system. It is to be powered by a single Pratt and Whitney PT6–67D engine that incorporates a full authority digital engine control (FADEC). The maximum gross weight of the aircraft is 9,500 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GHTI must show that the Engine Installation meets the applicable provisions of the regulations as listed below:

- 14 CFR part 29 as amended through and including Amendment 29–1, effective August 12, 1965.
- 14 CFR 29.1529, Instructions for Continued Airworthiness, Amendment Number 20, effective September 11, 1980.

In accordance with 14 CFR 36.1(a)(4), compliance with the noise requirements was not shown for the aircraft. Therefore, the engine installations under this supplemental type certificate are only eligible for external load operations excepted by 14 CFR 36.1(a)(4) and defined under section 133.1(b). Any alteration to the aircraft for Special Purpose not identified above will require further FAA approval and in addition, may require noise and/or flight testing.

In addition, the certification basis includes certain equivalent safety findings that are not relevant to this special condition.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this STC because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are defined in § 11.19 and issued in accordance with § 11.38 and become part of the STC certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model and/or modification for which they are issued. Should the type certificate or supplemental type certificate (STC) for that model or installation respectively, be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model or modification under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The GHTI UH–1H Restricted Category Helicopter with a Pratt & Whitney PT6–67D engine installed will incorporate the following novel or unusual design features: Electrical, electronic, or a combination of electrical electronic (electrical/electronic) systems such as FADEC that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the functions of engine control during flight operations.

Discussion

The GHTI installation of the PT–6–67D in the UH–1H helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems, such as a FADEC. After the design is finalized, GHTI will provide the FAA with a preliminary hazard analysis that will identify any other critical functions that are performed by the electrical/electronic systems required for safe flight and landing.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical/electronic systems that perform critical functions. These advanced systems respond to the transient effects of induced electrical current and voltage caused by HIRF incidents on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft or alteration certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions; (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies; and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during visual flight rules (VFR) operations. While the HIRF rulemaking requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the engine installation's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under VFR conditions.

These special conditions will require the systems that perform critical functions, as installed in the aircraft, meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF test environment. The FAA has determined that the test environment defined in Table 1 is acceptable for critical functions in helicopters.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) and other considerations, such as alternate or backup technology that is immune to HIRF, are appropriate for critical functions during instrument flight rules (IFR) operations. A level of 200 v/m is more appropriate for critical functions during VFR operations. Laboratory test levels are defined according to RTCA/DO–160D Section 20 Category W (100 v/m and 150 mA) and Category Y (200 v/m and 300 mA). As defined in DO–160D Section 20, the test levels are defined as the peak of the root means squared (rms) envelope. As a minimum, the modulations required for RTCA/DO–160D Section 20 Categories W and Y will be used. Other modulations should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to or cause an unsafe condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency

areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz, and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	150	150
100–500	200	200
500–2000	200	200
2–30 MHz	200	200
30–100	200	200
100–200	200	200
200–400	200	200
400–700	730	200
700–1000	1400	240
1–2 GHz	5000	250
2–4	6000	490
4–6	7200	400
6–8	1100	170
8–12	5000	330
12–18	2000	330
18–40	1000	420

Applicability

As discussed above, this special condition is applicable to Supplemental Type Certificate (STC) Project Number ST2017RC–R, for the installation of a Pratt & Whitney PT6–67D turbine engine in GHTI UH–1H military surplus helicopters type certificated under TC R00002RC. Should GHTI apply at a later date for a change to the STC to include another model incorporating the same novel or unusual design feature, the special condition would apply to that STC modification as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features associated with the STC project listed above. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter.

The substance of this special condition has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason and because a delay would significantly affect the certification of the helicopter modification which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for STC Project ST2017RC–R, installation of PT6–67D on Global Helicopter Technology, Inc (GHTI), Model UH–1H, Restricted Category Helicopters, type certificated under TC R00002RC.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 8, 2003.

Eric Bries,

Acting Manager, Aircraft Certification Service, Rotorcraft Directorate.

[FR Doc. 03–1010 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13997; Airspace Docket No. 02–AEA–20]

Amendment of Class D Airspace; White Plains, NY

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Westchester County Airport, White Plains, NY. this action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 25, 2002 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by providing additional Class D airspace extending two miles along the southeast and northwest localizer courses for Westchester County Airport up to but not including 3,000 feet mean sea level (MSL) was published in the **Federal Register** (67 FR 70564–70565). Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace document are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) extends Class D airspace from the surface of the earth up to but not including 3,000 feet MSL an additional two miles along the southeast and northwest localizer courses for Westchester County Airport, White Plains, NY. The extension of Class D airspace will provide coverage for aircraft conducting IFR operations to the airport.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 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—[AMENDED]

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

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

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 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D White Plains, NY [Revised]

Westchester County airport, White Plains, NY
(lat. 41°04′01″ N., long. 73°42′27″ W.)
Westchester County ILS Localizer Northwest
(lat. 41°03′27″ N., long. 73°41′58″ W.)
Westchester County ILS Localizer Southeast
(lat. 41°04′37″ N., long. 73°42′52″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1-mile radius of Westchester County Airport and within 1.5 miles each side of the Westchester County ILS northwest localizer course extending from the 4.1-mile radius to 6.1 miles northwest of the airport and within 1.5 miles each side of the Westchester County ILS southeast localizer course extending from the 4.1-mile radius to 6.1 miles southeast of the airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility Director.

* * * * *

Dated: Issued in Jamaica, New York on January 8, 2003,

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–1011 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–11]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Ulysses, KS.

EFFECTIVE DATE: 0901 UTC, February 20, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 13, 2002 (67 FR 68757). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 20, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 23, 2002.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–921 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13996; Airspace Docket No. 02–AEA–21]

Establishment of Class E Airspace; Lock Haven, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lock Haven, PA. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft operating into William T. Piper Memorial Airport, Lock Haven, PA under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 25, 2002, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA was published in the **Federal Register** (67 FR 70566). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 26, 2002. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 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 will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 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—[AMENDED]

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

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

§ 71.1 [Amended]

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.

* * * * *

AEA PA E5, Lock Haven, PA [New]

William T. Piper Memorial Airport, PA
(Lat. 41°08′09″N., long. 77°25′24″W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport, Lock Haven, PA.

* * * * *

Issued in Jamaica, New York on January 8, 2003.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–1012 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13413; Airspace Docket No. 02–ACE–6]

Realignment of Federal Airways V–72 and V–289; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airways 72 (V–72) and V–289 northeast of the Dogwood, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) so that aircraft may operate on the airways without encroaching on the newly modified Cannon A Military Operations Areas (MOA). The FAA is taking this action to enhance safety and the management of aircraft operations in the Dogwood, MO, area.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2002, the lateral boundaries of the Cannon A MOA were modified and the ceiling of the Cannon A MOA was raised from 5,000 feet above mean sea level up to but not including Flight Level 180. The MOA modification rendered portions of V–72 and V–289 unusable. Currently, V–289 passes through the lateral limits of the Cannon A MOA and V–72 is located immediately to the south of the Cannon A MOA at a distance that does not provide the air traffic control required separation from the MOA when the area is active. This action will allow the use of V–72 and V–289 when the Cannon A MOA is active and will enhance safety and the management of aircraft operations in the Dogwood, MO, area.

The Rule

This amendment to 14 CFR part 71 realigns a segment of V–72, northeast of the Dogwood, MO, VORTAC, clockwise by one degree and realigns V–289 to coincide with V–72 for 19 nautical miles (NM) northeast of the Dogwood, MO, VORTAC before proceeding directly to the Vichy, MO, VORTAC. This realignment will allow for the use of V–72 and V–289 when the Cannon A MOA is active and will enhance the safety and management of aircraft operations in the Dogwood, MO, area. Because this action is needed for safety reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

This regulation is limited to 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 it has been determined that 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.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–72 [Revised]

From Razorback, AR, Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; Maples; Farmington, MO; Centralia, IL; Bible Grove, IL; Mattoon, IL; to Bloomington, IL. From Rosewood, OH; Mansfield, OH; INT Mansfield 098° and Akron, OH, 233° radials; Akron; Youngstown, OH; Tidioute, PA; Bradford, PA; INT Bradford 078° and Elmira, NY, 252° radials; Elmira; Binghamton, NY; Rockdale, NY; Albany, NY; Cambridge, NY; INT Cambridge 063° and Lebanon, NH, 214° radials; to Lebanon.

* * * * *

V–289 [Revised]

From Beaumont, TX; INT Beaumont 323° and Lufkin, TX, 161° radials; Lufkin; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 052° and Maples, MO, 230° radials; INT Maples 230° and Vichy, MO, 198° radials; to Vichy. The airspace within R–4501A, R–4501B, R–4501C and R–4501D is excluded during their time of activation.

* * * * *

Issued in Washington, DC, on January 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–919 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 020816198–2315–02; I.D. 071202A]

RIN 0648–AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States; Amendment 5

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This final rule establishes a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establishes a minimum mesh size for a rock shrimp trawl net in the limited access area, requires the use of an approved vessel monitoring system (VMS) by vessels allowed to fish for rock shrimp in the limited access program, and requires an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effects of this final rule are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres (8 hectares) of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

DATES: This final rule is effective February 18, 2003.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this final rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge; phone: 727–570–5305; fax: 727–570–5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 5 on October 23, 2002. NMFS published a proposed rule to implement Amendment 5 and requested comments on the proposed rule through October 21, 2002 (67 FR 56516, September 4, 2002). The rationale for the measures in

Amendment 5 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received seven comments, from three individuals and the Council, on the proposed rule (67 FR 56516, September 4, 2002). A summary of the comments received and NMFS' responses follows.

Comment 1: A vessel owner reported that she had fished for rock shrimp in the 1980's and helped to build the market for rock shrimp. She believes that she should be eligible for a permit even though she did not meet the eligibility requirements.

Response: The public was notified on April 4, 1994, that the South Atlantic Council was considering a limited access program for the rock shrimp fishery and that anyone entering the fishery after April 4, 1994, might not be assured of future participation in the fishery if a limited entry management regime were implemented. Since then, there is evidence that the fishery has become overcapitalized. For example, although the current estimate for optimum yield is 6.83 million lb (3.10 million kg), as many as 400 vessels have obtained a rock shrimp permit. The Advisory Panel of the Council believes that the fishery can support, at most, no more than 150 vessels, and it is evident that a much smaller number of vessels could take the annual harvest in most years. For these reasons, the Council limited access to the fishery to participants who could demonstrate that they had landed at least 15,000 lb (6,804 kg) of rock shrimp in any one calendar year between 1996 and 2000.

Comment 2: One fisherman and one vessel owner opposed the VMS requirement. They believe that the government should pay for the VMS system and that the VMS system was not needed. Also, they reported that they wanted to split trips between rock and penaeid shrimp without having to unload their rock shrimp catch before they could fish for penaeid ''soft'' shrimp.

Response: There is considerable evidence that illegal trawling by rock shrimp vessels has resulted in extensive damage to Oculina habitat. Further, national standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch. The use of an approved VMS will minimize inadvertent, as well as deliberate, trawling in protected Oculina habitat areas because vessel captains will know precisely the location of protected areas and will be informed that trawling in such areas is prohibited. It should be noted that vessels with an approved VMS system will be able to split trips between rock and penaeid shrimp trips without having to land either type of shrimp first. The VMS will enable vessel owners to monitor vessel operations which should result in safer and more efficient fishing operations that will benefit the crew as well as the vessel owner.

Comment 3: One fisherman and one vessel owner opposed the limited access program for the rock shrimp fishery. They believe that fishing is a right that all Americans should be able to exercise.

Response: The Magnuson-Stevens Act mandates that fishery resources should be managed on a sustainable basis so that an optimal yield can be obtained. As noted earlier, there is evidence that overcapitalization has occurred in the rock shrimp fishery and, at most, no more than 150 vessels should be allowed to participate in the fishery. It is clear that the rock shrimp resource is limited and that an optimum economic yield is unlikely if open access to the fishery continues. As such, a limited access program is appropriate because it is prudent and reasonable to limit fishing pressure to the level which the resource can support without overfishing and without allowing the cost of fishing to exceed the revenues obtained by selling the catch.

Comment 4: One vessel owner opposed the minimum mesh size requirement.

Response: There is empirical evidence that the use of minimum mesh sizes less than 1 7/8 inches (4.76 cm) will result in an excessive catch of smaller, less valuable shrimp. It is believed that allowing shrimp to grow larger will result in more income to fishermen as well as a more attractive product for consumers. Also, the use of larger mesh should result in less bycatch of juvenile fish and other invertebrates. For this reason, the Council proposed and NMFS approved the 1 7/8–inch (4.76–cm) minimum mesh size.

Comment 5: One vessel owner did not want individuals to have to take a test to obtain a rock shrimp operator permit.

Response: NMFS will not require any performance or competency test to obtain an operator permit.

Comment 6: The Council's Habitat and Environmental Protection and Coral, Coral Reef and Live/Hard Bottom Habitat Advisory Panels endorsed the management measures in Amendment 5, especially the VMS and operator permit requirements and urged that these measures be implemented as soon as possible.

Response: NMFS agrees.

Comment 7: The Council commented in support of the management measures proposed in Amendment 5.

Response: NMFS agrees.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 5 is necessary for the conservation and management of the South Atlantic rock shrimp fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The analysis is summarized as follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The objective of the final rule is to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat; and ensure the long-term economic viability of the rock shrimp fishery. The final rule will: establish a limited access program for the rock shrimp fishery in the EEZ off Georgia and off the east coast of Florida (limited access area); establish a minimum mesh size for a rock shrimp trawl net in the limited access area; require the use of an approved VMS by vessels allowed to fish for rock shrimp in the limited access program; and, require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states to have an operator permit.

No duplicative, overlapping, or conflicting Federal rules have been identified.

No comments were received regarding the economic impact of this final rule.

The number of vessels with permits for the South Atlantic rock shrimp fishery varies from year to year but has not exceeded 431. Since permits were required in the fishery in 1996, at least 540 different vessels have been permitted in the fishery. Similarly, the number of vessels that have landed rock shrimp varies from year to year. In 1996, the number of active vessels reached an historical peak of 153. From 1996 through 2000, at least 279 different vessels have recorded landings of South Atlantic rock shrimp. All of these

vessels are commercial vessels; there is no recreational component of the fishery. All of the commercial vessels that have been permitted in the fishery will be affected by this final rule. Based on the Small Business Administration's current definition of a small entity in the fish harvesting sector (annual gross revenues not exceeding $3.5 million), the vast majority of these vessels are small entities. One company did own as many as 12 permitted vessels during the 1996–2000 time period. None of these vessels were active in the fishery during these years, and this company had zero landings and gross revenues from the fishery during these years. However, data on the company's operations in other fisheries have led to a determination that this company is a large entity. To maintain confidentiality, additional, detailed information regarding this company's operations cannot be provided.

At least 111 small entities (vessels) that have been active in the fishery are not expected to qualify for the limited access permit and could experience some short-term loss in revenue resulting from limiting access in the South Atlantic rock shrimp fishery off Georgia and Florida. The average loss in gross revenue per vessel would be expected to be no larger than $1,365 annually in the short term. Vessels that entered the fishery in 2001 could experience higher losses in average revenue, though data are not presently available to make such a determination. However, it is expected that some of these vessels may mitigate this loss by participating in other fisheries. Because information is not available on these vessels' economic dependence on the rock shrimp fishery, it is not possible to calculate the impact of limited access on their profitability. Since the single, large entity earned zero gross revenues from the fishery, no measurable economic impact would be imposed on this entity as a result of this action. Further, this entity would not be subject to other actions only applicable to limited access permit holders, and thus would not be affected by those actions.

For the 168 vessels expected to qualify for limited access permits, each would be required to pay a $50 fee per permit application. In addition, a time burden would be imposed as a result of having to apply for the limited access permit. The time burden for completing the application is estimated at 20 minutes. According to 2000 data from the Bureau of Labor Statistics, the average hourly wage for first-line supervisors/managers in the fishing, forestry, and farming industries is $16.72. Thus, the monetary value of this time burden is $5.58 per vessel. As a result, the total cost of this action per qualifying vessel is $55.58, or $9337 for all qualifying vessels. However, since these permits will be renewed, via application, biannually rather than annually, the total cost per year would be approximately $27.79. In cases where vessel owners have qualified as the result of a transfer in catch history, documentation would be needed to support a determination of eligibility. The time burden associated with compiling such documentation is estimated at 1 hour, for an additional one-time cost of $16.72 in the first year. Therefore, for these vessels, the monetary value of the time burden associated with this action is estimated at $19.51 per vessel. Thus, total annual costs would be $44.51 in the first year, and $27.79 in years thereafter.

For vessel owners that do not initially qualify for a limited access permit, two additional opportunities exist to obtain such a permit. Specifically, the vessel owner may submit a request to the RA for reconsideration of an initial determination of non-eligibility. The time burden associated with filing such a request is estimated to be 2 hours. In addition, these vessel owners may submit a request to be placed on a list of those desiring the re-issuance of a permit that was not renewed in a timely manner by an initial qualifier. The time burden associated with filing this request is estimated to be 5 minutes. Thus, the monetary value of these time burdens is $35 per vessel. Although it is not possible to perfectly predict how many non-qualifiers will submit such requests, those owners whose vessels were active in the fishery but did not qualify are most likely to submit one or both requests. Given that 111 active vessels are not expected to qualify, and since these vessels would have also submitted an application and therefore paid the requisite and non-refundable $50 fee, the total burden per vessel would be $85 for all such vessels, or $9435 in the aggregate.

The final rule is expected to result in lesser impacts than rejected option 2, which would limit eligibility to those who had met the criteria prior to December 31, 1999, rather than December 31, 2000. Rejected option 2 would exclude an additional 26 vessels, most of which were very active in the fishery in 2000, and the average annual short-term revenue loss per active vessel would increase from $1,365 to $4,153. Given the possibility of continued entry of new vessels into the fishery and an exacerbation of the current overcapacity problem, the no action option (rejected option 1) is not acceptable. Rejected option 3 would only enable those who entered the fishery after April 4, 1994, to obtain non-transferable permits. Relative to the final rule, this option is more restrictive on recent participants and was not supported by industry representatives. Also, it is likely that rejected option 3 would not reduce the initial level of overcapacity in the fishery. Based on the objectives of the FMP and the issues being addressed, the final rule is superior to the rejected alternatives.

The minimum mesh size requirement applicable to the limited access area could increase costs for those vessel owners whose gear does not meet the proposed minimum mesh size and who obtain limited access endorsements. The gear replacement cost is expected to be between $75 and $80 per net ($150 to $320 per vessel). During the 1996–2000 time period, active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery. These vessels also typically earn revenues from other fisheries, such as the penaeid shrimp fisheries of the South Atlantic and Gulf of Mexico. Since the minimum mesh size is the predominant mesh size presently being used in the fishery, a majority of vessel owners likely will not incur these costs. However, for those owners not presently using the minimum mesh size or larger, the gear modification expense could represent between 0.1 percent and 1 percent of their annual gross revenues from this fishery in the first year.

The final rule will result in gear replacement costs for those vessels that utilize trawl nets with a smaller mesh size. Compared to the no action option, this measure would impose a higher cost on the industry. However, the Council's Rock Shrimp Advisory Panel was of the opinion that the replacement cost for the cod end would be recovered in the future as overall yields increase from allowing recruitment of small shrimp that escape to larger size classes. Also, the time saved from not having to cull many small, unmarketable shrimp in each haul could translate into more tows per trip. In comparison to rejected options 3 and 4, the Advisory Panel felt that the recommended mesh size would be more effective at allowing the escapement of small, unmarketable shrimp than the 1 and 3/4–inch (4.45–cm) mesh size. However, the 2–inch (5–cm) mesh size would allow escapement of a much higher proportion of marketable shrimp compared to this proposed mesh size. Under the assumption that the net replacement cost would be recouped from higher

returns, and the Advisory Panel's recommendation that 1 and 7/8 inches (4.76 cm) is the optimal mesh size for this fishery, the mesh size specified by the final rule is superior to the alternatives considered.

The requirement for an operating VMS would impose a one-time cost to owners who obtain limited access endorsements that would not exceed $1,200. This capital cost is expected to be amortized over the average life-span of the equipment, presently estimated at 7 years. Thus, the annual cost per vessel is approximately $171. In addition, there would be some level of recurring operating/repair/maintenance costs, and no more than $800 in annual communication costs. Therefore, the requirement for an operating VMS would decrease a vessel's annual profitability by approximately $971. Given the previously noted annual gross revenue estimates, the expected annual explicit cost of the VMS requirement alone could represent between 0.8 percent and 3 percent of these vessels' annual gross revenues from the rock shrimp fishery.

Additionally, time burdens would be imposed as a result of the VMS requirement. Specifically, the time to install the VMS is estimated to be 4 hours; the time to complete and submit a statement certifying compliance with the installation and activation checklist is estimated to be 15 minutes; annual maintenance is estimated to be 2 hours each year; and the time to transmit position reports is estimated to be 14 minutes per day at sea. Current information suggests that the average, annual number of days at sea is approximately 200 for qualifying vessels active in this fishery. As such, this particular time burden is estimated at 2800 minutes or 46.67 hours per vessel. Therefore, the total time burden associated with VMS is approximately 53 hours per vessel in the first year, the monetary value of which is approximately $883 per vessel. In the years thereafter, only the time burdens associated with annual maintenance and the time to transmit position reports would be incurred. Thus, the time burden per vessel in later years would be 48.67 hours, the monetary value of which is approximately $813 annually per vessel. By combining the explicit and implicit costs, the total annual cost of this action is $1854 per vessel in the first year, and $1784 per vessel in later years, or $311,472 and $299,712 annually for all qualifying vessels.

The final rule will likely result in higher costs than rejected option 3, under which only vessels with a past fishery violation would be required to use VMS, as opposed to all vessels. The use of an approved vessel monitoring system is necessary to protect essential fish habitat and essential fish habitat areas of particular concern. Illegal use of rock shrimp trawls within the Oculina Bank can result in damage to bottom habitat, as emphasized in a recent report presented to the Council on this topic. This latest report indicates that only 20 acres of Oculina coral remain intact, not only in this area, but in the world. Requiring rock shrimp vessels to carry an approved VMS unit will improve compliance and allow the rock shrimp fishermen to demonstrate that they are not fishing in any closed areas. Currently, the probability of detecting fishing in the Oculina Bank HAPC is low, given the distance from shore and the frequency of Coast Guard patrols in this area. VMS technology will significantly improve the detection of fishery violations in this closed area. Thus, the final rule is superior to the no action option and rejected option 3. Rejected option 3 would only provide coverage for some vessels in the industry and would not be as effective as the preferred alternative in improving compliance. In comparison to rejected option 2, the VMS system requirements should be specified in order to ensure that the utilized system will ensure sufficient surveillance of vessel activities. In this respect, the final rule is preferable to rejected option 2. Also, the final rule establishes a cap on the cost per vessel for purchase of the VMS unit and annual communications. Based on these facts, the final rule is superior to the alternatives considered.

The requirement for operator permits in the South Atlantic rock shrimp fishery will increase costs to owners who operate their own vessels and to individual non-owning operators. The cost of a permit is expected to be not more than $50 and would generally be incurred once every 3 years, for an approximate cost per year of $16.67. Thus, the total explicit cost imposed on all qualifiers combined in the first year would be approximately $8400. The time burden of applying for this permit is estimated to be 60 minutes. In monetary terms, this time burden equates to $8.36 per vessel operator, or $2.79 per year. As a result of this action, the annual total cost per qualifying vessel is $19.46, or $3270 for all qualifying vessels.

This burden would also be imposed on vessel operators in the open access component of the fishery (i.e., the Carolinas), which could consist of as many as 24 additional vessels. If the single, large entity eventually chose to participate in the open access component of the fishery, it would also have to incur these expenses. Since the cost is constant on a per-vessel basis, disproportional impacts would not occur. In any case, for participants in the open access component of the fishery, these costs are unlikely to substantially reduce profitability.

The final rule will result in higher costs than the no action option (rejected option 1) since it would require an operator's permit, estimated to cost $50 per operator, that would be valid for 3 years. The Council's Rock Shrimp Advisory Panel recommended operator permits to assist in reducing the cost of penalties to the industry from federal fishery management violations. It is expected that an operator's permit requirement will improve compliance with fisheries management regulations. Even though rejected option 2, which only requires an operator's permit for captains who do not own the vessel they operate, would result in a lower cost to the industry, it would not eliminate the possibility that a vessel owner who had a vessel permit sanction for a federal fishery violation could obtain an operator's permit and work onboard another rock shrimp vessel. Thus, the final rule is preferable to the rejected alternatives.

Overall, the total costs of these actions on active, non-qualifying vessels could be as high or higher than $1450 per vessel, or $160,950 in the aggregate, in the short-term. Depending on circumstances, these vessels may or may not mitigate these losses by participating in other fisheries.

For the vessel owners who qualify for a limited access permit, the total annual costs of these actions could be as high as $2238 per vessel in the first year, and $1831 thereafter. Given that active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery, such costs could represent between 1.8 percent and 7.0 percent of these revenues in the first year, and between 1.4 percent and 5.7 percent in years thereafter. Depending on the profit margins associated with activity in this fishery, these losses could be considered substantial, at least for some of the affected small entities. However, it is expected that future gains in the fishery would offset the short-term costs to these small entities. The Council's industry representatives (Rock Shrimp Advisory Panel) recommended that the Council consider a limited access program to avoid a situation where the current overcapacity problem, the primary source of which is the large number of latent permits, is exacerbated and thus increases the risk that firms

dependent on rock shrimp could be forced out of the fishery or out of business. The Rock Shrimp Advisory Panel requested operator's permits to protect their interests since many owners do not operate their own vessels, and this measure would allow them to hire captains who are likely to be more compliant with fishery regulations. Vessel owners are also liable for any fishery violations even if they are not on board the vessel during the period when the infraction occurs; however, this is true regardless of operator permits. There have been a number of instances of illegal fishing in an important closed fishing area, the Oculina Bank HAPC, by vessels in the rock shrimp fishery. Given the dwindling law enforcement resources for patrolling these areas, which are several miles offshore, the Council recommended that vessels in this fishery be required to use an approved VMS since they regularly operate in close proximity to the Oculina Bank HAPC. There is a critical need to implement this measure for increased protection of the *Oculina* coral habitat. A recently completed research survey concluded that this area contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world. To the extent enforcement is increased and trawling in the Oculina Bank HAPC is eliminated, there will be corresponding benefits in terms of protecting Oculina coral, habitat, and juvenile rock shrimp.

Copies of the FRFA are available upon request (see **ADDRESSES**).

The Council prepared a final supplemental environmental impact statement (FEIS) for Amendment 5; a notice of availability was published on September 6, 2002 (67 FR 57007). The FEIS concludes that Amendment 5 will result in positive environmental impacts by reducing excess harvesting capacity in the fishery via the limited access program, reducing bycatch (including bycatch of undersized, unmarketable rock shrimp) via mesh size restrictions, and enhancing compliance with all management measures (including protection of the essential fish habitat and Oculina coral) via requirements for VMS and operator permits.

This final rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely, application for a limited access endorsement for the South Atlantic rock shrimp fishery, documentation of eligibility through a written agreement, transfer of a limited access endorsement, installation and operation of a VMS by a vessel that has been issued a limited access endorsement, and application for an operator permit for the South Atlantic rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida). These collection-of-information requirements have been approved by OMB, OMB control number 0648–0205. The average public reporting burdens are estimated as follows: For the limited access endorsement, 20 minutes for each application for the endorsement or for the transfer of an endorsement, 1 hour for documentation of eligibility submitted with the application, 2 hours for each request for reconsideration of the RA's determination regarding initial endorsement eligibility, and 5 minutes for each request to be placed on the list of owners desiring consideration for reissue of an endorsement that had not been renewed; for the VMS, 4 hours per installation, 15 minutes for completion and submission of the statement certifying compliance with the installation and activation checklist, 14 minutes per day at sea for transmittal of position reports, and 2 hours for annual maintenance; and for the operator permit, 60 minutes for each application.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of the collections of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 10, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b), under 50 CFR, is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
622.9	–0205
* * * * *	
622.19	–0205
* * * * *	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

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

4. In § 622.4, paragraph (a)(2)(viii), (c), (f) through (j), and (l) are revised and paragraphs (a)(5) and (b)(4) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(viii) *South Atlantic rock shrimp.* (A) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(B) In addition, effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or

from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

* * * * *

(5) *Operator permits.* (i) Effective May 16, 2003, for a person to be an operator of a vessel fishing for rock shrimp in the South Atlantic EEZ or possessing rock shrimp in or from the South Atlantic EEZ, or to be an operator of a vessel that has a valid permit for South Atlantic rock shrimp issued under this section, such person must have and carry on board a valid operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(ii) An owner of a vessel that fishes for rock shrimp in the South Atlantic EEZ or possesses rock shrimp in or from the South Atlantic EEZ, and an owner of a vessel that has a valid permit for rock shrimp issued under this section, must ensure that at least one person with a valid operator permit for the South Atlantic rock shrimp fishery is aboard while the vessel is at sea or offloading.

(b) * * *

(4) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1–yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal*—(1) *Vessel permits, licenses, and endorsements and dealer permits.* Although a vessel permit, license, or endorsement or a dealer permit required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has submitted all reports required under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal); that the permit, license, or endorsement is ineligible for automatic renewal; or that a new application is required.

(i) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(ii) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iii) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iv) *If notification is not received.* A vessel owner or dealer must contact the RA if he/she does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in the South Atlantic rock shrimp fishery must present his/her operator

permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

* * * * *

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

* * * * *

5. In § 622.7, paragraphs (b) and (c) are revised and paragraph (bb) through (ee) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in § 622.4(b), (g), (p), (q), or (r) or in §§ 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

* * * * *

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) and (ii).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

6. In subpart A, § 622.9 is added to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* As of October 14, 2003 or 90 days after NMFS publishes in the **Federal Register**, the list of approved transmitting units and associated communications service providers, whichever is later, an owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by NMFS for use in the South Atlantic rock shrimp fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must—

(1) Follow procedures indicated on an installation and activation checklist, which is available from NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL; phone: 727–570–5344; and

(2) Submit to NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of South Atlantic rock shrimp in or from the South Atlantic EEZ, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

7. In subpart B, § 622.19 is added to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* Effective July 15, 2003, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Initial eligibility.* A vessel is eligible for an initial limited access endorsement for South Atlantic rock shrimp if the owner—

(1) Owned a vessel with a Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and

(2) Landed at least 15,000 lbs (6,804 kg) of South Atlantic rock shrimp in any one of the calendar years 1996 through 2000 from a vessel that he/she owned.

(c) *Determinations of eligibility*—(1) *Permit history.* The sole basis for determining whether a vessel had a Federal permit for South Atlantic rock shrimp, and that vessel's owner during the time it was permitted, is the RA's permit records. A person who believes he/she meets the permit history criterion based on ownership of a vessel under a different name, as may have occurred when ownership changed from individual to corporate or vice versa, must document his/her ownership.

(2) *Landings.* (i) Landings of rock shrimp from the South Atlantic EEZ during the qualifying period are verified from landings data that were submitted on or before January 31, 2001 and are in state or Federal database systems; no additional landings data will be accepted.

(ii) Only landings when a vessel had a valid Federal permit for rock shrimp, that were harvested from the South Atlantic EEZ, and that were landed and sold in compliance with state and Federal regulations will be used to establish eligibility.

(iii) For the purpose of eligibility for an initial limited access endorsement

for South Atlantic rock shrimp, the owner of a vessel that had a permit for South Atlantic rock shrimp during the qualifying period retains the rock shrimp landings record of that vessel during the time of his/her ownership, unless, prior to January 16, 2003, a sale of the vessel includes a written agreement that credit for qualifying landings is transferred to the new owner. Qualifying landings are landings of at least 15,000 lb (6,804 kg) of rock shrimp harvested from the South Atlantic EEZ in any one of the calendar years 1996 through 2000. Such transfer of credit must be for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the seller's ownership; no partial transfers are allowed.

(d) *Implementation procedures*—(1) *Notification of status.* On or about March 17, 2003, the RA will notify each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a vessel currently permitted for South Atlantic rock shrimp, of the RA's initial determination of eligibility for a limited access endorsement for South Atlantic rock shrimp. The notification will include a determination regarding the 15,000–lb (6,804–kg) threshold level for the endorsement. If the landings in the combined state and Federal databases do not meet the 15,000–lb (6,804–kg) threshold for any of the qualifying years, the landings in each of the qualifying years, as shown in those databases, will be included. Each notification will include an application for such endorsement. Addresses for notifications will be based on the RA's permit records. Each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a currently permitted vessel, who does not receive notification by April 1, 2003 must advise the RA of non-receipt within 15 days thereafter.

(2) *Applications.* (i) An owner of a vessel who desires a limited access endorsement for South Atlantic rock shrimp must submit an application for such endorsement postmarked or hand-delivered not later than May 16, 2003. Failure to apply in a timely manner will preclude issuance of an endorsement even if the vessel owner meets the eligibility criteria for the endorsement.

(ii) An applicant who agrees with the RA's initial determination of eligibility does not need to provide documentation of eligibility with his/her application.

(iii) An applicant who disagrees with the RA's initial determination of eligibility must provide documentation of eligibility with his/her application. Such documentation must include the name and official number of the vessel permitted for South Atlantic rock shrimp and the dates, quantities, trip tickets, and purchasing dealers for specific landings claimed for the vessel. In addition, if an owner's application for a limited access endorsement is based on qualifying landings that were transferred to him/her through a written agreement, as discussed in paragraph (c)(2)(iii) of this section, the application must be accompanied by a copy of that agreement and a statement of the cost associated with obtaining the catch history. Documentation and other information submitted on or with an application are subject to verification by comparison with state or Federal records and information. If such documentation and information cannot be verified from state or Federal records and information, the documentation and other information will be rejected. Submission of false documentation or information may disqualify an owner from obtaining an initial limited access endorsement for South Atlantic rock shrimp and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(3) *Issuance.* If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RA will take action as follows:

(i) If a qualified applicant owns a vessel that has a valid permit for South Atlantic rock shrimp, the RA will issue an initial limited access endorsement for South Atlantic rock shrimp and mail it to the vessel owner prior to July 15, 2003.

(ii) If a qualified applicant does not currently own a vessel, the RA will inform him/her of qualification, but no endorsement will be issued. Such qualified applicant must apply for a permit and endorsement for a vessel that he/she owns, or transfer the rights to the endorsement to an owner of a vessel, prior to July 15, 2005. After that date, the rights to an initial limited access endorsement for South Atlantic rock shrimp that were based on the qualification will expire. A qualified applicant who desires to transfer the rights to an initial endorsement to the owner of a vessel must submit an application requesting such transfer to the RA. Such transfer of rights will include transfer of credit for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the qualified applicant's ownership.

(4) *Reconsideration.* (i) If the eligibility requirements specified in paragraph (b) of this section are not met, the RA will notify the applicant, in writing, not later than July 16, 2003. The notification will include the reason for the determination that the eligibility requirements were not met. An applicant may request reconsideration of the RA's determination regarding initial endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered not later than September 15, 2003 and must provide additional written documentation supporting eligibility for the endorsement.

(ii) Upon receipt of a request for reconsideration, the RA will forward the initial application, the RA's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the members of the Application Oversight Board such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. The Application Oversight Board may not consider whether an applicant should have been eligible for a vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RA.

(v) The RA will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the applicant, and the recommendations and comments from members of the Application Oversight Board. The RA may not consider whether an applicant

should have been eligible for a vessel permit because of hardship or other factors. The RA will notify the applicant of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RA's decision will constitute the final administrative action by NMFS.

(e) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(f) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(g) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, ''inactive'' means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(h) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (g) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. To be placed on the list, an owner must submit a written request to the RA postmarked or hand-delivered not later than January 16, 2004. The written request must contain documentation of each specific landing claimed, i.e., date, quantity of rock shrimp, name and official number of the harvesting vessel, ownership of the vessel at the time of landing, and name and address of the purchasing dealer. Claimed landings that are not verified by comparison with state trip ticket or dealer records will not be recognized.

8. In § 622.41, the heading of paragraph (g)) is revised and paragraph (j) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Penaeid shrimp in the South Atlantic.* * * *

* * * * *

(j) *Rock shrimp in the South Atlantic off Georgia and Florida.* The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1 7/8 inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

[FR Doc. 03–1014 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–234–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, a proposed amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Revised Statutes (KRS) at 350.445 pertaining to the construction of a road above a highwall. Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet address: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated May 9, 2000 (administrative record no. KY–1473), Kentucky submitted a proposed amendment to its approved permanent regulatory program. Three house bills were included in the submission. House Bill (HB) 502 continues in effect the current administrative regulations on ownership and control. HB 599 creates a new section of KRS Chapter 350 and pertains to an easement of necessity. HB 792 amends KRS 350.445(3) and is the subject of this rule. We previously announced our decisions on HB 502 and 599 in the April 30, 2002 **Federal Register** (67 FR 21173), and the June 20, 2001 **Federal Register** (66 FR 33020), respectively.

We announced receipt of the proposed amendment in the May 31, 2000, **Federal Register** (65 FR 34625), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 30, 2000.

By letter dated July 10, 2002, (administrative record no. KY–1547), Kentucky submitted additional explanatory information in response to our letter dated February 13, 2002. Because the information merely clarified certain provisions of the proposed amendment, we did not reopen the comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons described below, we are approving the amendment, with an exception. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

House Bill 792, Subsection(3), amends KRS 350.445(3)—Steep Slopes. It allows disturbance of the land above the highwall for the construction of a permanent road only if the permittee affirmatively demonstrates, and the Natural Resources and Environmental Protection Cabinet (Cabinet) makes a detailed written determination, that the proposed disturbance facilitates compliance with KRS Chapter 350, and it requires that the land disturbed be limited to that amount necessary to facilitate compliance. The Cabinet determination must be made upon the permittee demonstration that certain, specific requirements will be met. These requirements are contained in KRS 350.445(3)(a) through (j). For example, the permittee must completely eliminate the production highwall and backfill the mined areas to approximate original contour with no road remaining on the bench. In addition to the specified requirements, the permittee must meet all other performance standards of this chapter.

Section 515(d)(3) of SMCRA allows disturbances above the highwall if the disturbances will facilitate compliance with the environmental protection (performance) standards of Section 515. In addition, the disturbances ''shall be limited to that amount necessary to facilitate * * * compliance'' with Section 515.30 U.S.C. 1265(d)(3).

Kentucky requires compliance with KRS Chapter 350. In its letter dated July 10, 2002, Kentucky clarified that KRS 350 includes both application requirements and performance standards. However, Kentucky stated that the demonstrations required of the permittee are directed towards, and would facilitate compliance with, performance standards. Kentucky further explained how constructing roads above highwalls would facilitate that compliance by stating, ''permanent roads constructed above the highwall result in a more stable mine backfill configuration than the steeper backfill required with an on-bench road at the toe of the backfill. Further, the disturbance of the area above the highwall, in creating the road cut, results in smaller volumes of excess spoil than would placement of an on-bench road at the base of the backfill resulting in a reduction of spoil materials placed in off-bench hollow fills and associated stream loss.''

Additionally, the backfilling and grading plan must incorporate a narrative, applicable specifications (plan, profile and section drawings), and volumetric calculations sufficient for the Cabinet to make an affirmative finding. The reclamation plan will be based on the construction requirements for a permanent road. No road embankments would exist. The roadbed would be surfaced with durable rock or cut to a solid rock surface. That section of the exposed road cut constructed in soils materials and the undisturbed natural barrier would be revegetated in accordance with the approved plan. The roadway width in the approved plan must be designed to be appropriate for the amount of traffic and for the equipment to manage the approved postmining land use. Evaluation of the postmining land use would be based on the level of management and road specifications (volume of traffic, size and weight of vehicles, and periodic/daily use required by the landowner). The roads will connect with other roads and must support the approved postmining land use. The Cabinet will make a written determination upon a demonstration by the permittee that the requirements of KRS 350.445 (3) (a–j) are met. Kentucky also affirmed that it retains discretion to ultimately approve or disapprove a permittee's request to construct a permanent road above a highwall.

Because the Kentucky amendment contains provisions that are substantively identical to those contained in section 515(d)(3) of SMCRA, and also imposes additional requirements for roads constructed above highwalls, we find that the proposed Kentucky amendment is no less stringent than section 515(d)(3) of SMCRA and can be approved, with one exception. Section (3)(g) requires that the road be constructed to a size and design appropriate to support coal mining activities and the proposed postmining land use. Allowing roads above highwalls ''to support coal mining activities'' is inconsistent with, and therefore less stringent than, section 515(d)(3) of SMCRA, which allows disturbances above highwalls only where the disturbances will facilitate compliance with environmental protection performance standards, and not where they will facilitate mining itself. For this reason, the phrase ''to support coal mining activities and'' cannot be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record no. KY–1494), and received two pertaining to HB 792. Because no one requested an opportunity to speak at a public hearing, none was held. By letter dated June 14, 2000 (administrative record no. KY–1480), the Kentucky Coal Association expressed its full support of HB 792. By electronic mail on July 5, 2000 (administrative record no. KY–1484), the Kentucky Resources Council, Inc. (KRC) expressed concern that to the extent that HB 792 eliminates Kentucky's discretion to approve or disapprove a proposed above-highwall disturbance and to mandate that it accepts as ''facilitating compliance'' any mine plan which proposes a permanent road above the top of a highwall, the provision would be inconsistent with Federal law. The KRC acknowledged that under certain configurations where a road above the highwall is constructed in lieu of a permanent mine bench road, that less spoil disposal in valley fills is necessary. It contends, however, that widespread abuse has occurred and safeguards must therefore be instituted. Kentucky must also retain discretion to determine whether the road approval will facilitate environmental compliance and meet all other performance standards. The KRC emphasized that only under narrowly drawn circumstances, with Kentucky retaining discretion to approve or disapprove the roads, can the proposed amendment be considered consistent with Federal law.

We acknowledge the KRC's concerns. We refer to Kentucky's letter dated July 10, 2002, discussed in the finding above, in which Kentucky affirms that the land above a highwall may be disturbed for the construction of a permanent road only when the applicant affirmatively demonstrates, and Kentucky makes a written determination that the proposed disturbances facilitate compliance with both application requirements and performance standards. Kentucky further affirms that it will retain full discretion to approve or disapprove a

permittee's request and will monitor compliance with an approved backfilling and grading plan through routine inspections. We feel Kentucky has demonstrated that by retaining discretion and by instituting necessary safeguards, that the provisions of the proposed amendment can be implemented in a manner consistent with the provisions of SMCRA.

The KRC also commented that the roads above highwalls must be constructed to an appropriate size and design standard, and must be part of the approved postmining land uses. In response, we note that these specific demonstrations are required at KRS 350.445(3)(g). The KRC also commented that the proposed mine plan and road construction sequencing in relation to the mining activity must be designed to maximize permanent retention of mined spoil on the mine bench. In response, we note that KRS 350.445(3)(h) requires these demonstrations. Finally, the KRC commented that the proposed mine plan must include removal of the bench road and restoration of the approximate original contour of the mined area, with no permanent road left on the mine bench. In response, we note that KRS 350.445(3)(a) requires this demonstration.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment submitted on May 9, 2000, from various Federal agencies with an actual or potential interest in the Kentucky program. None were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the provisions in this amendment pertain to clean water or clean air standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on May 9, 2000, with the exception noted in section III.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

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

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM.

Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal,

which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

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

2. Section 917.12 is amended by adding paragraph (d) to read as follows:

§ 917.12 State regulatory program and proposed program amendment provisions not approved.

* * * * *

(d) The phrase ''* * * coal mining activities and * * *'' in KRS 350.445(3)(g) is not approved.

3. Section 917.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 9, 2000	January 16, 2003	House Bill 792, KRS 350.445(3) (except for a portion of (3)(g))
*	*	*

[FR Doc. 03–976 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–240–FOR]

Kentucky Regulatory Program

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

ACTION: Final rule; technical amendment.

SUMMARY: We are announcing the removal of two instructions to Kentucky pertaining to required amendments to the Kentucky regulatory program (the ''Kentucky program''). The Kentucky program was established under the Surface Mining Control and Reclamation of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky. We are removing the instructions because the actions we required are no longer applicable and nothing further is required from the State.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director, Telephone: (859) 260–8400, Internet address: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. OSM's Findings
III. Summary and Disposition of Comments
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. OSM's Findings

During the course of implementing SMCRA, we occasionally issue new regulations. As a result, States may have to amend their approved programs in order to be consistent with the new Federal regulations. In addition, States may submit proposed amendments to their approved programs on their own initiative. In either event, we must determine whether the amendment submitted by the State meets the requirements of SMCRA. When it does, the amendment is approved and when it does not, it is not approved and the State may be instructed to further amend its program. These instructions are codified in our regulations at 30 CFR 917.16 for the Kentucky program. For the reasons that follow, we are removing two such instructions to the State of Kentucky.

At 30 CFR 917.16 (c)(2), Kentucky was required to submit proposed regulations to implement the program changes contained in Senate Bill (SB) 374. SB 374 added a new section to Kentucky's statutes pertaining to the issuance of special permits for the remining of previously affected mined areas. However, SB 374 specifically prohibits its own implementation until implementing regulations are promulgated by Kentucky and approved by OSM. In addition, 30 CFR 732.17(g) prohibits states from implementing proposed amendments to their programs until OSM approves the amendments. Because Kentucky has never submitted these implementing regulations, and because OSM determined that SB 374 could not be implemented without accompanying regulations, SB 374 is not a functioning part of the approved State program. *See* 51 FR 26002, 26005 (July 18, 1986). For these reasons, the requirement codified at 30 CFR 917.16(c)(2) is unnecessary and the instruction should be removed. Senate Bill 374 cannot take effect, of course, until Kentucky submits implementing regulations and we approve them.

At 30 CFR 917.16(o), Kentucky was required to submit a program change to the Kentucky Revised Statutes (KRS) at 350.060 to: (1) Clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired, and (2) require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired. On September 6, 2000, we announced the preemption and supersession of KRS 350.060(16) because it was inconsistent with the requirements of SMCRA (30 CFR 917.13(c); 65 FR 53909). Because both our disapproval and subsequent supersession of the quoted provisions of the statute prevent Kentucky from implementing those provisions, and because the Kentucky program otherwise requires issuance of imminent harm cessation orders to persons conducting surface coal mining operations under expired permits, we believe that the requirements codified at 30 CFR 917.16(o) are no longer necessary and the instruction should be removed.

III. Summary and Disposition of Comments

Public Comments

In the July 15, 2002, **Federal Register** (67 FR 46432), we asked for public comments on our proposal to remove the two instructions (administrative record no. KY 1562), but did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the instructions proposed for removal did not pertain to these subjects, we did not request EPA concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposal from EPA (administrative record No. KY 1562). EPA did not respond to our request.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule is a technical amendment and does not have takings implications.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section.

Executive Order 13132—Federalism

This rule is a technical amendment and does not have Federalism implications.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is a technical amendment that does not impose any additional requirements on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons previously stated, this rule: (a) Does not have an annual effect

on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule is a technical amendment and will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 2002.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

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

§ 917.16 [Amended]

2. § 917.16 is amended by removing and reserving paragraphs (c)(2) and (o).

[FR Doc. 03–978 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–03–005]

Drawbridge Operation Regulations: Hobe Sound Bridge (SR 708), Atlantic Intracoastal Waterway, Mile 996.0, Hobe Sound, Martin County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Hobe Sound Bridge (SR 708) at Hobe Sound across the Atlantic Intracoastal Waterway, mile 996.0 in Hobe Sound, Martin County, Florida. This deviation allows the drawbridge to open only a single-leaf on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. for two days, with a double-leaf openings available with two-hour notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

DATES: This deviation is effective from 7 a.m. on January 15, 2003 until 6 p.m. on January 16, 2003.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–03–005] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations of the Hobe Sound Bridge (SR 708), mile 996, at Hobe Sound, Martin County, Florida, published in the **Federal Register** [CGD07–02–104, 67 FR 55115], require the bridge to open on signal, except that from 7 a.m. to 6 p.m. the bridge will open on the hour, 20 minutes after the hour, and 40 minutes after the hour. On December 4, 2002, the Commissioners of Martin County, the drawbridge owner, requested a deviation from the current operating regulations by allowing the bridge to only open a single-leaf of the bridge to safety effect repairs. A double-leaf opening will be available with two-hour advance notice to the bridge tender.

The District Commander has granted a temporary deviation from the operating requirements listed in CGD07–02–104, 67 FR 55115 to complete repairs to the bridge. Under this deviation, the Hobe Sound Bridge (SR 708) need open only a single-leaf on the hour, 20 minutes after the hour, and 40 minutes after the hour from 7 a.m. to 6 p.m. on January 15, 2002 and January 16, 2002. A double-leaf opening will be provided with a two-hour advance notice to the bridge tender.

Dated: January 9, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–1007 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–103]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Fifth Coast Guard District is adding vessel speed limits, for certain vessels operating in the vicinity of Naval Station Norfolk, to the existing regulated navigation area found at 33 CFR 165.501. This temporary rule is necessary to ensure the safety and security of naval vessels that are moored at Naval Station Norfolk. The temporary rule will require all vessels of 300 gross tons and greater to reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels.

DATES: This temporary final rule is effective from December 20, 2002 to June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–103 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Monica Acosta, USCG, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Upon request by the Navy, immediate action is necessary to ensure the safety and security of naval vessels moored at Naval Station Norfolk during large merchant vessel transits of the Elizabeth River. Due to their large size and substantial momentum while underway, these merchant vessels pose

a potential threat to Naval Station Norfolk's security. Imposing this speed limit will improve security alongside Naval Station Norfolk as well as reduce the potential threat. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule would be contrary to the public interest, as immediate action is necessary to ensure the safety and security of naval vessels during large merchant vessel transits of the Elizabeth River.

Background and Purpose

The Commander Naval Station Norfolk requested this rule to reduce the potential threat to national security that may be posed by vessels of 300 gross tons or greater as they pass the naval station. This temporary modification of the regulated navigation area (RNA) is necessary to ensure the safety and security of naval vessels in the vicinity of Naval Station Norfolk. The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

No vessel of 300 gross tons or greater may proceed at a speed over eight knots between Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach. All vessels less than 300 gross tons are exempt from this rule, as well as all Public vessels as defined in 33 U.S.C. 1321, which states that a public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Regulatory Evaluation

This temporary 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). This temporary final rule will be in effect for less than nine months. During this period, it is estimated to affect 3988 vessel transits. However, the speed limit restrictions are only in effect for less than four miles, and typical vessel speed is 10 knots. Therefore, any delay caused by the two knot reduction in speed will be minimal.

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 temporary rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels 300 gross tons or greater intending to transit Norfolk Harbor Reach at speeds greater than eight knots. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only affect a limited portion of a vessel's total transit, and for only a length of less than four miles. Deep-draft vessels typically transit this area at approximately 10 knots, and therefore the eight-knot speed limit will not cause significant delays. Further, the rule is only in effect for nine months.

If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could 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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 rule will 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 effect 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

We have 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.

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.

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.

Environment

We have considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well established Regulated Navigation Area, and will be in effect for less than nine months. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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. From December 20, 2002 until June 15, 2003 add new paragraph (d)(14) to § 165.501 to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters—regulated navigation area.

* * * * *

(d) * * *

(14) Speed restrictions on Norfolk Harbor Reach. Vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy 5 (LL 9470) of Norfolk Harbor Reach (northwest of Sewells Point) at approximately 36°58′00″ N, 76°20′00″ W and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal) at approximately 36°54′17″ N, 76°20′11″ W. All vessels less than 300 gross tons are exempt from this rule. All coordinates reference Datum NAD 1983. This speed restriction does not apply to Public Vessels as defined in 33 U.S.C. 1321(a)(4). The U.S. Navy or other federal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

* * * * *

Dated: December 20, 2002.

J.D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–1006 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL–7439–7]

Change of Physical Location of EPA's Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency has relocated its office and today is amending the address as it is referenced in the regulation on Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.

DATES: This final rule is effective on January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Eurika Durr, Clerk of the Board. Telephone number: (202) 233–0122. Email: *Durr.Eurika@epa.gov*.

SUPPLEMENTARY INFORMATION: This action is directed to the public in general, and in particular to anyone who may need or want to visit or submit documents to the office of the EAB. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

I. Background

A. What Action Is the Agency Taking?

The EAB has relocated its office from one office building to another in downtown Washington, DC. The current physical location of the EAB is Suite 500, 607 14th Street, NW., Washington, DC. This address is referenced in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 CFR part 22, which provides, in pertinent part, that:

> Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board, (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.).

40 CFR 22.30(a). On December 9, 2002, the EAB relocated its office to Suite 600, 1341 G Street, NW. The purpose of this amendment is to delete the sentence in 40 CFR 22.30(a) which provides that ''[h]and deliveries may be made at Suite 500, 607 14th Street, NW.,'' and to substitute a sentence which provides that ''[h]and deliveries may be made at Suite 600, 1341 G Street, NW.'' The amendment will have no effect on any documents that are filed at the EAB's official mailing address, which is 1200 Pennsylvania Ave., NW.

B. How Can I Get Additional Information About This Action?

You may obtain additional information about this action on the EAB's Internet home page at *http://www.epa.gov/eab*.

C. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority. Reorganization Plan No. 3 of 1970 (5 U.S.C. app.). In addition, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice of public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that this amendment is technical and non-substantive, and therefore, that there is good cause under 5 U.S.C. 553(b)(B) for making this rule final without prior proposal and opportunity for comment.

II. Do Any of the Regulatory Assessment Requirements Apply to This Action?

No. This final rule implements a technical amendment to 40 CFR part 22 to reflect a change in the physical location of the office of the EAB, and does not otherwise impose or amend any requirements. This action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–94). In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the UMRA of 1995. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Similarly, this rule will not have substantial direct effects on tribal governments, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

III. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, generally provides that, before a rule may take effect, the agency that promulgates the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environmental protection, Administrative practice and procedure.

Dated: January 9, 2003.

Christine Todd Whitman,

Administrator.

40 CFR Part 22 is amended as follows:

1. The authority citation for Part 22 continues to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

2. Section 22.30(a)(1) is amended by revising the second sentence to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * * (1) * * * Hand deliveries may be made at Suite 600, 1341 G Street, NW.).* * *

* * * * *

[FR Doc. 03–963 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940a; FRL –7439–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on July 22, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These revisions to rules 62–296.412 and 62–296.511, which update the applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities to achieve compliance with regulations are being made to keep the EPA approved SIP consistent with the Florida regulations.

DATES: This direct final rule is effective March 17, 2003, without further notice, unless EPA receives adverse comment by February 18, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

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

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at 404/562–9035 (E-mail: *lesane.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: The State of Florida through the FDEP submitted revisions to Rules 62–296.412(1) and 62–296.511 of the Florida SIP on July 22, 1996. These rules were amended to update applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities. The amendments provide that dry cleaning facilities using

perchloroethylene which have not yet achieved compliance with the requirements of 40 CFR Part 63 Subpart M—*National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities,* would continue to be subject to the requirements of Rule 62–296.412 until compliance is achieved. Likewise, the amendments provide that degreasing facilities using halogenated solvents which have not yet achieved compliance with the requirements of 40 CFR Part 63, Subpart T,—*National Emission Standards for Halogenated Solvent Cleaning,* would continue to be subject to the requirements of Rule 62–296.511 until compliance is achieved. These revisions primarily affect 40 CFR Part 63—*National Emission Standards for Hazardous Air Pollutants for Source Categories,* however, the amendments also provide emissions reductions of volatile organic compounds (VOCs).

Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with the Clean Air Act (CAA) and EPA requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 17, 2003, without further notice unless the Agency receives adverse comments by February 18, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 17, 2003, and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 3, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

2. In § 52.520(c) the table is amended by revising the entry for ''62–296.412'' and ''62–296.511'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
62–296.412	Dry Cleaning Facilities	06/05/1996	01/16/2003 [Insert page citation of publication].	
*	*	*	*	*
62–296.511	Solvent Metal Cleaning	06/05/1996	01/16/2003 [Insert page citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 03–858 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA185–4197; FRL–7437–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Control of Volatile Organic Compounds From Solvent Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes revised volatile organic compound (VOC) control regulations for solvent cleaning operations and also adds new definitions and amends certain existing definitions for terms used in regulations pertaining to solvent cleaning operations.

EFFECTIVE DATE: This final rule is effective on February 18, 2003.

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

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034 or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 2002, (67 FR 34647), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of revised VOC control requirements for solvent cleaning operations, and the addition and amendment of definitions for terms used in the regulations for solvent cleaning operations. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on February 13, 2002. Other specific requirements of Pennsylvania's SIP revision for solvent cleaning operations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On June 13, 2002, EPA received adverse comments on the May 15, 2002, NPR. A summary of the comments submitted and EPA's responses are provided in section II of this document.

II. Public Comments and Responses

Carpenter Technology Corporation (Carpenter) submitted adverse comments on the proposed rule to approve revised VOC control regulations for solvent cleaning operations in the Commonwealth of Pennsylvania published by EPA in the **Federal Register** on May 15, 2002 (67 FR 34647). A summary of those comments and EPA's responses are provided below.

Comment: Carpenter comments that the State failed to provide an opportunity for public comment on the cost/benefit analysis used to justify the rule.

Response: EPA disagrees that the Commonwealth failed to meet the public participation requirements for this SIP revision. The Clean Air Act requires that a state provide for public comment and hearing on a proposed SIP revision. In this instance, the Commonwealth's proposed SIP revision consists of the addition of the Solvent Cleaning Operations rule. After publishing notices in nine newspapers across the entire state announcing their respective dates, times and venues, public hearings were held by the Pennsylvania Environmental Quality Board (EQB) on the proposed rulemaking for the Solvent Cleaning Operations rule at the Pennsylvania Department of Environmental Protection's (PADEP) Southwestern Regional Office in Pittsburgh on September 28, 1999, at its Southeastern Regional office in Conshohocken on October 1, 1999, and on October 5, 1999, at its South Central Regional Office in Harrisburg. The notices also provided information to the public for obtaining hard copies of the proposed rulemaking from PADEP and the electronic address on its website where the proposed rulemaking could also be reviewed for comment by the public. On August 28, 1999, the EQB published the proposed rulemaking in the *Pennsylvania Bulletin* (29 Pa. B. 4661). In addition to the proposed rule itself, the August 28, 1999 proposed rulemaking (29 Pa. B. 4661) also includes the information as to the start and close of the public comment period; the dates, times and venues of the public hearings; and the means by which the public may provide comments on the proposed rulemaking both in writing and electronically to the EQB.

Although not required by Federal law for meeting public participation requirements for SIP revisions, Executive Order 1996–1 of the

Commonwealth of Pennsylvania requires that PADEP perform a Regulatory Analysis as part of its rule adoption process. The Regulatory Analysis is to be submitted to the General Counsel, Secretary of Budget and the Governor's Policy Director. That regulatory analysis is to include a cost/benefit analysis. Executive Order 1996–1 does not require PADEP to publish the Regulatory Analysis for comment by the public. However, the August 28, 1999 *Pennsylvania Bulletin* proposed rulemaking states that a cost/benefit analysis was done for the proposed making and states that the Regulatory Analysis form is available to the public upon request (29 Pa. B. 4662). Moreover, as part of its SIP revision submittal, PADEP included a document entitled, ''Solvent Cleaning Operations Comment and Response Document,'' dated May 1, 2001. That document includes Carpenter's comments on the cost/benefit analysis of the proposed rulemaking and provides PADEP's response.

The final rulemaking published in the *Pennsylvania Bulletin* on December 22, 2001 (31 Pa. B. 6921), announcing the adoption of the final version of the Solvent Cleaning Operations rule includes the following finding by the Environmental Quality Board of the Commonwealth of Pennsylvania at J. *Findings* (2): ''A public comment period was provided as required by law and all comments were considered.'' (31 Pa. B. 6926, December 22, 2001).

Comment: Carpenter comments that no data analysis was presented to support the projected VOC emission reductions in the final rule.

Response: EPA is not approving a quantified amount of emission reductions from Pennsylvania's solvent cleaning rule. Nor does Pennsylvania's SIP revision submittal include a request that any amount of emission reductions be approved by EPA. Emission reductions achieved by this rule and any other rules credited by PADEP in SIP revisions submitted to satisfy any rate of progress plan or attainment demonstration plan requirements would be the subject of separate rulemakings on those plans.

Comment: Carpenter comments that the freeboard requirements for closed-top immersion cold cleaning machines will actually increase emissions, and has provided specific information as to the emission increases that would occur at its Reading, Pennsylvania facility. In its comment letter, Carpenter also provides information regarding modifications to its Reading facility which have reduced VOC emissions from 14 tons per year (tpy) to 2.5 tpy.

Response: EPA disagrees that a freeboard requirement for closed-top immersion cold cleaning machines will increase emissions. For purposes of clarification, in Pennsylvania's regulation, an immersion cold cleaning machine refers to a cold cleaning machine with an opening at the top (as opposed to the side or bottom) of the machine through which the parts to be immersed must pass in order to reach the solvent. An immersion cold cleaning machine may or may not be equipped with a cover or lid that would have to be raised or removed in order to pass the parts that are to be immersed through the top opening. Pennsylvania's regulation requires that all immersion cold cleaning machines, as defined above, that use two gallons or more of solvents containing greater than 5 percent VOC content by weight for the cleaning of metal parts, be equipped with a cover that shall be closed at all times except during the cleaning of parts or the addition or removal of solvent. The Pennsylvania rulemaking allows operators of affected cold cleaning machines the option of using low volatility solvents (1 mm Hg) in a machine with a freeboard ratio of 0.5 or greater. A freeboard ratio of 0.75 or greater is required only if the solvent volatility is greater than 1 mm Hg. Carpenter is correct in pointing out that an increase in freeboard ratio results in more space (volume) in which the solvent may evaporate.

However, because the solvent vapors are denser than the air in the cold cleaning machine, the solvent vapor concentration is greatest near the liquid solvent than near the opening of the cold cleaning machine. A higher freeboard ratio means that the more concentrated solvent vapor interface area will be less disturbed by air draft or air currents when the cleaner is opened or when it remains open during cleaning. When opening the cover on a cold cleaning machine, Carpenter states that solvent vapor will escape from the machine. This is true, but in machines with a higher freeboard ratio, the less concentrated solvent vapors nearest the opening are more likely to be affected by the opening and closing of the cover, than are the more concentrated solvent vapors near the liquid solvent.

In its emissions analysis, Carpenter is assuming that solvent evaporation is reaching equilibrium within the volume of the cold cleaning machine, and that this entire volume of solvent will be emitted when opening the cover on the cold cleaning machine. In actual practice, in properly operated cold cleaning machines, not all of the volume of solvent that has evaporated into the freeboard area will be emitted. An increased freeboard ratio also reduces working emission losses to the extent that it provides additional dwell space in order for the liquid solvent to drain back into the cold cleaning machine when parts are removed after having been cleaned. Therefore, EPA expects that PADEP's freeboard requirements for open-top immersion cold cleaning machines will reduce VOC emissions in the Commonwealth.

However, given the specific circumstances of Carpenter's Reading facility as described in its June 10, 2002 letter of comment to EPA, including the information regarding the switch to aqueous-based cleaning solutions, the replacement of equipment, and the costs associated with these changes which resulted in a reduction in VOC emissions from 14 tons per year (TPY) to 2.5 TPY (an 82 percent reduction), Carpenter may wish to apply to PADEP for a source-specific variance to the revised regulations. If Carpenter can provide documentation to PADEP of the information provided in its June 10, 2002 letter to EPA, and demonstrate to the Commonwealth's satisfaction that compliance with the revised regulations would indeed increase VOC emissions at its Reading facility, PADEP could issue a source-specific alternative to Carpenter and submit it to EPA for approval as a SIP revision.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP regarding VOC control requirements for solvent cleaning operations applicable throughout the Commonwealth.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving revisions to Pennsylvania's control of VOCs from solvent cleaning operations, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: December 31, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(195) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(195) Revisions to the Pennsylvania Regulations regarding VOC control requirements for solvent cleaning operations, submitted on February 13, 2002, by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of February 13, 2002, from the Pennsylvania Department of Environmental Protection transmitting the revisions to VOC control requirements for solvent cleaning operations.

(B) Revisions to 25 PA Code, chapter 121 and chapter 129, effective December 22, 2001.

(*1*) Additions and Revisions of definitions for terms in chapter 121, General Provisions, section 121.1, Definitions.

(*i*) Addition of the following terms: Airless cleaning system, Airtight cleaning system, Batch vapor cleaning machine, Carbon adsorber, Cold cleaning machine, Dwell, Dwell time, Extreme cleaning service, Freeboard refrigeration device, Idling mode, Immersion cold cleaning machine, In-line vapor cleaning machine, Reduced room draft, Remote reservoir cold cleaning machine, Solvent/air interface, Solvent cleaning machine, Solvent cleaning machine automated parts handling sytem, Solvent cleaning machine down time, Solvent vapor zone, Superheated vapor system, Vapor cleaning machine, Vapor cleaning machine primary condenser, Vapor pressure, Vapor up control switch, Working mode cover.

(*ii*) Revision of the term ''freeboard ratio.''

(*2*) Revisions to chapter 129, Standards for Sources, Sources of VOCs, section 129.63, VOC Cleaning Operations replacing the current section 129.63.

(ii) Additional Material. Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(195)(i) of this section.

[FR Doc. 03–851 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 137–3093a; FRL–7436–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). Maryland has requested a six-month extension of the Federal deadline to incorporate electronic checks to of On-board Diagnostic (OBD) computer systems of 1996-and-newer vehicles into

Maryland's motor vehicle emissions inspection and maintenance (I/M) program. EPA's rules governing I/M programs required states to add OBD checks to their I/M programs by January 1, 2002. However, EPA's same rule provides states the option to submit a request for delay of this deadline by up to one additional year, provided each state making such a request for delay demonstrates to EPA that such a delay was necessary. Maryland has requested a six-month delay provided for by EPA's regulations (*i.e.*, until July 1, 2002) in commencing OBD checks as part of its I/M program. EPA has reviewed Maryland's request, and is proposing through this action to grant Maryland's request for a six-month extension of the OBD testing deadline in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 17, 2003 without further notice, unless EPA receives adverse written comment by February 18, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Robert Kramer, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of these relevant documents are also available from the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janet C. Kremer, (215) 814–2147, or by e-mail at *kremer.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 2001, EPA's revised I/M program requirements rule was published in the **Federal Register** (Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-board Diagnostics Check; Final Rule (66 FR 18156)). The revised I/M requirements rule requires that electronic checks of the On-board Diagnostics system of applicable 1996-and-newer motor vehicles be conducted as part of states' motor vehicle I/M programs. This revised I/M requirements rule applies only to those areas required to implement an I/M program under the Clean Air Act of 1990. This rule establishes a deadline of January 1, 2002 for states to begin performing OBD checks on 1996-and-newer model OBD-equipped vehicles, and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check. However, the revised I/M rule also provides several options to states to delay implementation of OBD testing, under certain circumstances, beyond the prescribed January 1, 2002 deadline. One such option provides for a one-time, 12-month extension of the deadline for states to begin conducting mandatory OBD checks (to as late as January 1, 2003) provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents ''the best the state can reasonably do''.

EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay request that are listed in EPA's rule include: contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

Maryland has submitted a SIP revision to formally request an extension of the OBD I/M test deadline, per EPA's I/M requirement rule. Maryland's SIP revision lists many of the same factors that are listed in EPA's I/M rule in order to justify the State's request for extension of the OBD testing deadline.

Summary of SIP Revision

On July 9, 2002, Maryland submitted a formal revision to its SIP, which constitutes a request to delay the addition of on-board diagnostic system checks of 1996-and-newer vehicles to Maryland's adopted and SIP-approved I/M program.

Maryland's SIP revision to request delay in adding OBD testing to it I/M program list several factors that effect the State's ability to conduct OBD testing at this time. Maryland's justification for its request of a 6-month delay includes the following factors:

(1) Hardware and software issues pertaining to the transition to new hardware and testing equipment, installation of new communications network, and construction of a new data management system. Also, the time to develop a new formal acceptance testing procedures for equipment and develop quality assurance specifications and procedures for the OBD test equipment that will be incorporated into the State's ongoing assurance audit inspections of the Vehicle Emissions Inspection Program (VEIP) stations,

(2) evaluation of various programmatic options, and the design of an OBD program that will be compatible with the current VEIP program design,

(3) the need to train the contractor inspection, operational, and management personnel, so that all of these personnel have a thorough knowledge of all aspects of the final OBD program design and operation,

(4) the need for additional education and training of the vehicle repair community in the new OBD test procedures as well as the repair of OBD-failed vehicles,

(5) the need for additional outreach and public education in order to increase public acceptance of OBD testing.

II. Final Action

EPA is granting the state of Maryland's request for a six-month extension of the OBD testing deadline, per the guidelines established by EPA in its amended Vehicle Inspection and Maintenance Program Requirements Rule, published in the April 5, 2001 edition of the **Federal Register** (66 FR 18156). Maryland has adequately justified a six-month extension of the January 1, 2002 Federal OBD I/M testing deadline. EPA therefore proposes to grant a six-month extension of the deadline to commence OBD testing as part of the Maryland I/M program to July 1, 2002. EPA has determined that this delayed implementation schedule represents the timeliest implementation schedule that Maryland can perform, and is ''the best the state can reasonably do''.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as EPA's I/M program requirements regulations allow the Administrator to grant such an extension request if a state provides a justification that meets the factors set forth in EPA's I/M regulations (66 FR 18156).

However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 17, 2003 without further notice unless EPA receives adverse comment

by February 18, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to extend the deadline for incorporation of On-board Diagnostics checks to the Maryland I/M program by six-months must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 23, 2002.

Judith M. Katz,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(179) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(179) Revisions to the Code of Maryland Administrative Regulation (COMAR) 11.14.08 pertaining to the request for delay in the incorporation of On-board Diagnostics testing in the state's Vehicle Inspection and Maintenance Program submitted on July 9, 2002 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 9, 2002 from the Maryland Department of the Environment transmitting amendments to Regulations .03, .06, .09, .12, and .16 under COMAR 11.14.08, Vehicle Emissions Inspection Program.

(B) Additions and revisions to COMAR 11.14.08.03, .06, .09, .12, and .16, effective June 10, 2002:

(*1*) Added COMAR 11.14.08.03E.

(*2*) Revised COMAR 11.14.08.06A(3)(r), .09F, .12C(1) through (3) inclusive, and .16D.

(ii) Additional Material.—Remainder of the State submittal(s) pertaining to the revisions listed in paragraph (c)(179)(i) of this section.

3. Section 52.1078 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1078 Extensions.

* * * * *

(b) The Administrator hereby extends by six-months the deadline by which Maryland must incorporate mandatory testing of second generation On-board Diagnostics (OBD–II) equipped motor vehicles as part of its inspection and maintenance (I/M) program. As a result of this deadline extension, Maryland must now incorporate mandatory OBD–II checks (for 1996-and-newer OBD–II equipped vehicles) as an element of the Commonwealth's I/M program in all enhanced I/M program areas by July 1, 2002.

[FR Doc. 03–855 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155–1a; FRL–7425–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Regulations

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On July 11, 2002, Ohio submitted a plan which contained rules to control emissions of oxides of nitrogen (NO_X) from electric generating units (EGU), non-EGUs and Portland Cement Kilns. The plan and associated rules represent a strategy submitted by the Ohio Environmental Protection Agency (Ohio EPA) in response to USEPA's October 27, 1998, NO_X State Implementation Plan (SIP) Call and subsequent technical amendments. This direct final rule addresses the adequacy and acceptability of the Ohio plan, which we believe will have a major impact in reducing NO_X and ozone in Ohio and in areas downwind from major sources of NO_X emissions. USEPA believes the State's plan, which includes a NO_X trading program, an energy efficiency/renewable energy feature and accommodates innovative technology projects, adequately addresses the requirements of the NO_X SIP Call and meets the budget prescribed for Ohio. USEPA is taking final action today to approve the Ohio EPA plan.

DATES: This rule is effective on March 17, 2003, unless USEPA receives relevant adverse written comments by February 18, 2003. If USEPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air and Radiation Division (AR–18J) Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may obtain a copy of the State Implementation Plan revision request at the above address. Please telephone John Paskevicz at (312) 886–6084 if you intend to visit the Region 5 office.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois, 60604. E-Mail Address: *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''you'' refer to the reader of this proposed rule and/or to sources subject to the State rule, and the terms ''we'', ''us'', or ''our'' refers to USEPA.

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I. Background

A. What Requirements Led to the State's Submittal of the NO_X Emission Control Plan?

On October 27, 1998, the USEPA promulgated a regulation known as the NO_X SIP Call for numerous States, including the State of Ohio. The NO_X SIP Call requires the subject States to develop NO_X emission control regulations sufficient to provide for a prescribed NO_X emission budget in 2007.

Preceding the promulgation of USEPA's NO_X SIP Call, there had been extensive discussions by Federal, State, and local environmental agencies, industry, and environmental groups regarding the transport of ozone in the eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995, USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995, USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_X emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO_X SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_X SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions [1] emit NO_X in amounts that ''significantly contribute'' to ozone nonattainment or interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(I)(I). USEPA identified NO_X emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_X emission budgets for each affected jurisdiction for 2007 based on the

[1] Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

possible cost-effective NO_X emission reductions.

The source sectors include nonroad mobile, highway mobile, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO_X emissions caps for large EGUs (potentially generating more than 25 megawatts) and for large non-EGUs (minimum design heat input of 250 mmBTU per hour). USEPA determined that significant NO_X reductions using cost-effective measures could be obtained as follows: Application of a 0.15 pounds NO_X/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_X emissions from large non-EGUs; a 30 percent reduction of NO_X emissions from large cement kilns; and a 90 percent reduction of NO_X emissions from large stationary internal combustion engines. The 2007 state-wide NO_X emission budgets established by jurisdiction were based, in part, by assuming these levels of NO_X emission controls coupled with NO_X emissions projected by source sector to 2007.

Although the state-wide NO_X emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_X SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_X emission budgets. It does not require the States to adopt the specific NO_X emission rates assumed by the USEPA in establishing the NO_X emission budgets. The NO_X SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_X state-wide emission budget. The NO_X SIP Call encourages the States to adopt a NO_X cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_X trading program that the USEPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO_X SIP Call.

B. What Requirements Must Ohio Meet?

The State of Ohio has the primary responsibility under the Clean Air Act for ensuring that Ohio meets the ozone air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO_X emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the USEPA for approval.

These NO_X emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO_X SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Ohio and other states were substantially inadequate to prohibit NO_X emissions that significantly contribute to ozone nonattainment. As a result, Ohio was required to submit SIP revisions that addressed this inadequacy.

USEPA has published a model rule for control of NO_X emissions from boilers and turbines. This model rule, codified at title 40 of the Code of Federal Regulations part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO_X emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO_X emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely follow USEPA's model rule. (*See* 63 FR 57365)

C. What Have Been the Court Rulings Regarding USEPA's NO_X Emission Control Rule?

When the USEPA published the NO_X SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia. The court, on May 25, 1999, stayed the States' obligation to submit SIPs in response to the NO_X SIP Call rule. Subsequently, on March 3, 2000, the court upheld most of USEPA's NO_X SIP Call rule. The court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The court also vacated the rule as it applied to Wisconsin because the court believed that USEPA had not made a showing that sources in Wisconsin significantly contributed to nonattainment or interfered with maintenance of the ozone NAAQS in any other State. Finally, the court remanded to USEPA two issues concerning a limited portion of the NO_X emission budgets. *See* Michigan *et al.* v. EPA, 213 F.3d 663 (D.C. Cir. 2000). On April 11, 2000, based on the remanded issues, USEPA initiated a two phase approach to implement the NO_X SIP Call. Phase I of this approach addressed the portion of the NO_X SIP Call upheld by the court. Phase I will achieve the majority of the reductions in the NO_X SIP Call. The Phase I plan was due from Ohio on October 30, 2000.

Phase II will address the few narrow issues that the DC Circuit court remanded to USEPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO_X SIP Call will not require a submittal from the States until USEPA has proposed and finalized rules in response to the court's remand.

On June 22, 2000, the court removed the stay of the state's obligation to submit SIPs in response to the NO_X SIP Call and denied petitioner's motions for rehearing and rehearing *en banc*. In removing the stay, the court provided that USEPA should allow 128 days for States to submit SIPs to the USEPA, *i.e.*, by October 30, 2000. Shortly after removing the stay, petitioners requested that the court adjust the NO_X SIP Call compliance date. In an action related to *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir

2000) the court then determined that the compliance date for the SIP Call would be May 31, 2004. Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline.

II. Summary of the State Submittal

A. When Was the Ohio EPA NO_X Plan Submitted to the USEPA?

Ohio EPA submitted the NO_X plan on July 11, 2002. USEPA had an opportunity to review and comment on earlier draft versions of the rules during the stakeholder review process. USEPA made both formal and informal comments, and these comments are available in the Docket. The plan was submitted in sufficient time for the USEPA to make a finding of completeness, which terminated the imposition of sanctions which were scheduled to go into effect on July 25, 2002, due to Ohio's failure to submit a plan. The Region 5 Regional Administrator signed the completeness finding on July 24, 2002. (*See* 67 FR 50600)

B. What Are the Basic Components of the Ohio EPA NO_X Plan?

The Ohio EPA plan includes the following documents: (1) A letter from the Director of Ohio EPA requesting a revision to the Ohio EPA plan; (2) a copy of the rules containing the provisions and requirements to implement a NO_X budget trading program to control and reduce emissions of NO_X in Ohio; (3) a copy of the Ohio code indicating the authority of the Ohio EPA Director to develop and submit the revision; (4) a notice of the proposed rulemaking and public hearing; (5) a transcript of the public hearing on the rules containing comments and testimony; (6) the Ohio Director's Findings and Orders announcing the adoption of rules controlling NO_X from sources in Ohio; (7) a list of Ohio's ''interested parties'' or stakeholders to whom draft rules were distributed for comment; (8) summary of comments submitted into Ohio's formal hearing record regarding the proposed rules which establish a NO_X budget trading program in Ohio; and, (9) Ohio's budget demonstration including a list of units (operating or under construction) subject to the State's NO_X rules.

Ohio's NO_X plan and rules apply to, and establish, a trading program for EGUs, non-EGUs, and portland cement kilns. The rules contained in chapter 3745–14, establish the provisions and requirements to implement a NO_X budget trading program in Ohio. The net effect of the rules is to cap emissions from major emitters and provide allowances to units to operate within the State's budget during the control period. Allowance allocations are made for five year periods with the exception of the first period, which is for a four-year period.

The State's market-based program which follows the model NO_X budget trading rule is the method selected by Ohio to meet its NO_X emissions reduction obligations under the NO_X SIP Call. The trading program caps total emissions in order to ensure that emissions reductions are achieved and maintained. Also, the flexibility in the State's program allows sources to reduce emissions and where possible, and if desired, generate allowances for trading.

The Ohio EPA plan includes Ohio rule 3745–14. This trading rule contains eleven separate rule elements, listed in Table 1, which correspond with part 96 model rule of the NO_X SIP Call.

TABLE 1.—COMPARISON OF STATE RULE TO MODEL RULE

Ohio Rule 3745–14	Corresponds with USEPA rule . . .
01, General Provisions	Subpart A, sections 96.1, 96.2, and 96.3 Purpose, Definitions and Abbreviations. 96.4, Applicability. 96.5, Retired unit exemptions. 96.6, Standard requirements. 96.7, Computation of time.
02, NO_X authorized account representative.	Subpart B, section 96.10 . . . the NO_X authorized account representative. 96.11, Alternate NO_X authorized account representative. 96.12, Changing the account representative. 96.13, Account certificate of representation. 96.14, Objections re: NO_X account representative.
03, NO_X budget permit	Subpart C, section 96.20, NO_X budget permit requirements. 96.21, Submission of NO_X budget permit application. 96.22, Information requirements for NO_X budget permit applications. 96.23, content. 96.25, revisions.
04, Compliance certification	Subpart D, section 96.30, Compliance certification report. 96.31, State and USEPA's action on compliance certification.
05, NO_X allowance allocations	Subpart E, section 96.40, NO_X allowance allocations. 96.41, Timing requirements. 96.42 NO_X allowance allocations. 96.55 Banking (Early reduction credit portion of this section).
06, NO_X allowance tracking system.	Subpart F, section 96.50, NO_X allowance tracking system (ATS) accounts. 96.51, Establishment of accounts. 96.52, NO_X ATS responsibilities of NO_X authorized account rep. 96.53, Recordation of NO_X allowance allocations. 96.54, Compliance. 96.55, Banking. 96.56, Account error. 96.57, Closing of general accounts.
07, NO_X allowance transfers	Subpart G, section 96.60, Submission of NO_X allowance transfers transfers. 96.61, EPA recordation. 96.62, Notification.
08, Monitoring and reporting	Subpart H, Monitoring and Reporting. 96.70, General requirements. 96.71, Initial certification and recertification procedures. 96.72, Out of control periods. 96.73, Notifications. 96.74, Recordkeeping and reporting. 96.75, Petitions. 96.76, Additional requirements to provide heat input data for allocations.
09, NO_X budget opt-in units	Subpart I, Individual Unit Opt-ins. Section 96.80, Applicability. 96.81, General. 96.82, NO_X authorized account representative. 96.83, Applying for NO_X budget opt-in permit. 96.84, Opt-in process. 96.85, NO_X budget opt-in permit contents. 96.86, Withdrawal from NO_X budget trading program. 96.87, Change in regulatory status. 96.88, NO_X allowance allocations to opt-in units.
10, Alternative compliance plans	This rule allows a source to participate in alternate compliance multi-pollutant reduction schemes such as the President's Clear Skies proposal.
11, Portland cement kilns	Part 98, subpart B, Emissions from cement manufacturing, proposed rules, October 21, 1998.

Ohio's plan includes opportunities for sources to obtain, beginning in 2006, an allocation for energy efficiency/renewable energy projects. The Ohio rule contains a provision which sets aside one percent of the tons of NO_X emissions in the State trading budget. This set-aside is for units that during the control period reduce end-use demand for electricity or displace electrical energy utilization by use of wind power,

solar power, biomass or landfill methane gas generation.

Ohio's plan also sets aside one percent of the trading budget beginning in 2006 for innovative technology projects. This means that an industry can compete for a set-aside, using stationary or mobile source technology which has not yet been adequately demonstrated in practice but where there is a likelihood that the technology will reduce NO_X emissions and increase energy efficiency.

C. Does the Ohio EPA NO_X Plan Meet the Federal NO_X Statewide Emissions Budget?

Yes, on July 11, 2002, Ohio submitted a plan containing rules in OAC Chapter 3745–14 to respond to USEPA's NO_X SIP Call published in the **Federal Register** on October 27, 1998. We reviewed the plan and found it complete on July 23, 2002. (*See* 67 FR 50600, dated August 5, 2002)

USEPA's NO_X SIP Call affected sources of oxides of nitrogen (NO_X) in 22 states (including Ohio) and the District of Columbia. The NO_X SIP Call rulemaking established statewide budgets for NO_X emissions beginning in the 2003 ozone season (May 1 to September 30). Each state was required to submit a State Implementation Plan (SIP) containing rules necessary to reduce NO_X emissions to the NO_X budget levels.

On March 2, 2000, USEPA published a final rule amending state NO_X budgets (65 FR 11222). Ohio used the information from this final rule to develop its budget. Further, Ohio describes the process it used to develop the budget in the budget demonstration contained in its plan submittal. A summary of the base and budget NO_X emissions contained in this rule for Ohio are provided in table 2.

TABLE 2.—NO_X EMISSIONS BUDGET BY SOURCE CATEGORY

[In tons]

2007 final	Source Category					
	EGU	non-EGU	Area source	non-road mobile	Highway mobile	Total
Base	163,132	50,001	21,860	43,380	94,850	373,223
Budget	48,990	40,194	21,860	43,380	94,850	249,274
Reduction	114,142	9,807	0	0	0	123,949

On November 15, 2000, Ohio informally provided draft rules for preliminary review to stakeholders and USEPA to start the rulemaking process. Ohio received comments on these draft rules from USEPA and 22 other interested parties. Ohio's draft rules were revised to take into account the comments received, and the revised draft rules were distributed to interested parties on November 19, 2001. Ohio EPA, again, received comments on these draft rules from USEPA and 38 other interested parties. The rules, to be submitted to Ohio's Joint Committee for Administrative Rule Review (JCARR), were revised again taking into consideration the comments. Ohio believes that these rules will achieve the NO_X reductions required by USEPA's NO_X SIP Call, and has finalized them for inclusion in its submitted NO_X plan.

The budget projections used to prepare Ohio's submission are the same as the State budget established by USEPA in the final rule published in the **Federal Register** on March 2, 2000 (65 FR 11222). A minor change was made by Ohio EPA and is addressed in the State's submittal. This change corresponds with a technical correction to the Ohio inventory made by USEPA on October 31, 2001 (66 FR 54992).

Ohio's budgets for Area Sources, Mobile Sources and Non-Mobile sources reflect emissions during the ozone control period from May 1 through September 30 for each year. The original USEPA budgets that Ohio used in it's analysis can be found on the electronic file entitled ''OH.zip'' on USEPA's web site *ftp://ftp.epa.gov/EmisInventory/NO*$_X$SIPCall_Mar2_2000. Ohio submitted similar budgets for area, mobile and non-mobile source categories on a compact disk (CD) along with the Budget Demonstration. The CD is available in the Region 5 Docket. Table 3 identifies the 2007 base budgets for these sources and the name of the attached file in which they are found. No NO_X reductions from these source categories (mobile, area, and non-mobile) are projected for Ohio's budget demonstration. Furthermore, Ohio does not expect to have to develop additional NO_X emission reduction measures to meet the statewide budget during the 5-month ozone season.

TABLE 3.—UNAFFECTED SOURCE CATEGORIES

[In tons]

Source category	2007 base budget	File name
Area Sources	21,860	OH_ar.wb3
Mobile Sources	94,850	OH_mb.wb3
Non-Road Mobile Sources	43,380	OH_nr.wb3

Table 4 contains the base and final NO_X budget for EGUs. Ohio obtained these data from USEPA Clean Air Markets Division. The file was not part of the technical amendment to the NO_X SIP Call of March 2, 2000 (*see* 65 FR 11222). The files for EGUs on USEPA's Web site ''*ftp://ftp.epa.gov/EmisInventory/NOX SIPCall_Mar2_2000*'' did not contain 2007 base or budget numbers. This file contains information which includes the base and final budgets for EGUs. Ohio submitted this file (along with other files referenced here) on a CD with the Budget Demonstration. The CD is available in the Region 5 Docket.

TABLE 4.—BASE AND FINAL BUDGETS

[In tons]

Source category	2007 base budget	2007 final budget	File name
EGU	163,132	48,990	UT_budget.wb3

Table 5 contains the original budget that USEPA calculated for large industrial boilers (non-EGUs) located in Ohio. The information in Table 5 can be found on USEPA's web-site at ''*ftp://ftp.epa.gov/ EmisInventory/* NO_XSIPCall_Mar2_2000,'' in the file entitled ''OH_pt.wb3.'' USEPA modified the original non-EGU budget because on October 31, 2001, we made a determination (66 FR 54992) that Marathon Ashland Petroleum LLC's Plant 1576000301, emissions unit B015 was not a NO_X budget unit. USEPA's original non-EGU budget was modified to remove 18 NO_X allowances initially designated for B015 and to add 36 tons of uncontrolled NO_X emissions from B015 to the total budget for this source category. The budget submitted by Ohio EPA reflects these changes and the electronic file reflecting these changes is located on the CD submitted by Ohio in the file entitled ''NonEGU Adjusted.wb3.''

TABLE 5.—SOURCES REGULATED BY STATE RULES

Source	2007 Base budget	2007 Final budget	File name
non-EGUs	50,001	40,194	OH_pt.wb3

The information in Table 6, presents the components of Ohio's NO_X budget for EGUs and non-EGUs.

TABLE 6.—OHIO NO_X BUDGET

[In tons]

	EGU		non-EGU
	2004,2005	2006 and after	2004 and after
Total for source categories	48,990	48,990	40,194
non-Regulated Units	3,558	3,558	36,127
Set-Asides	[1] 2,272	[2] 3,181	[1] 203
Allowances available for existing units	43,160	42,251	3,846

[1] In each year, 5% of the Regulated Units' budget will be set aside to be allocated to new units.

[2] After 2005, an additional 2% of the EGU Regulated Units' budget will be set aside to fund two set-asides: 1% for Energy Efficiency/Renewable Energy Projects and 1% for Innovative Technology Projects.

USEPA believes the Ohio NO_X sources addressed here, which includes a cap and an allowance trading program, will be adequately controlled to ensure the sources in the State will meet the statewide NO_X budget established by USEPA.

D. What Public Review Opportunities Were Provided?

The Director of the Ohio Environmental Protection Agency ''* * * may conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government.'' (Ohio Revised Code chapter 3704.03, Powers of the director of environmental protections.) Ohio's Director held several meetings early on in the rule development process, shortly after the USEPA promulgated the Finding of Significant Contribution and Rulemaking for the Purpose of Reducing Regional Transportation of Ozone Rule (*see* 63 FR 57356, dated October 27, 1998). During the course of development, Ohio sent draft rules to stakeholders for review and comment. This process was repeated several times until the State was satisfied it had fulfilled the public process. Stakeholders included affected utilities, major heavy industry, environmental groups (both local and national), consultants, industry and manufacturing associations, planning commissions and councils of government, and one university.

Finally, a public hearing was held in Columbus, Ohio, on April 11, 2002, and Ohio accepted written comments until April 26, 2002. The transcript of the public hearing is included as part of the State's submittal and can be found in the Docket at Region 5.

E. What Guidance Did USEPA Use To Evaluate Ohio's NO_X Control Program?

USEPA used the final NO_X SIP Call rule at 40 CFR part 96 for review of portions of the Ohio submittal. We also used 40 CFR 51.121 and 51.122 to evaluate Ohio's rules and the plan. The Ohio rules also apply to portland cement kilns. For USEPA's current position on these types of sources the public can consult USEPA's proposed part 98, dated October 21, 1998 (*see* 63 FR 56394), which USEPA expects to finalize shortly.

F. Does the Ohio Plan Meet Federal NO_X SIP Call Requirements?

USEPA is satisfied that the Ohio plan meets the requirements of the NO_X SIP

Call. Ohio's rules are patterned directly from the USEPA model rule and Ohio EPA included in the rules all of the requirements needed for approval by USEPA. The plan includes a budget trading program, and addresses all of the components of the emissions budget listed in the USEPA technical amendment. Ohio's analysis indicates that additional NO_X control strategies will not be necessary to meet the NO_X budget for the State. USEPA has previously determined, on August 5, 2002 (67 FR 50600), that Ohio had satisfied the requirements for submittal of a complete plan to address NO_X controls on major sources of emission.

G. What Deficiencies Were Noted in the Ohio EPA NO_X Plan?

USEPA found a small deficiency in Ohio's submittal regarding the trigger date for flow control. In reviewing Ohio's July 11, 2002, NO_X SIP Call submittal, USEPA found that the State's rule triggers flow control in 2006. (*See* OAC chapter 3745–14–06(E)(6)) The NO_X SIP Call model rule requires flow control to be triggered in the second year of the program. This means Ohio's rule should require flow control to be triggered in 2005. Flow control is a mechanism to limit the excessive use of banked allowances. It is more of an insurance policy, rather than a provision that is routinely expected to be carried out. Furthermore, we do not believe it is appropriate to delay implementation of flow control beyond 2005.

Ohio used the model rule (63 FR 57356, dated October 27, 1998) to develop its plan. The State also used language from elements of the section 126 rule (65 FR 2674, dated January 18, 2000) in place of some of the language from the model rule. An amendment to the section 126 rule dated April 30, 2002, (*see* 67 FR 21522) extended the flow control date to 2006. This one year extension corresponds to the extension of the compliance date noted earlier. While the extension by one year of flow control to 2006 is appropriate for section 126, it is not appropriate for Ohio's rule in the NO_X SIP Call. A detailed discussion regarding the difference in the trigger dates for flow control between section 126 program and the NO_X SIP Call can be found in 65 FR 2674, dated January 18, 2000. We do not expect there will be any States subject to section 126. All affected States are expected to implement an NO_X SIP Call plan by the compliance date of May 2004. In order for flow control to be universally applied to all sources in the NO_X SIP Call region, the flow control trigger date must be the same for all of the States in the ozone transport region.

USEPA believes the 2006 date in the Ohio rule is a deficiency which can be cured by Ohio via the submittal of a State rule to revise the flow control date at the soonest possible time before the NO_X compliance date.

USEPA also found a deficiency in OAC chapter 3745–14–09(G)(7) entitled NO_X Budget Opt-in Units. The Ohio rule states that opt-in units that have withdrawn from the program can reapply for a permit after 2 years. A previous version of the Ohio rule had this time period as 4 years, which is the time period found in both the NO_X SIP Call model rule and the section 126 rule. The purpose of the 4 year period in the model rule is to discourage these opt-in sources from coming in and out of the budget trading program at a frequency that would be disruptive to the operation of the trading program. USEPA recommends Ohio change this time period from 2 years to 4 years.

III. USEPA Action

We are approving, in this direct final rule, the Ohio NO_X SIP because it meets the requirements of the USEPA NO_X trading program by meeting Ohio's NO_X budget. Ohio's rule mirrors the USEPA model rule for the NO_X SIP Call and the State adequately responded to all of the concerns of stakeholders during the public process. Ohio's plan is approved with the understanding that it will take action to change the date (the flow control trigger date) in OAC 3745–14–06(E) (6) from 2006 to 2005. If this date is not changed from 2006 to 2005, and Ohio fails to submit the change as a revision to its plan by May 31, 2004, USEPA will remove the approval of Ohio's NO_X SIP and take subsequent rulemaking action, as necessary. USEPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State's NO_X plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by February 18, 2003. Should USEPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on March 17, 2003.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise

satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 18, 2003.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(127) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745–14–(1 through 11 and Appendices A and B) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO_X) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO_X rules.

(i) Incorporation by reference.

(A) Ohio NO_X rules: 3745–14–01, 3745–14–02, 3745–14–03, 3745–14–04, 3745–14–05, 3745–14–06, 3745–14–07, 3745–14–08, 3745–14–09, 3745–14–10, 3745–14–11, Appendix A to Chapter 3745–14 Annual No_X allowance allocations to regulated electric generating units for each year from 2004 through 2007, Appendix B to Chapter 3745–14 Annual NO_X allowance allocation for the control period in years 2004 through 2007 for non-electrical generating units, in the OAC all with an effective date of July 18, 2002.

[FR Doc. 03–962 Filed 1–15–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–002; FRL–7422–3]

Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ) on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the title V operating permit program.

EPA is also taking final action to revoke the total suspended particulates (TSP) area designations for Idaho and to adjust the PM–10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

DATES: Effective February 18, 2003.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706–1255. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to State implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas), including revisions to title I, part D new source review (NSR). IDEQ amended its part D NSR rules on April 8, 1994, and submitted them to EPA on May 17, 1994, as a revision to the Idaho SIP.

Idaho also revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and its regulations implementing the

operating permit program under title V of the Act. In addition, since EPA last approved the Idaho SIP in 1993, Idaho has revised nearly every section of its air quality rules to some degree. Many of these amendments have been editorial and are renumberings, changes to citations for cross-referenced rules or statutes, changes in terminology, or grammatical corrections. Finally, during the 2000 legislative session, the Idaho Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. *See* Idaho Code sections 39–102A and 39–104. At the same time, IDEQ was given the SIP authorities previously held by the Department of Health and Welfare. *See* Idaho Code sections 39–108 to 39–118D. As a result, Idaho has renumbered and recodified all of its air quality regulations in a new IDAPA Chapter 58. IDEQ submitted these various revisions to its rules for air pollution sources to EPA on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, as revisions to the Idaho SIP.

On August 13, 2002, EPA solicited public comment on a proposal to approve all of the revisions submitted by IDEQ, except identified provisions on which EPA proposed to take no action.[1] EPA also requested public comment on its proposal to delete the TSP area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313. *See* 67 FR 52666 (August 13, 2002).

II. Response to Comments

EPA received two comment letters in response to the proposal, one which was submitted by IDEQ. IDEQ expressed support for EPA's proposed action, but did identify some concerns. The other commenter, J.R. Simplot Company (Simplot), raised a concern with the provisions in the Idaho SIP for the control of sulfur oxides in the Eastern Idaho Interstate Air Quality Control Region. The following is a summary of the issues raised by the commenters, along with EPA's response to those issues.

Comment 1: IDEQ commented that, in the notice acknowledging consistency with the Clean Air Act, EPA proposed to conditionally approve IDAPA 58.01.01.213. The proposed condition was that IDEQ submit within 5 days of issuance all written approvals, draft permits, and final permits. IDEQ noted that draft and final permits are at this time submitted by IDEQ to EPA and that IDEQ will submit to EPA on issuance copies of any pre-permit construction approval letters issued under IDAPA 58.01.01.213. IDEQ further asserted that a conditional approval is inappropriate from an administrative and legal standpoint.

Response 1: IDEQ is mistaken as to the type of action EPA proposed. EPA did not propose conditional approval under section 110(k)(4) of the Act, which could result in the SIP approval converting to a disapproval if the conditions are not met. Rather, EPA proposed approval of IDAPA 58.01.01.213 under section 110(k)(3) of the Act, based on the understanding that Idaho will provide EPA with copies of approvals issued under that provision, as they do in the case of all new source review permits, so that EPA can carry out its obligations to oversee SIP implementation, provide the public with copies of the SIP requirements for any source when requested, and enforce the SIP requirements if a source begins actual construction without having received the necessary approval from IDEQ.

Comment 2: IDEQ commented that IDAPA 58.01.01.220.01.a.iii requires sources that are not specifically listed as categorically exempt under IDAPA 58.01.01.222.02 to demonstrate, with modeling, that the source will not cause or contribute to a violation of an ambient air quality standard. According to IDEQ, the modeling requirement was included in the Idaho rules as a means to ensure that sources that are not specifically identified as categorically exempt but are exempted based on emission levels do not cause or significantly contribute to a violation of an ambient air quality standard. As such, Idaho continued, the requirement is a necessary part of Idaho's program to ''assure that national ambient air quality standards are achieved'' as required by section 110(a)(2)(C) and (D) of the CAA. Therefore, IDEQ asserted, this provision is appropriately included as part of Idaho's SIP, and EPA should approve the provision into the SIP so that it may be enforced by EPA or by citizens in Federal court.

Response 2: EPA's approval of the list of categorically exempt sources and the ''below regulatory concern'' levels in sections IDAPA 58.01.01.221, –222.01, and –222.02 is based on EPA's determination that the emission levels and source categories in those sections are appropriately exempted from minor new source review. The requirement in IDAPA 58.01.01.220.01.a.iii that a source conduct modeling to show that its uncontrolled potential to emit will not cause or contribute to a NAAQS violation is a determination that is initially made by the source and is not submitted to IDEQ unless specifically requested. Because this modeling requirement is part of Idaho's requirements for the exemption of certain sources from minor new source review, EPA is approving it as an enforceable requirement of the Idaho SIP, but EPA did not base its approval of the minor new source review exemption provisions on this modeling requirement.

Comment 3: IDEQ disagreed with EPA's proposal not to approve IDAPA 58.01.01.222.03 based on EPA's determination that it conflicts with section 110(a)(2)(c) of the CAA and 40 CFR 51.160, which require that the SIP identify types and sizes of sources subject to review and enforcement. IDEQ stated that there are safeguards in the Idaho ''director's discretion'' exemption, in that the source's potential to emit cannot equal or exceed 100 tons per year of any regulated air pollutant, the emissions increase cannot constitute a major modification, and IDEQ must review and approve the ambient modeling to ensure the source's proposed emissions would not cause or significantly contribute to a violation of any ambient air quality standard. IDEQ pointed out that EPA acknowledges in the proposal that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. IDEQ concludes that the section 222.03 exemption should be approved because it does not violate any control strategy nor interfere with attainment of the NAAQS.

Response 3: As discussed in the proposal, IDAPA 58.01.01.222.03 authorizes IDEQ, without going through rulemaking or a SIP revision, to add individual sources to the list of sources that are exempt from minor NSR as categorically insignificant. *See* 67 FR at 52670. Although IDEQ states that there are safeguards on this exemption, IDEQ's determination that the source will not cause or contribute to a violation of an ambient air quality standard is at no point in the process

[1] Included in the docket for the proposal and this final action is a table showing all of the provisions of IDAPA chapter 16, now codified at IDAPA chapter 58; the type of change made to the provisions (*e.g.*, new section, amended, editorial change, unchanged, relocated, deleted); the provisions that were not submitted by IDEQ as part of a SIP revision; and those provisions that were submitted as part of a SIP revision but on which EPA is taking no action.

subject to public and EPA review. This is in marked contrast to the other types of sources that are exempt from minor NSR in Idaho, for which the public and EPA have had an opportunity to review and comment on the emission levels and source categories that set the boundaries for the minor NSR exemptions.

It is true that EPA regulations do not require the issuance of a permit for the construction or modification of minor sources provided the SIP includes a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. EPA statutes and regulations do require, however, that SIP revisions be subject to public comment and EPA approval, CAA 110(l) and 40 CFR 51.104, and also that the public have an opportunity to review and comment on a State's proposed approval of a new source or modification, 40 CFR 51.161(a). At no point in the process is IDEQ's decision that a particular source does not need approval or a permit to construct because it should be exempt under IDAPA 58.01.01.222.03 subject to EPA or public review. Moreover, EPA regulations require that a State's new source review regulations specifically identify the types and sizes of sources subject to review. *See* 40 CFR 51.160(e). The Idaho rules do not meet this requirement because sources that are initially required by the rules to get a permit can subsequently be exempted from that requirement by the Director of IDEQ without EPA or public notice or approval.

In short, IDAPA 58.01.01.222.03 in effect authorizes IDEQ to revise the SIP without a SIP revision that is subject to public or EPA review. Sections 110(i) and (l) of the CAA specifically preclude States from changing the requirements of the SIP except through SIP revisions adopted by the State after reasonable notice and public hearing and approved by EPA. This ''director's discretion'' provision of IDAPA 58.01.01.222.03 is inconsistent with those requirements, as well as the requirements of CAA section 110(a)(2)(C), 40 CFR 51.104, 40 CFR 51.160, and 40 CFR 51.161. Therefore, EPA is taking no action on this provision. As noted in the proposal, if IDEQ determines to exempt a source from new source review under the authority of IDAPA 58.01.01.222.03, the source is not exempt from new source review as a matter of Federal law unless and until the exemption has been approved by EPA as a source-specific SIP revision. *See* 67 FR 52670.

Comment 4: IDEQ commented on EPA's proposal not to act on IDAPA 58.01.01.401.04, which authorizes IDEQ to issue a Tier II operating permit with a future compliance date and requires EPA approval prior to issuance of such a permit. Idaho agrees that operating permits sanctioning a requirement that conflicts with the SIP may require a SIP revision. IDEQ asserts, however, that just as IDEQ enters into consent orders and settlement agreements with compliance schedules, IDEQ issues Tier II operating permits containing compliance schedules. IDEQ notes that compliance orders in Tier II permits use language similar to that in Tier II (title V) operating permits, that is, that the terms and conditions of the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. For this reason, IDEQ asserts, EPA should approve IDAPA 58.01.01.401.04 as part of the SIP.

Response 4: By its terms, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04. allows a source a future compliance date of up to three years beyond the compliance date of any provisions in IDAPA chapter 58. In other words, a compliance schedule issued under the authority of this provision is intended to delay the time for required compliance, in essence, to change the requirement for the source.[2] As such, it is a SIP revision that must be approved by EPA. This is in contrast to the kinds of compliance schedules issued under IDEQ's Tier I (title V) operating permit program or under other authority of State law, under which the compliance schedule sets forth a series of milestones for bringing a source into compliance with an applicable requirement. As noted by IDEQ, a compliance schedule issued in a Tier I (title V) operating permit does not sanction noncompliance with the underlying applicable requirement and does not extend the compliance date for the source. In contrast, a compliance schedule issued under the authority of IDAPA 58.01.01.401.04 by its terms extends the applicable compliance date for the source. In any event, because Idaho regulations provide that compliance schedules issued under the authority of IDAPA 58.01.01.401.04 must be approved by EPA, it is not necessary to include this provision as part of the SIP. Moreover, its inclusion in the SIP could cause confusion.

[2] Such a mechanism would perhaps be better characterized as a compliance extension.

Therefore, EPA is taking no action on this provision.

It may be that IDEQ has authority elsewhere in its Tier II permit program or under other provisions of Idaho law to issue a compliance schedule as part of a Tier II permit that sets forth a series of milestones for bringing a source into compliance with certain requirements, but that does not delay the compliance date, as does a compliance schedule issued under the authority of IDAPA 58.01.01.401.04. EPA's decision to take no action on IDAPA 58.01.01.401.04 has no bearing on IDEQ's authority to issue other types of compliance schedules. EPA recommends, however, that IDEQ carefully identify in any Tier II permit that contains a compliance schedule the regulatory provision under which such a compliance schedule is issued so that the procedure for issuing such a compliance schedule and the legal effect of such a compliance schedule is readily apparent.

Comment 5: IDEQ commented that EPA improperly places the burden on Idaho to establish that it has jurisdiction within Indian country with respect to regulation of persons who are not members of the tribe. IDEQ asserts that, under settled Indian law principles, Idaho presumptively has jurisdiction over persons that reside on Indian Reservations in Idaho who are not members of Tribes, citing to *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation,* 502 U.S. 251, 257–58 (1992). Equally important, according to IDEQ, the CAA itself preserves State law from preemption in section 116 of the CAA, 42 U.S.C. 7416, with respect to air emission standards except in specified situations, and nothing in the statute itself expressly precludes the exercise of such authority in Indian country. IDEQ asserts that EPA therefore should expressly provide in the final rule that nothing in its approval is intended to preclude the exercise of State regulatory authority within Idaho Indian country independent of the CAA to the extent consistent with applicable Indian law principles.

Response 5: EPA reads this comment as a request that EPA clarify the status of State law as it applies within Indian reservations or other parts of Indian country.[3] EPA's proposed and final

[3] ''Indian country'' is defined under 18 U.S.C 1151 as: ''(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently

Continued

action are under the authority of the Federal Clean Air Act to approve revisions to the SIP so that those SIP provisions will be Federally enforceable under the CAA. Before EPA can approve a SIP or SIP revision as applying to a source, the State must demonstrate that it has adequate legal authority to implement and enforce the SIP under the Clean Air Act. *See* CAA sections 110(a)(2)(A), 110(a)(2)(E)(i) and 172(c)(6) of the Act. It is EPA's position that unless EPA has explicitly approved a program as applying in Indian country, State or local regulations are not effective within the boundaries of that Indian country land for purposes of complying with the CAA. *See* Federal Operating Permits Program Final Rule, 64 FR 8247, 8254 (February 19, 1999). EPA does not believe it would be appropriate for EPA to approve State CAA programs as applying in Indian country where there has not been an explicit demonstration of adequate jurisdiction. 64 FR 8253. Moreover, EPA interprets the Clean Air Act as favoring a territorial approach for implementing the CAA throughout Indian reservations either under tribal authority as delegated by Congress or by EPA implementation. 64 FR 8252. EPA believes it has the authority under the CAA to regulate all reservation sources in order to ensure an efficient and effective transition to Tribal administration of CAA programs and to avoid the administratively undesirable checkerboarding of reservations based on land ownership. *Id.* EPA notes that nowhere in the State's SIP submittal did IDEQ attempt to demonstrate that it has the authority to implement and enforce its State laws under the authority of the Clean Air Act in Indian country in Idaho, and EPA has not evaluated these State law authorities outside of the context of the CAA. EPA's proposed approval and this final action do not take a position on whether State laws regulating air resources have effect in Indian country outside of the context of the Clean Air Act.

Comment 6: IDEQ commented that disagreement exists over the continued existence of the Nez Perce Reservation as described in Article 2 of the 1863 Treaty with the Nez Perces, 14 Stat. 647 (1863). IDEQ believes that a cession agreement between the United States and the Tribe ratified by Congress in 1894, 28 Stat. 326 (1894), has diminished the Reservation's land base substantially and that the Reservation now encompasses only those lands retained presently in trust pursuant to the terms of the cession agreement, citing to *United States* v. *Webb*, 219 F.3d 1127 (9th Cir. 2000), *cert. denied*, 531 U.S. 1200 (2001). IDEQ asserted that EPA and IDEQ acknowledged this controversy in a December 2000 memorandum of understanding (MOU) concerning implementation of title V of the CAA. In view of the decision in *Michigan* v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001), IDEQ continued, EPA should make clear its rationale for excluding the entirety of the 1863 Reservation from the scope of the proposed action.

Response 6: As discussed above, unless EPA has explicitly approved a program as applying in Indian country, it is EPA's position that State or local regulation is not effective within the boundaries of that Indian country land for purposes of complying with the CAA. EPA is excluding from this SIP approval the Nez Perce Reservation, as described in the 1863 Nez Perce Treaty, because the Federal government has long maintained that the Nez Perce Reservation, as described in that treaty, constitutes Indian country, as defined in 18 U.S.C. 1151.

Michigan v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001) does not apply to this SIP action. That case dealt with the issue of whether EPA has authority to require a facility to apply to EPA for a Federal operating permit under title V of the Clean Air Act in cases where EPA had not determined whether the facility was in Indian country. This SIP approval is an action under title I of the CAA. Moreover, EPA's position, and that of the United States, is that the exterior boundary of the Nez Perce Reservation that exists today is described in the 1863 Nez Perce Treaty [4] and that the Nez Perce Reservation, as so described, is Indian country. In its comment, the State cites *U.S.* v. *Webb*, Case No. CR98–80–N–EJL (9th Cir., Jan. 12, 1999), as showing there is a controversy about the Reservation boundaries. However, the United States' position in that case, as well as other cases raising the issue, was that the Nez Perce Reservation is still as described in the 1863 Treaty. *Michigan* v. *EPA* is therefore not relevant to the issues in this SIP approval.

EPA remains fully committed to the spirit and intent of the December 2000 MOU referenced in the IDEQ comment. The purpose of the MOU, however, was to address the implementation of the operating permits program under title V of the CAA on the Nez Perce Reservation and it does not address the issue of whether IDEQ has established that it has authority under the Clean Air Act to implement and enforce its State regulations approved under title I of the Act against sources located within the boundaries of the Nez Perce Reservation as established by the 1863 Nez Perce Treaty. Moreover, nothing in the MOU constituted an admission by the United States that the Nez Perce Reservation has been diminished or is otherwise in question.

Comment 7: Simplot requested reconsideration of EPA's position that EPA approval of Idaho's ''Rules for Control of Sulfur Oxide from Sulfuric Acid Plants'' does not alter previous EPA disapproval of the Idaho SIP regarding the Eastern Idaho Intrastate Air Quality Control Strategy, nor the source-specific Federal regulations at 40 CFR 52.675. According to Simplot, EPA's position does not recognize relevant and significant history related to the Eastern Idaho Intrastate Air Quality Control Strategy, which has been in attainment for 20 years. Accordingly, Simplot requested that portions of the Federal regulations imposed upon Simplot to adequately prevent violations of the NAAQS for SO_2, which Simplot contends are obsolete, be revisited and deleted from this portion of the Idaho control strategy.

Response 7: This comment does not address aspects of the SIP request submitted by the State of Idaho and on which EPA proposed to take action. Thus, EPA views this comment as a request to conduct rulemaking to revise the existing Federal implementation plan as it pertains to Simplot.

As EPA has previously notified IDEQ and Simplot, EPA does not have the authority to repeal these FIP requirements in the absence of other Federally-enforceable limits on SO_2 emissions from the Simplot sulfuric acid plants approved as part of a SIP or promulgated as part of other Federal requirements and a demonstration that these limits do not interfere with attainment or maintenance of the NAAQS for SO_2, violate any prevention of significant deterioration (PSD) increment, or result in visibility impairment. To date, EPA has not received from IDEQ or Simplot a demonstration that the Federally-enforceable limits in place at the

acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' Under this definition, EPA treats as reservation lands trust lands that have not been formally designated as a reservation.

[4] IDEQ recognized EPA's position in the MOU referenced in IDEQ's comment. The sixth ''Whereas'' clause of memorandum states: ''Whereas, the United States position, both in judicial proceedings and in administrative, civil and criminal contexts is that the present boundaries of the Nez Perce Reservation are as described in the 1863 Nez Perce Treaty.''

Simplot facility are sufficient to protect the SO_2 NAAQS, PSD increments, and visibility in the absence of the requirements Simplot requests be removed. Therefore, as noted in the proposal, EPA's action on this SIP does not modify EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region. *See* 40 CFR 52.675(a)(1) and (2). Thus, the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval remain in place. *See* 67 FR 52672.

III. Final Action

EPA is taking final action to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is taking no action on section 008; subsections 107.03.h. through q[5]; section 222.03; sections 300 through 387; subsection 401.01.a. and section 401.04; sections 440 and 441; sections 525 through 538; section 577.06; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.[6] EPA approved section 204 on April 17, 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873). The entire text of the EPA-approved Idaho rules may be viewed on line at *http://www.epa.gov/r10earth/sips.htm.*

EPA is also deleting the total suspended particulates area designations for Idaho in 40 CFR 81.313 and adjusting the PM–10 area designations in 40 CFR 81.313.

Consistent with EPA's proposal, this SIP approval does not extend to Indian country in Idaho. *See* 67 FR 52673.

Note that, with respect to Idaho's rules relating to new source review, EPA has determined that Idaho's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect, and is taking no position on whether Idaho will need to make changes to its new source review rules to meet requirements that EPA has promulgated, but are not yet effective, as part of new source review reform.

Finally, while EPA is approving the Idaho permit to construct rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Idaho permit to construct rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Idaho are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State ''is not acting in compliance with'' any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of title V of the Act and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is ''not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.''

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the title V operating permit.

IV. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

[5] In the notice of proposed rulemaking, EPA incorrectly cited subsections 107.03.v. through aa.

[6] Sections 009, 010, 140 through 149, 161, 203.03, 210, 585, 587, 590, 591, and 855 through 858 were not submitted for inclusion in the Idaho SIP. In addition, section 710 Particulate Matter—Process Equipment Emission Limitations on or After July 1, 2000, and amendments to section 209 Procedures for Issuing Permits and section 700 Particulate Matter—Process Weight Limitations which were submitted to EPA on March 9, 2001, were returned to the State as incomplete, so they are not before EPA to act on at this time.

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: December 4, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Part 52, subpart N, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(37) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(37) On May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, the Idaho Department of Environmental Quality submitted amendments to State of Idaho Rules for Control of Air Pollution in Idaho (IDAPA 58.01.01) as revisions to the Idaho State implementation plan.

(i) Incorporation by Reference.

(A) IDAPA 58.01.01 as in effect on March 30, 2001 except for the following provisions: section 000; section 002; section 003; section 008; section 009; section 010; subsections 107.03; section 128; sections 140 through 149; section 161; subsection 203.03; section 209; section 210; section 214; subsection 222.03; section 223; sections 300 through 387; subsection 401.01.a. and 401.04; sections 440 and 441; sections 525 through 538; sections 552, 553, 556, 558, and 561; subsection 577.06; sections 585, 586, 587, 590 and 591; section 700; section 710; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; subsection 824.01; sections 835 through 839; and sections 855 through 862.

(B) IDAPA 58.01.01 sections 209 and 700 as in effect on April 5, 2000.

(C) IDAPA 58.01.01 sections 552, 553, 556, 558, and 561 as in effect on March 15, 2002.

§ 52.674 [Removed and Reserved]

3. Section 52.674 Legal Authority is removed and reserved.

4. Section 52.679 is revised to read as follows:

§ 52.679 Contents of Idaho State Implementation Plan.

Implementation Plan for the Control of Air Pollution in the State of Idaho

Chapter I—Introduction (submitted 1–15–80)
Chapter II—Administration (submitted 1–15–80)
Chapter III—Emission Inventory (submitted 1–15–80)
Chapter IV—Air Quality Monitoring (submitted 1–15–80, and 2–14–80)
Chapter V—Source Surveillance (submitted 1–15–80)
Chapter VI—Emergency Episode Plan (submitted 1–15–80)
Chapter VIII—Nonattainment Area Plans
- VIII-a—Silver Valley TSP Nonattainment Area Plan (submitted 1–15–80): EPA effective 7–28–82.
- VIII-b—Lewiston TSP Nonattainment Plan (submitted 1–15–80, 12–4–80, and 2–5–81): EPA effective 7–28–82.
- VIII-c—Transportation Control Plan for carbon monoxide, Ada County (submitted 5–24–84, 1–3–85, 3–25–85, and 6–29–94): EPA effective 7–28–82, 8–5–85, and 1–30–95.
- VIII-d—Pocatello TSP Nonattainment Plan (submitted 3–7–80, and 2–5–81): EPA effective 7–28–82.
- VIII-e—Soda Springs TSP Nonattainment Plan (submitted 1–15–80): EPA effective 7–28–82.
- VIII-f—Pinehurst PM–10 Nonattainment Plan (4–14–92): EPA effective 10–24–94.
- VIII-g—North Ada County PM10 Nonattainment Area Plan (submitted 11–14–91, 12–30–94, and 7–13–95): EPA effective 7–29–96.
- VIII-h—Fort Hall PM–10 Nonattainment Area Plan (FIP): EPA effective 9–22–00.
- VIII-i—Sandpoint PM10 Nonattainment Area Plan (submitted 8–16–96): EPA effective 8–26–02.
- VIII-j—North Ada County CO Limited Maintenance Plan (submitted 1–17–02): EPA effective 11–27–02.

Chapter IX—Reserved
Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead (submitted 2–3–84): EPA effective 6–4–84.
Small Business Assistance Program (submitted 1–3–94): EPA effective 11–18–94.

Appendix A Legal Authority and other General Administrative Matters (submitted 1–15–80)
Appendix A.2 Idaho Environmental Protection and Health Act, Idaho Code Section 39–101 *et seq.* (submitted 3–15–01)
Appendix A.3 Idaho Administrative Procedures Act (IDAPA) Chapter 58, Rules for the Control of Air Pollution in Idaho, previously codified at IDAPA Chapter 39 (submitted 5–17–94, 5–11–95, 11–21–96, 2–28–97, 12–18–97, 4–9–98, 5–5–99, 12–5–00, and 5–30–02)

EPA-approved rules which are incorporated by reference are listed in the table below:

Citation	Title	State effective date
	IDAPA 58—Department of Environmental Quality	
	58.01.01—Rules for the Control of Air Pollution in Idaho	
001.	Title and Scope	5/1/94
004.	Catchlines	5/1/94
005.	Definitions	5/1/94
006.	General Definitions	4/5/00
		3/20/97
		5/1/95
		5/1/94
007.	Definitions for the Purposes of Sections 200 Through 225 and 400 Through 461	4/5/00
		6/30/95
		5/1/95
		5/1/94
106.	Abbreviations	5/1/94
107.	Incorporations by Reference (Except subsection 03.)	7/1/97
		5/1/94
121.	Compliance Requirements by Department	5/1/94
122.	Information Orders by the Department	4/5/00
		5/1/94
123.	Certification of Documents	5/1/94
124.	Truth, Accuracy and Completeness of Documents	5/1/94
125.	False Statements	3/23/98
126.	Tampering	3/23/98
127.	Format of Responses	5/1/94
130.	Startup, Shutdown, Scheduled Maintenance, Safety Measures, Upset and Breakdown	4/5/00
131.	Excess Emissions	4/5/00
132.	Correction of Condition	4/5/00
133.	Startup, Shutdown and Scheduled Maintenance Requirements	4/5/00
		3/20/97
134.	Upset, Breakdown, and Safety Requirements	4/5/00
		3/20/97
135.	Excess Emission Reports	4/5/00
		3/20/97
136.	Excess Emission Records	4/5/00
		3/23/98
		3/20/97
155.	Circumvention	4/5/00
156.	Total Compliance	5/1/94
157.	Test Methods and Procedures	4/5/00
160.	Provisions Governing Specific Activities and Conditions	4/5/00
162.	Modifying Physical Conditions	5/1/94
163.	Source Density	5/1/94
164.	Polychlorinated Biphenyls (PCBs)	5/1/94
200.	Procedures and Requirements for Permits to Construct	4/5/00
201.	Permit to Construct Required	3/30/01
202.	Application Procedures	4/5/00
		5/1/94
203.	Permit Requirements for New and Modified Stationary Sources (Except subsection 203.03)	5/1/94
204.	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas	3/30/01
		4/5/00
		5/1/94
205.	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas	4/5/00
		5/1/94
206.	Optional Offsets for Permits to Construct	6/30/95
207.	Requirements for Emission Reduction Credit	5/1/94
208.	Demonstration of Net Air Quality Benefit	4/5/00
		5/1/94
209.	Procedures for Issuing Permits	4/5/00
		3/19/99
		3/23/98
		5/1/94
211.	Conditions for Permits to Construct	5/1/94
212.	Obligation to Comply	5/1/94

Citation	Title	State effective date
213.	Pre-permit Construction	4/5/00
		3/23/98
220.	General Exemption Criteria for Permit to Construct Exemptions	4/5/00
221.	Category I Exemption	4/5/00
222.	Category II Exemption (Except subsection 222.03.)	4/5/00
		7/1/97
		5/1/94
400.	Procedures and Requirements for Tier II Operating Permits	5/1/94
401.	Tier II Operating Permit (Except subsections 401.01.a and 401.04)	4/5/00
		3/19/99
		5/1/94
402.	Application Procedures	4/5/00
		5/1/94
403.	Permit Requirements for Tier II Sources	5/1/94
404.	Procedures for Issuing Permits	4/5/00
		5/1/94
405.	Conditions for Tier II Operating Permits	5/1/94
406.	Obligation to Comply	5/1/94
460.	Requirements for Emission Reduction Credit	4/5/00
		5/1/94
461.	Requirements for Banking Emission Reduction Credits (ERC's)	4/5/00
		5/1/94
470.	Permit Application Fees for Tier II Permits	3/7/95
500.	Registration Procedures and Requirements for Portable Equipment	5/1/94
510.	Stack Heights and Dispersion Techniques	5/1/94
511.	Applicability	4/5/00
512.	Definitions	4/5/00
		5/1/94
513.	Requirements	4/5/00
514.	Opportunity for Public Hearing	5/1/94
515.	Approval of Field Studies and Fluid Models	5/1/94
516.	No Restriction on Actual Stack Height	5/1/94
550.	Air Pollution Emergency Rule	5/1/94
551.	Episode Criteria	5/1/94
552.	Stages	3/15/02
		5/1/94
553.	Effect of Stages	3/15/02
556.	Criteria for Defining Levels Within Stages	3/15/02
		4/5/00
557.	Public Notification	5/1/94
558.	Information to Be Given	3/15/02
		5/1/94
559.	Manner and Frequency of Notification	5/1/94
560.	Notification to Sources	4/5/00
561.	General Rules	3/15/02
		4/5/00
		5/1/94
562.	Specific Emergency Episode Abatement Plans for Point Sources	5/1/94
563.	Transportation Conformity	3/30/01
564.	Incorporation by Reference	3/30/01
565.	Abbreviations	3/30/01
566.	Definitions for the Purpose of Sections 563 Through 574 and 582	3/30/01
567.	Agencies Affected by Consultation	3/30/01
568.	ICC Member Roles in Consultation	3/30/01
569.	ICC Member Responsibilities in Consultation	3/30/01
570.	General Consultation Process	3/30/01
571.	Consultation Procedures	3/30/01
572.	Final Conformity Determinations by USDOT	3/30/01
573.	Resolving Conflicts	3/30/01
574.	Public Consultation Procedures	3/30/01
575.	Air Quality Standards and Area Classification	4/5/00
576.	General Provisions for Ambient Air Quality Standards	5/1/94
577.	Ambient Air Quality Standards for Specific Air Pollutants (Except subsection 577.06)	5/1/94
578.	Designation of Attainment, Unclassifiable, and Nonattainment Areas	5/1/94
579.	Baselines for Prevention of Significant Deterioration	4/5/00
		5/1/94
580.	Classification of Prevention of Significant Deterioration Areas	4/5/00
		5/1/94
581.	Prevention of Significant Deterioration (PSD) Increments	4/5/00
		7/1/97
		5/1/94
582.	Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM–10	3/30/01
600.	Rules for Control of Open Burning	3/19/99

Citation	Title	State effective date
601.	Fire Permits, Hazardous Materials and Liability	5/1/94
602.	Nonpreemption of Other Jurisdictions	5/1/94
603.	General Restrictions	5/1/94
604.	Alternatives to Open Burning	5/1/94
606.	Categories of Allowable Burning	5/1/94
607.	Recreational and Warming Fires	5/1/94
608.	Weed Control Fires	5/1/94
609.	Training Fires	5/1/94
610.	Industrial Flares	5/1/94
611.	Residential Solid Waste Disposal Fires	5/1/94
612.	Landfill Disposal Site Fires	3/19/99
613.	Orchard Fires	4/5/00
		5/1/94
614.	Prescribed Burning	5/1/94
615.	Dangerous Material Fires	5/1/94
616.	Infectious Waste Burning	5/1/94
625.	Visible Emissions	4/5/00
		5/1/94
626.	General Restrictions on Visible Emissions from Wigwam Burners	4/5/00
650.	Rules for Control of Fugitive Dust	5/1/94
651.	General Rules	5/1/94
675.	Fuel Burning Equipment—Particulate Matter	4/5/00
676.	Standards for New Sources	5/1/94
677.	Standards for Minor and Existing Sources	5/1/94
678.	Combinations of Fuels	5/1/94
679.	Averaging Period	4/5/00
		5/1/94
680.	Altitude Correction	5/1/94
681.	Test Methods and Procedures	4/5/00
700.	Particulate Matter—Process Weight Limitations	4/5/00
701.	Particulate Matter—New Equipment Process Weight Limitations	4/5/00
702.	Particulate Matter—Existing Equipment Process Weight Limitations	4/5/00
		5/1/94
703.	Particulate Matter—Other Processes	4/5/00
725.	Rules for Sulfur Content of Fuels	4/5/00
726.	Definitions as Used in Sections 727 Through 729	5/1/94
727.	Residual Fuel Oils	5/1/94
728.	Distillate Fuel Oil	5/1/94
729.	Coal	5/1/94
785.	Rules for Control of Incinerators	5/1/94
786.	Emission Limits	4/5/00
787.	Exceptions	3/23/98
805.	Rules for Control of Hot-mix Asphalt Plants	5/1/94
806.	Emission Limits	5/1/94
807.	Multiple Stacks	5/1/94
808.	Fugitive Dust Control	5/1/94
815.	Rules for Control of Kraft Pulping Mills	5/1/94
816.	Statement of Policy	5/1/94
817.	General Rules	5/1/94
821.	Recovery Furnace Particulate Standards	5/1/94
822.	Lime Kiln Standards	5/1/94
823.	Smelt Tank Standards	5/1/94
824.	Monitoring and Reporting (Except subsection 824.01)	4/5/00
		5/1/94
825.	Special Studies	5/1/94
826.	Exceptions	5/1/94
845.	Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants	5/1/94
846.	Emission Limits	4/5/00
847.	Monitoring and Testing	4/5/00
848.	Compliance Schedule	5/1/94

5. Section 52.681 is revised to read as follows:

§ 52.681 Permits to construct and tier II operating permits.

(a) Except as otherwise provided in pargraph (b) of this section, emission limitations and other provisions contained in Permits to Construct and Tier II Operating Permits issued by the Idaho Department of Environmental Quality in accordance with the Federally-approved State of Idaho Rules for Control of Air Pollution in Idaho, incorporated by reference in section 52.670 (IDAPA 58.01.01.200 through 222, IDAPA 58.01.01.400 through 406), shall be applicable requirements of the Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

(b) Operating Permits authorizing the use of alternative emission limits (bubbles) under IDAPA

58.01.01.401.01.a, 58.01.01.440, and 58.01.01.441 (including the use of banked emission reduction credits in a bubble pursuant to IDAPA 58.01.01.461), and Tier II Operating Permits authorizing compliance schedule extensions under IDAPA 58.01.01.401.04 must be submitted to EPA for approval as revisions to the Idaho SIP before they become applicable requirements of the Idaho SIP.

6. Section 52.683 is revised to read as follows:

§ 52.683 Significant deterioration of air quality.

(a) The State of Idaho Rules for Control of Air Pollution in Idaho, specifically, IDAPA 58.01.01.005 through 007 (definitions), IDAPA 58.01.01.200 through 222 (permit to construct rules), IDAPA 58.01.01.510 through 516 (stack height rules), and IDAPA 58.01.01.575 through 581 (standards, increments and area designations) are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of title I, part C, subpart 1 of the Clean Air Act are not met for Indian reservations because Idaho has not demonstrated authority to implement and enforce under the Clean Air Act Idaho State rules in Indian country. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian country in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's original approval of Idaho's prevention of significant deterioration regulations.

Therefore, the provisions of § 52.21(b), (c), (d), and (h) through (w) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

Part 81, subpart C, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.313, the table entitled ''Idaho-TSP'' is removed and the table entitled ''Idaho PM–10'' is revised to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Eastern Idaho Intrastate AQCR 61:				
Power-Bannock Counties, part of: (Pocatello)	11/15/90	Nonattainment	11/15/90	Moderate
State Lands—Portneuf Valley Area:				
T.5S, R.34E Sections 25–36				
T.5S, R.35E Section 31				
T.6S, R.34E Sections 1–36				
T.6S, R.35E Sections 5–9, 16–21, 28–33, plus the West ½ of Sections 10, 15, 22, 27, 34				
T.7S, R.34E Sections 1–4, 10–14, and 24				
T.7S, R.35E Sections 4–9, 16–21, 28–33, plus the West ½ of Sections 3, 10, 15, 22, 27, 34				
T.8S, R.35E Section 4, plus the West ½ of Section 3				
Power-Bannock Counties, part of: (Pocatello)	11/15/90	Nonattainment	11/15/90	Moderate
Fort Hall Indian Reservation:				
T.5S, R.34E Sections 15–23				
T.5S, R.33E Sections 13–36				
T.6S, R.33E Sections 1–36				
T.7S, R.33E Sections 4, 5, 6				
T.7S, R.34E Section 8				
Pocatello: 336 square mile area from Schiller at the northwest to Inkom at southeast, excluding the Portneuf Valley and Fort Hall nonattainment areas.	11/15/90	Unclassifiable.		
Soda Springs: 96 square mile area encompassing Soda Springs, Conda and the industrial area in between.	11/15/90	Unclassifiable.		
Remainder of AQCR 61	11/15/90	Unclassifiable.		
Eastern Washington-Northern Idaho Interstate AQCR 62 (Idaho portion):				
Shoshone County: Pinehurst Expansion Area Northwest quarter of the Northwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Northwest quarter, Section 8, Township 48, North, Range 2 East; Northwest quarter of the Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter, Section 8, Township 48 North, Range 2 East; Southwest quarter of the Southwest quarter, Section 48 North, Range 2 East, Boise Base (known as ''Pinehurst expansion area'').	11/20/94	Nonattainment	1/20/94	Moderate.
City of Pinehurst	11/15/90	Nonattainment	11/15/90	Moderate.
Silver Valley (Shoshone County), excluding the Pinehurst Expansion Area and City of Pinehurst PM–10 nonattainment areas.	11/15/90	Unclassifiable.		
Lewiston	11/15/90	Unclassifiable.		
Remainder of AQCR 62 (Idaho portion)	11/15/90	Unclassifiable.		
Idaho Intrastate AQCR 63:				
Bonner County: Sandpoint Area: Section 1–3, 9–12, 15, 16, 21, 22, 27, 28 of range 2 west and Township 57 north; and the western ¾ of Sections 14, 23 and 26 of the same Township and range coordinates.	11/15/90	Nonattainment	11/15/90	Moderate.

IDAHO PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Remainder of AQCR 63	11/15/90	Unclassifiable.		
Metropolitan Boise the Intrastate AQCR 64:				
Ada County: Boise	3/12/99	Pre-existing	3/12/99 PM–10 NAAQS NA	Pre-existing PM–10 NAAQS NA
Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in Township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W.				
Western Boundary—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W.				
Southern Boundary—Thence, east to the southwest corner of section 33 of T1N, R4E.				
Eastern Boundary—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.				
Remainder of AQCR 64	11/15/90	Unclassifiable..		

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[FR Doc. 03–856 Filed 1–15–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0047; FRL–7418–2]

RIN 2060–AH13

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The final rule is applicable to both major and area sources and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS). The final rule adds startup, shutdown, and malfunction (SSM) requirements, adds operating condition deviations for out-of-bounds monitoring parameters, requires timely control of bioreactor landfills, and changes the reporting frequency for one type of report.

The final rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT).

The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning the development of the final rule, contact Ms. JoLynn Collins, Waste and Chemical Processes Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5671, facsimile number (919) 541–0246, electronic mail address *collins.jolynn@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management.	924110	9511	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	4953	Solid waste landfills.

Category	NAICS code	SIC code	Examples of potentially regulated entities
State, local, and tribal government agencies	562212 924110	4953	Solid waste landfills; Air and water resource and solid waste management.

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 facility is regulated by this action, you should examine the applicability criteria in sections 63.1935 and 63.1940 of subpart AAAA. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID No. OAR–2002–0047. 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 or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air 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 Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule 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 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 in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *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.

Judicial Review. The NESHAP for MSW landfills was proposed on November 7, 2000 (65 FR 66672). A supplemental proposal with additional bioreactor provisions was published on May 23, 2002 (67 FR 36460). The final rule announces the EPA's final decision. Under section 307(b)(1) of the CAA, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 17, 2003. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in the preamble is organized as follows:

I. Introduction and Background Information
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 Municipal Solid Waste Landfills?
II. Summary of the NESHAP
A. What Source Categories Are Affected by the Final Rule?
B. What Is the Affected Source?
C. What Do the Standards Require?
D. When Must I Begin Complying With the Standards?
E. How Are New and Existing Sources Defined Differently For Purposes of the NESHAP and for the EG/NSPS?
F. How Must I Demonstrate Compliance?
G. What Are the Additional Requirements for Bioreactors?
III. Summary of Public Comments and Responses
A. Applicability of the NESHAP
B. Major Source Determination
C. Bioreactors
D. Mercury
E. Title V Operating Permits
IV. Summary of the Energy, Environmental, and Economic Impacts
V. 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 (UMRA) of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.) 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction and Background Information

A. What Is the Source of Authority for Development of NESHAP?

Under section 112(d) of the CAA, we are required to regulate major sources of 188 HAP listed in section 112(b) of the CAA. On July 16, 1992 (57 FR 31576), we published a list of industrial source categories, which included MSW landfills, that emit one or more of these HAP. We must promulgate standards for the control of emissions of HAP from both new and existing major source MSW landfills.

Under section 112(k) of the CAA, we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706).

B. What Criteria Are Used in the Development of NESHAP?

The CAA requires NESHAP to reflect the maximum degree of reduction in

emissions of HAP that is achievable for new and existing major sources. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. The MACT floor ensures that all major HAP emissions sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each category. 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 standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also must 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, non-air-quality health and environmental impacts, and energy requirements.

Finally, the CAA allows NESHAP to reflect an alternative standard for area sources. The alternative standard provides for the use of generally available control technologies (GACT) or management practices to reduce emissions of HAP.

C. What Are the Health Effects Associated With Municipal Solid Waste Landfills?

The final rule ensures reductions of emissions of nearly 30 HAP including, but not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure. For example, vinyl chloride can adversely affect the central nervous system and has been shown to increase the risk of liver cancer in humans, while benzene is known to cause leukemia in humans. Additional discussion of health effects is provided in the proposal (65 FR 66672) and Docket A–98–28. The degree of adverse effects to human health from exposure to these HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced depend on the ambient concentration observed in the area (as influenced by emissions rates, meteorological conditions, and terrain); the frequency and duration of exposures; characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence). We recognize that health risks are significantly reduced at landfills that collect and control landfill gas.

II. Summary of the NESHAP

The final rule contains the same requirements as the EG/NSPS (40 CFR part 60, subparts Cc and WWW), plus SSM definition and reporting of deviations for out-of-range monitoring parameters. Also, the final rule requires compliance reporting every 6 months while the EG/NSPS requires annual reporting. For bioreactors at large landfills, the NESHAP also require timely installation of controls, and allows timely removal of controls.

A. What Source Categories Are Affected by the Final Rule?

The final rule applies to all MSW landfills that are major sources or are collocated with a major source, and to some landfills that are area sources. We estimate that all MSW landfills that are major sources of HAP (*i.e.*, with a potential to emit at least 10 tons per year (tpy) of any individual HAP or 25 tpy total HAP) will also meet the EG/NSPS criteria for installing collection and control systems (*i.e.*, have a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and have estimated uncontrolled emissions of 50 megagrams per year (Mg/yr) nonmethane organic compound (NMOC)). All major source landfills, including those operated partially or completely as bioreactors, are covered by the final rule and, in addition to EG/NSPS control requirements, are subject to the additional SSM, deviation, and compliance reporting requirements of the NESHAP. Landfills that do not themselves emit major source levels of HAP but that are collocated with major sources of HAP are also covered by the final rule. However, if these landfills are smaller than the EG/NSPS thresholds, they have fewer requirements under the NESHAP, as previously discussed in this preamble.

In addition, as previously discussed in this preamble, landfills have been listed as an area source category pursuant to section 112(k). The final rule applies to area source landfills if they have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, and they have estimated uncontrolled emissions of 50 Mg/yr NMOC or more, or are operated as a bioreactor. The final rule does not apply to area source landfills (including bioreactors) with a design capacity less than 2.5 million Mg or 2.5 million m^3. It also does not apply to conventional area source landfills that have estimated uncontrolled emissions of less than 50 Mg/yr NMOC. (The EG/NSPS require landfills that meet the design capacity criteria to periodically calculate uncontrolled annual NMOC emissions. If an area source landfill that currently has estimated uncontrolled emissions less than 50 Mg/yr increases to 50 Mg/yr in the future, it will become subject to the NESHAP at that time.) For a complete description of applicability, see section III.A of this preamble and sections 63.1935 through 63.1945 of the final rule.

B. What Is the Affected Source?

The affected source is the entire MSW landfill in a contiguous geographical space where household waste is placed in or on the land and consists of one or more cells that are under common ownership or control. The facility may receive household waste as well as other types of Resource Conservation and Recovery Act (RCRA) Subtitle D waste. The affected source may be operated as a conventional landfill, or it may be operated completely or partially as a bioreactor. To be an affected source, the landfill must have accepted waste since November 8, 1987, or have additional capacity for waste deposition, and must be either: (1) A major source of HAP; (2) collocated with a major source of HAP; (3) an area source with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 and with estimated uncontrolled NMOC emissions equal to or greater than 50 Mg/yr; or (4) an active area source landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 that operates an anaerobic bioreactor, as defined in the final rule. The bioreactor provisions do not apply to closed landfills.

C. What Do the Standards Require?

Major and area source landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m^3, and with estimated uncontrolled NMOC emissions of at least 50 Mg/yr, would continue to be subject to the EG/NSPS as applicable, plus additional requirements imposed by the final rule. These requirements also apply to bioreactors within active landfills at both major and area sources if the landfill meets the design capacity criteria.

You are required to meet the SSM requirements that are listed in the general provisions to 40 CFR part 63.

You must develop and implement a written SSM plan that describes in detail the procedures for operating and maintaining the collection and control system and the continuous monitoring system (CMS) during periods of SSM (section 63.6(e)(3)). There are also recordkeeping and reporting requirements for SSM incidents.

The final rule also requires you to operate the control device within the operating parameter boundaries as described in 40 CFR 60.758(c)(1) and to continuously monitor control device operating parameters. Compliance with the operating conditions is demonstrated when monitoring data show that the gas control devices are operated within the established operating parameter range. Compliance also occurs when data quality is sufficient to constitute a valid hour of data in a 3-hour block period. Deviations occur when a source's 3-hour average falls outside the established boundaries. A deviation also occurs when more than 1 hour in a 3-hour average is considered invalid. To be considered a valid hour, measured values must be available for at least three 15-minute periods within the hour. If such a deviation occurs, then the source may be in violation of operating conditions (that is, in violation of proper operation and maintenance of a control device).

With one exception, the final rule also requires you to submit the reports that are specified in 40 CFR part 60, subpart WWW, or in the Federal plan, the EPA-approved State plan, or Tribal plan that implements 40 CFR part 60 subpart Cc, whichever is applicable. As an exception, the report required in section 60.757(f) must be submitted every 6 months rather than annually. The report pertains to the control device operating parameter value and the duration of time that control devices were operating in out-of-bounds conditions, the duration of periods when the landfill gas stream was diverted from the control device(s), the location of areas that exceed the 500 parts per million methane concentration limit, and the dates of installation and location of each added well or collection system expansion.

If a landfill is subject to the final rule because it is collocated with a major source and the landfill has a design capacity less than 2.5 million Mg or 2.5 million m^3, the landfill must comply with the applicable EG/NSPS requirements (i.e., it must submit a design capacity report). The landfill would not be subject to additional control and reporting requirements under the NESHAP.

Note that while area source landfills that have a design capacity less than 2.5 million Mg or 2.5 million m^3, or estimated uncontrolled NMOC emissions less than 50 Mg/yr (for landfills other than bioreactors) are not subject to the final rule, they must continue to comply with the provisions of the NSPS or State, tribal, or Federal plan that implements the EG, as applicable.

D. When Must I Begin Complying With the Standards?

If your landfill is a new affected source, you must comply with the final rule by January 16, 2003 or at the time you begin operating, whichever occurs last. The final rule requires you to comply with the NSPS at that time. For the requirements in the final rule that are over and above the NSPS, you must begin complying by the date your new major or area source landfill is required to install a collection and control system by the NSPS. If you own or operate a bioreactor at a landfill that is a new affected source, then you are required to install the gas collection and control system in the bioreactor prior to initiating liquids addition, regardless of whether the landfill emissions rate equals or exceeds the estimated uncontrolled emissions rate of 50 Mg/yr specified in the EG/NSPS. Startup of the collection and control system is required within 180 days after initiating liquids addition or within 180 days after reaching 40 percent moisture content within the bioreactor, whichever is later.

If your landfill is an existing affected source, then you must comply with the final rule by January 16, 2004. The final rule requires you to comply with the NSPS or Federal, State, or Tribal plan that implements the EG, whichever applies to your landfill, at that time. You must begin complying with the additional requirements of the final rule (that are over and above the EG/NSPS) by January 16, 2004, or the date your landfill is required to install a collection and control system by the NSPS or Federal, State, or Tribal plan that implements the EG, whichever is later. If your landfill has a bioreactor and the landfill is an existing affected source, then you must install and begin operating a collection and control system for the bioreactor within 3 years after publication of the final rule unless earlier control is already required by the EG/NSPS. You are required to conduct a performance test and report the results within 180 days after startup of the bioreactor collection and control system. If an existing source landfill installs and begins to operate a bioreactor at a date later than 3 years after the final rule is published, you must install a collection and control system for the bioreactor before the initiation of liquids addition. The control system is required to begin operation within 180 days after the first date of liquids addition or within 180 days after reaching 40 percent moisture content. See sections 63.1935 through 63.1947 for the complete requirements regarding compliance times.

E. How Are New and Existing Sources Defined Differently for Purposes of the NESHAP and for the EG/NSPS?

For the final rule, a new affected source is one that commenced construction or reconstruction (defined in 40 CFR part 63, subpart A) after November 7, 2000. An existing affected source is any affected source that is not a new source, that is, any source that commenced construction on or before November 7, 2000, and accepted waste any time since November 8, 1987, or has additional capacity for waste deposition.

For purposes of the NSPS, a new source is each MSW landfill for which construction, modification, or reconstruction commenced on or after May 30, 1991. For purposes of the EG, an existing source is any MSW landfill that is not a new source and has accepted waste since November 8, 1987, or has capacity for additional waste deposition.

Because regulatory impacts can vary based on these different definitions, it is important for sources to know how they are defined and the regulatory implications for each rule that applies to them. The regulatory implications of new versus existing source determination for sources affected by the EG/NSPS are well understood, unaffected by the final rule, and, thus, will not be discussed further here. The regulatory implications of new versus existing source determination for sources affected by the final rule are limited to compliance timing and are previously discussed in this preamble.

F. How Must I Demonstrate Compliance?

You must demonstrate compliance by meeting the applicable requirements in the EG/NSPS and, if you are required to install a collection and control system, by maintaining monitoring parameters within acceptable ranges. In addition, you must submit reports every 6 months which would include any notifications of deviations from the monitoring parameter values. You must develop and implement a written SSM plan according to the provisions in section

63.6(e)(3). If you take action during a SSM event, you must keep records for that SSM event which demonstrate that you followed the procedures specified in the SSM plan. You must submit a report every 6 months if the action is consistent with the SSM plan. However, if the action is not consistent with the SSM plan, you must notify EPA within 2 days of the SSM event and must follow up with a letter within 7 days of the event (section 63.10(d)(5)(ii)).

G. What Are the Additional Requirements for Bioreactors?

A bioreactor is defined as a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste. We consider landfill gas condensate to be a constituent of leachate. Addition of wastewater sludges to the waste mass is considered addition of liquids other than leachate. Bioreactors at active landfills that meet the design capacity criteria are required to install and begin operating gas collection and control systems in a timely manner as previously discussed in this preamble. The timing for extending the collection and control system into new cells or areas of the bioreactor is also different from conventional landfills. Once control of your bioreactor is required, you must install collection and control systems in new areas or cells of the bioreactor prior to initiating liquids addition to that area, cell, or group of cells. Controls may be removed from the bioreactor portion of the landfill either:

(1) When the criteria for control removal specified in the landfills EG/NSPS are met, or (2) When the bioreactor is permanently closed, liquids addition has ceased, and liquids have not been added to the bioreactor for at least 1 year.

At some landfills, a portion of the landfill is a bioreactor and the remainder is designed and operated as a conventional landfill. In these situations, the control requirements and the timing of control installation for the conventional portion of the landfill do not change. You must continue to use the equations and factors in the EG/NSPS to calculate the annual estimated uncontrolled NMOC emissions for your landfill as a whole (including the total waste placed in the bioreactor area and the conventional area). When your calculated uncontrolled NMOC emissions equal or exceed 50 Mg/yr, then you must install a collection and control system for the conventional portions of the landfill according to the schedule in the NSPS, or the applicable State, Tribal, or Federal plan that implements the EG. Only the bioreactor portion of the landfill must meet the control schedule for bioreactors.

Note that as a general rule, it is currently difficult for an owner/operator of a MSW landfill to operate a large bioreactor as defined in the final rule. This is because of the Federal criteria regulating MSW landfills, specifically 40 CFR part 258.28 which prohibits the addition of liquids other than leachate and gas condensate to a landfill and 40 CFR part 258.26 which limits the entry of rainwater into MSW landfills through specified run-on control systems. A few landfills have gained site specific variances under Project XL to operate landfill bioreactors.

However, on June 10, 2002, EPA proposed a revision to 40 CFR part 258 that would allow the Director of an approved State to issue a research, development, and demonstration (RD&D) permit for a MSW landfill (67 FR 39662). That proposed RD&D rule would allow the States to grant variances to certain parts of the MSW landfill criteria (40 CFR part 258) through the issuance of RD&D permits. As a result, once the RD&D rule becomes final and an approved State integrates the new Federal regulations, the Director of an approved State may issue permits which could potentially allow for the operation of a bioreactor landfill as long as there is no increased risk to human health and the environment (as compared to a MSW landfill permitted under the existing 40 CFR part 258 criteria). Therefore, once the proposed rule allowing RD&D permits for MSW landfills becomes final, we expect the number of bioreactor landfills to increase.

III. Summary of Public Comments and Responses

This section of the preamble is a brief summary of the major public comments received in response to the original proposal and the supplemental proposal for the MSW landfills NESHAP, and changes resulting from the comments. Additional comments are summarized in the document ''Municipal Solid Waste Landfills: Background Information Document for National Emission Standards for Hazardous Air Pollutants—Public Comments and Responses.'' The document contains a full report of all comments received and our responses. The document may be found in Docket A–98–28.

A. Applicability of the NESHAP

Comment: Two commenters recommended that additional MACT requirements apply only to major sources and that EPA require no controls for area sources.

Response: We believe regulation of area sources is appropriate under section 112(k) of the CAA. Under Section 112(k), we developed a strategy to control emissions of HAP from area sources in urban areas, identifying 33 HAP that present the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources. Municipal solid waste landfills were listed on July 19, 1999, as an area source category to be regulated pursuant to section 112(k) because 13 of the listed HAP are emitted from MSW landfills (64 FR 38706). Section 112(k) requires that sufficient categories of area sources be regulated to assure that sources accounting for at least 90 percent of the aggregate emissions of each of the HAP identified pursuant to 112(k) as being the greatest threat to health in urban areas are subject to standards. As we stated at proposal, we believe it is necessary to regulate some area MSW landfills to meet this requirement of section 112(k). Therefore, we have not changed this aspect of the final rule's applicability. (Note that the bioreactor provisions of the final rule apply to major and area sources that exceed the EG/NSPS design capacity criteria of 2.5 million Mg and 2.5 million m^3 and operate as a bioreactor regardless of whether they meet or exceed the EG/NSPS estimated uncontrolled NMOC emissions criteria of 50 Mg/yr. See sections II and III.C of this preamble for further information on bioreactor applicability and requirements.)

Comment: A commenter expressed concern that small landfills that are collocated with major source facilities become subject to EG/NSPS control under the final rule.

Response: Small landfills that are collocated with major source facilities are subject to the final rule. The final rule requires them to comply with the EG/NSPS. If the design capacity of the collocated landfills is less than 2.5 million Mg or 2.5 million m^3, the landfills comply by submitting a design capacity report as required by the EG/NSPS. The final rule language has been revised to clarify that the final rule applies to these landfills but does not extend the additional final rule requirements and EG/NSPS collection and control requirements to landfills

that do not meet the control device applicability thresholds of the EG/NSPS.

Comment: Several other comments included suggested changes to proposed rule applicability language.

Response: We have revised sections 63.1935, 63.1940, and 63.1945 to clarify the application of the final rule to major sources, area sources and smaller landfills collocated with major sources, as well as identify the affected source for the final rule and clarify the timing of the regulatory requirements. We also added language to section 63.1955 to further explain that landfills required to install a collection and control system under NSPS, Federal, State or tribal plans that implement the EG must also meet the requirements in sections 63.1960 through 63.1980 of the final rule.

Comment: Two commenters requested clarification of the timing of the final rule regulatory requirements. They pointed out that the proposal preamble indicated that the additional requirements of the final rule (compared to the NSPS) do not take effect until the landfill is required to install controls under the EG/NSPS, but the regulation language was not clear.

Response: In response to this comment, we revised section 63.1945 to be consistent with our intent at proposal. The wording of this section continues to require that new sources comply with the final rule on the date of publication of the final rule or at the time they begin operation, whichever is later; and that existing sources comply with the final rule by January 16, 2004. At that time, the source is required to comply with the NSPS or the Federal, State, or tribal plan that implements the EG. We have added language to this section to clarify when landfills must comply with certain requirements within the final rule. New affected sources must comply with the additional final rule requirements (such as the SSM plan and the semiannual reporting of deviations) on the date the landfill is required to install collection and control systems under the NSPS. Existing affected sources must comply with the additional final rule requirements on the date the landfill is required to install collection and control systems under the NSPS, Federal, State or tribal plan or 1 year after publication of the final rule, whichever is later.

B. Major Source Determination

Comment: Several commenters expressed concern that we overestimated the number of major source landfills. The commenters contend that AP–42 emissions factors are incorrect and provide overestimates of landfill gas emissions, that EG/NSPS controls should be taken into account when determining major source status of landfills, and that using NMOC as a HAP surrogate is too arbitrary.

Response: We respond that we used the best method for calculating emissions that is currently available and accepted, which is the current version of AP–42. The EPA program responsible for AP–42 factors is reviewing existing reports and technical data as well as undertaking a landfill testing program to collect additional HAP data. Currently, the data collection and analysis are not yet complete, and could not be completed prior to promulgation of the final rule. When we update the AP–42 chapter on landfill emissions, we will consider all relevant data. However, any update of AP–42 or adjustment of calculation procedures would not affect our regulatory decisions in developing the final rule. We find that the MACT floor is the EG/NSPS level of control. The floor is based on the current level of control at major and synthetic area sources and would not change if there were somewhat fewer or more major sources than previously estimated.

We agree that in determining whether a source is major, enforceable control requirements should be considered. The statement in the proposal preamble identifying 1,140 facilities as major sources may not have been clear. The intent was to say that based on estimates of maximum uncontrolled emissions, 1,140 landfills have potential emissions greater than 10 tpy individual HAP or 25 tpy of a combination of HAP. Some of the 1,140 landfills are major sources and others are ''synthetic area'' sources (sources that would otherwise be major if not for enforceable emissions controls). Both major and synthetic area sources were correctly included in the MACT floor determination. The CAA does not suggest we exclude a control technology from consideration in the MACT floor because it is so effective it reduces emissions from a source such that the source is no longer a major source of HAP.

To determine major source status for rule applicability, a landfill owner/operator would consider enforceable control requirements such as the NSPS. Since the landfills NESHAP requirements for area sources that meet the NSPS capacity criteria and have uncontrolled NMOC emissions of 50 Mg/yr or greater are the same as for major sources, this classification would not change the control or reporting requirements for the landfill. It should be noted that the final rule has not redefined major source. Major source status is determined according to the NESHAP general provisions definition. Nonmethane organic compounds are a surrogate for HAP control, not for whether a facility is a major source. Nonmethane organic compounds are an appropriate surrogate for HAP control because all HAP regulated by the final rule are contained in the NMOC portion of the landfill gas. Landfill owners/operators are already required to estimate NMOC under the EG/NSPS, and it is not necessary to increase the burden by requiring specific HAP measurements as well.

C. Bioreactors

Comment: We received several comments about the timing of startup of the gas collection and control system. Three commenters expressed concern that due to a wide range of possible development scenarios, commencing operation of the gas collection and control system within 90 days of liquids addition may not be appropriate in all cases. Two of the commenters stated that the generation rates of landfill gas during the initial development phases of bioreactors are a function of many factors and substantial quantities of recoverable landfill gas may not be available due to low waste acceptance rates, hybrid bioreactor operations, high inorganic waste fractions, or low liquids addition rates where gas generation is likely to be similar to that of conventional landfills. Under these circumstances, premature startup of the gas control system may result in significant volumes of air being introduced into the bioreactor, thus killing methane-producing bacteria. These commenters recommended extending the startup time frame to 180 days or establishing a process for waiving or delaying the startup date if local conditions warrant.

Response: In response to this comment, we have changed the final rule to allow 180 days instead of 90 days to begin operation of the collection and control system. We are aware that bioreactors may experience variable emissions rates upon initial liquids addition due to site-specific factors such as those described by the commenters. Furthermore, gas collection systems for bioreactors are site-specific and are likely to use newer designs, so operators may require time to gain experience and make operational adjustments to their systems. The 180 day period will allow time for landfill operators to adjust their collection systems such that they can achieve continuous, stable collection and control system operation.

Comment: Four commenters requested clarification as to whether the

rule was meant to require the operation of the gas collection and control system within 90 days after the initial liquids addition or within 90 days after the moisture content has reached 40 percent. Commenters stated that they believed the intent was to require operation of the gas collection and control system after the moisture content reached 40 percent. The commenters stated that it may take longer than 90 days of liquids addition to reach a moisture content of 40 percent.

Response: It was our intent that attaining 40 percent moisture triggers the operation of the control system, and not merely the introduction of liquids. If operation of the control system is based on the time of liquids addition and the landfill has not reached 40 percent moisture content within 90 days, then the rule (as proposed) would be requiring collection and control to be installed and operated prior to the landfill meeting the definition of a bioreactor. We have revised the final rule to clarify that the operation of the collection and control system is required within 180 days after the landfill starts liquids addition or within 180 days after the bioreactor has reached 40 percent moisture content (i.e. 180 days after the landfill has met the definition of bioreactor), whichever is later. Landfills must use the procedures in section 63.1980(g) and (h) to determine when 40 percent moisture content is reached. (No calculation is needed if you start operating the collection and control system within 180 days after the initial liquids addition.) Installation of the collection and control system is still required prior to liquids addition, as required in the supplemental proposal.

Comment: We received several comments pertaining to the exclusion of landfills that recirculate leachate and do not add any other liquids from the definition of a bioreactor landfill. Three commenters who supported the exclusion stated that liquids addition other than that provided by leachate recirculation is normally needed to achieve optimum moisture for bioreactors. Many landfills recirculate leachate as part of their leachate management system without creating bioreactor conditions. A commenter who opposed the exclusion contended that a landfill in a relatively moist climate could sustain an effective bioreactor operation on leachate recirculation alone. This commenter pointed out that there were odor problems at landfills in his State that began recirculating leachate without a collection and control system. The commenter stated that his State now requires collection and control for all landfills that recirculate leachate. The commenter also expressed concern that landfills recirculating leachate only may reach the 40 percent moisture level in the waste by recirculating leachate from the entire landfill into a single bioreactor cell. Another commenter who opposed the exclusion contended that minimal data from landfills recirculating leachate has been collected to allow for the exclusion.

Response: We have not changed the bioreactor definition. A very small percentage of bioreactors in moist climates would reach moisture content of 40 percent with leachate recirculation only. Due to variations in rainfall throughout the year, it would be difficult to consistently maintain a high moisture content in the waste to function as a fully operational bioreactor. We expect that landfill owners that decide to create bioreactors in the future will typically plan to operate a large area as a bioreactor to achieve potential benefits such as earlier stabilization of waste, extended use of current sites and reduced need for new sites. Liquids addition would be needed to maintain such bioreactors.

It would be a large and unnecessary burden to require potentially hundreds of landfills that recirculate leachate, but do not add any other liquids, to calculate their percent moisture content and determine if they are a bioreactor, when we expect that they will not meet the 40 percent moisture criteria in the definition of a bioreactor. These landfills would still be subject to the final rule and EG/NSPS control requirements for conventional landfills, which will require gas collection and control after their estimated uncontrolled NMOC emissions reach 50 Mg/yr. State, local, or tribal agencies may develop more stringent State or local regulations for landfills recirculating leachate in cases where odor or air emissions warrant active landfill gas collection and control.

Comment: One commenter pointed out that the potential exists for smaller bioreactor landfills that add liquids, to generate significant air emissions that warrant timely installation of gas collection and control systems. The commenter recommended requiring control of bioreactors at landfills with design capacities less than 2.5 million Mg or 2.5 million m^3.

Response: We have not changed our conclusion since proposal. In determining GACT for area sources, we decided not to require control at small area source conventional or bioreactor landfills. While bioreactors generate larger amounts of landfill gas early in their life, we expect that their lifetime total landfill gas generation potential would not be significantly greater than a conventional landfill accepting the same total amount of waste. Therefore, potential emissions reductions from control of bioreactors would be similar to potential long-term emissions reductions from control of small conventional landfills. Requiring bioreactors at small landfills (i.e., landfills with design capacities less than 2.5 million Mg or 2.5 million m^3) to install controls would result in additional control costs because they are not required to install controls by the EG/NSPS. The design capacity exemption excludes those landfills that can least afford the costs of collection and control systems including small businesses and, particularly, municipalities. Other reasons for exempting small landfills are described in the proposed landfills NESHAP (65 FR 66677, November 7, 2000) and also apply to bioreactors.

Comment: Four commenters encouraged us to include aerobic bioreactor operations by imposing the anaerobic bioreactor emissions requirements on aerobic bioreactor landfills. Two of these commenters provide references to available literature on MSW composting. They suggested that controls for aerobic bioreactor landfills may be warranted, although one of these commenters concluded that there is not enough scientifically valid data to develop a MACT standard for aerobic bioreactor landfills. Five other commenters agreed there is limited data, especially HAP emissions data, and believe it is important to exclude aerobic bioreactors at this time.

Response: The references provided for composting operations are not applicable because composting of MSW is not the same as operating an aerobic bioreactor within a MSW landfill. We know of no full scale aerobic bioreactors in operation in the United States, and an insufficient amount of aerobic landfill data are available to properly characterize HAP emissions from aerobic bioreactors. We expect a significant number of aerobic bioreactors will not be built in the next several years (in contrast to the trend for anaerobic bioreactors). For these reasons, we have determined that it is not appropriate to include aerobic bioreactors in the bioreactor definition or related timing requirements. Portions of a landfill that are operated as aerobic bioreactors would continue to be subject to the EG/NSPS and the final rule requirements for conventional landfills. Under section 112(f) of the CAA, we

will evaluate residual risks and promulgate standards to address residual risks within 8 years of promulgation of the final rule. In addition, section 112(d)(6) requires review of the final rule every 8 years. At that time, we will consider any new information on the prevalence and emissions of aerobic bioreactors to determine if additional requirements are necessary.

D. Mercury

Comment: Four commenters questioned the reliability of the available mercury data. Some commenters quoted mercury emissions tests that showed mercury emissions from MSW landfills to be insignificant.

Response: We considered data from a number of studies, including one specifically mentioned by the commenters, prior to proposal. We found insufficient data to adequately characterize the concentrations of mercury in landfill gas or determine their significance. Based on the available information, we concluded that the MACT floor for mercury is no emissions reductions and because there are no alternatives above that floor, the MACT standard is also no reduction in emissions.

Comment: Other commenters wrote in support of the cooperative efforts of EPA and the Environmental Research and Education Foundation to conduct tests for HAP metals such as mercury in landfill gas and emissions from gas combustion. The commenters suggested waiting until the test results are complete before making any decision on mercury controls. Another commenter also asked us to clarify the level of mercury emissions from MSW landfill gas and requested that we investigate beyond-the-floor control options.

Response: We find that the currently available data support the promulgation of the rulemaking without a mercury emissions limit. Because there are no control devices, pollution prevention practices or other techniques to reduce landfill mercury emissions, we could not identify any beyond-the-floor control options, and we consider the MACT for new and existing landfills to be no reduction in mercury emissions.

E. Title V Operating Permits

Comment: A commenter recommended that we delete the requirement mandating that area sources be required to obtain a title V permit and instead allow part 60 to address the permitting of area source landfills. The commenter further suggested that if we retain the requirement of permitting area source landfills, that we justify why area source landfills must be permitted.

Response: In response to that comment, title V requirements included in § 63.1935 at proposal have been deleted. We further respond that section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. This section states that the Administrator may promulgate regulations to exempt one or more source categories, in whole or in part, from the requirements of the section if the Administrator finds that compliance with title V requirements is impracticable, infeasible, or unnecessarily burdensome on such categories. Thus, we do not need to justify requiring title V permits. The CAA mandates criteria that must be met to justify an exemption for any category of sources. According to section 502(a), however, the Administrator may not exempt any major source from the requirements of title V.

Although section 502(a) requires that area sources subject to regulations under section 111 or 112 be permitted unless the test in this section is met (i.e., the Administrator finds that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome), we are not applying this test to the landfills NESHAP.[1] Rather, consistent with what the commenter suggested, EPA is allowing the EG/NSPS for MSW landfills to address the permitting requirements for area source landfills. This approach is justified because the same universe of area source landfills would have been required to apply for a title V permit under the final rule (if the final rule were promulgated as proposed) as is currently subject to title V permitting requirements under the NSPS for landfills and whatever plan is used to implement 40 CFR part 60, subpart Cc in an area (i.e., an EPA approved and effective section 111(d) State or tribal plan for landfills or the landfills Federal plan (40 CFR part 62, subpart GGG)). Moreover, most area source landfills which have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 have already been required to apply for a title V permit due to either the NSPS for landfills, an EPA approved and effective section 111(d) State or tribal plan for landfills, or the landfills Federal plan. See 40 CFR 60.752(c), 60.32c(c), and 62.14352(e). See also the ''Clarification of Title V Permitting Requirements'' section of the EG/NSPS direct final rule amendments for MSW Landfills (63 FR 32743, 32746, June 16, 1998). In fact, unless the owner/operator of a MSW landfill only recently commenced construction of the landfill and has not yet been required to file a design capacity report (which the NSPS requires within 90 days after the owner/operator commences construction), all area source landfills of the design capacity noted above and which meet the definition of new or existing under the EG/NSPS should have already applied for a title V permit. As a result, EPA believes that it is unnecessary for area sources to be required to apply for a title V permit as a result of the landfills NESHAP.

If a MSW landfill is a major source or is a part of a major source as defined under one or more of title V's three major source definitions (section 112, section 302, and part D of title I of the CAA),[2] a title V application from such a source may be due even earlier than the deadlines established by 40 CFR part 60, subpart WWW, any EPA approved and effective section 111(d) State or tribal plan, or the landfills Federal plan. When a source is subject to title V for more than one reason (e.g., meeting the title V applicability criteria in subpart WWW as well as having the potential to emit one or more pollutants at major source levels), the 12-month timeframe (or earlier if required by the title V permitting authority) for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. See CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b), and 71.5(a)(1). See also the ''Clarification of Title V Permitting Requirements'' section of the EG/NSPS direct final rule for MSW Landfills (63 FR 32743, 32746, June 16, 1998).[3]

[1] It is important to note that the determination regarding the permitting of area sources under this NESHAP does not affect the permitting of area sources under other section 111 or 112 standards. Rather, to exempt area sources under either a section 111 or 112 standard, the test in section 502(a) must be met. If commenters choose to try and meet this test when commenting on a proposed section 111 or 112 standard, they must submit comments which document in detail the ways in which title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source catergory in question.

[2] For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2. Nothing in this subpart revises how affected sources are aggregated for purposes of determining whether an affected source is a part of an area, nonmajor, or major source under any provisions of the CAA or EPA's regulations.

[3] Consistent with the above, it is important to note that an application deadline once established

Given that most area source landfills subject to the final rule are already subject to the requirements of title V, it is important to note the following. In cases where the owner/operator of a landfill has submitted a timely and complete title V application[4], but the draft title V permit has not yet been released by the permitting authority, the owner/operator must supplement his title V application[5] by incorporating the applicable requirements of the final landfills NESHAP in accordance with 40 CFR 70.5(b) or 71.5(b). Additionally, if a landfill is a major source, or is a part of a major source, and is covered by a title V permit with a remaining permit term of 3 or more years on the promulgation date of the landfills NESHAP, the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of the final rule within 18 months of the promulgation date of the final rule. See CAA section 502(b)(9) and 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

Comment: Two commenters recommended that we clarify that deviations that are properly addressed in accordance with the SSM plan under the proposed rule will not become violations under any CAA program or permit, such as a title V permit, in which the standard, limitation, prohibition, or other Federally-enforceable requirement is contained. The commenters stated that the proposed rule suggested that any deviations that occur during SSM would not be violations under section 112 if the SSM plan were adequate and followed. The commenters are concerned that such a deviation might be considered a violation under title V and/or the EG/NSPS for MSW landfills.

Response: To the extent that a source is in compliance with the applicable SSM provisions of parts 60 and 63, the source is in compliance with its title V permit with respect to these specific applicable requirements. In terms of the EG/NSPS for landfills, deviations, and, therefore, potential violations, will be defined by the applicable requirements (i.e., 40 CFR part 60, subpart WWW, an EPA approved and effective State or tribal plan, or the landfills Federal plan.)

Furthermore, in response to this comment, section 63.1970 has been removed from the final rule to eliminate any confusion regarding the use of SSM plans. Given that the revisions to the General Provisions for part 63 (67 FR 16582, April 5, 2002) included revisions to 40 CFR 63.6(e), a subsection which addresses SSM plans, and given the other language in the General Provisions for parts 60 and 63, the NSPS for landfills, and the landfills Federal plan relevant to this topic, EPA does not believe a regulatory section regarding the use of SSM plans is needed in the final rule. See 40 CFR 60.11(c), 60.755(e), 63.6(e), 63.6(f)(1), and 62.14354(b).

Comment: Two commenters requested a more detailed discussion of which reporting requirements under the final rule would satisfy specific requirements under the title V program. The commenters cited a specific example: the proposed rule requires that the landfill owner/operator notify EPA within 2 days of a SSM event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of the title V program.

Response: As many owners/operators of landfills subject to this subpart will have the requirements of the final rule in their title V permits, any reports submitted for such sources will need to satisfy the reporting requirements of the landfills NESHAP and title V (e.g., type of report, content of report, and frequency of submission.) A permitting authority is not, however, precluded from consolidating required reports as long as all reporting requirements of the landfills NESHAP and title V are met.

We would like to emphasize that under 40 CFR part 70 or 71, any application form, report, compliance certification, or other document required by a permit to be submitted to a permitting authority must contain certification by a responsible official that the statements and information in the document are true, accurate, and complete. See 40 CFR 70.5(d), 70.6(c)(1), 71.5(d), and 71.6(c)(1). Thus, to the extent reports submitted under the final rule are also required by a title V permit to be submitted, they must meet the title V certification requirement to meet the reporting requirements of title V.

The commenters mentioned a specific requirement in 40 CFR 63.10(d)(5)(ii). This provision states that any time an owner/operator takes an action during a SSM event which is not consistent with the procedures specified in the affected source's SSM plan, the owner/operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The commenters questioned whether this requirement would satisfy the prompt reporting requirements of title V.

In terms of the prompt reporting of deviations, 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Therefore, it is the responsibility of the part 70 permitting authority to determine whether the timing of reports under 40 CFR 63.10(d)(5)(ii) is sufficient to meet the permitting authority's requirements for the prompt reporting of deviations. The permitting authority may decide for a particular source or source category, or as a general matter, to impose more stringent reporting requirements (e.g., type of report, content of report, and frequency of submission) than those specified in the applicable requirement.

IV. Summary of the Energy, Environmental, and Economic Impacts

We foresee minimal economic impacts to major sources since all of these landfills are currently required to comply with the EG/NSPS. For such sources, the final rule will only impose a requirement to prepare a SSM plan, recordkeeping and reporting requirements for SSM events, and semiannual reports instead of annual reports. The expected annual cost to affected major source landfills is only $1,700 (1998 dollars), which represents less than 0.001 percent of the tipping fees collected by an average sized landfill. For more information on the economic impacts of the standards, refer to the economic impact analysis in the docket.

We also foresee no environmental, energy, or economic impacts for collection and control of landfill gas to area source landfills. As with major source landfills, all area source landfills subject to the final rule are already required to implement the EG/NSPS. Area source landfills that are too small to trigger the EG/NSPS applicability are not subject to control under the

for a source cannot be superseded by another later application deadline unless the title V program itself changes (e.g., a State program under 40 CFR part 70 becomes a Federal program under 40 CFR part 71).

[4] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain an application shield. (An application shield allows a source to operate without being in violation of title V prior to being issued a final title V permit.) To maintain an application shield, a source must submit information as requested by the permitting authority and by the specified deadline. See section 503(d) of the CAA, 40 CFR 70.5(a)(2), 70.7(b), 71.5(a)(2), and 71.7(b).

[5] A title V application from a major source must address all emissions units at the title V source, not just the section 111 or 112 emissions unit. See 40 CFR 70.3(c)(1) and 71.3(c)(1).

standards and, therefore, will not incur impacts.

We expect a positive environmental impact and negligible economic impacts from the requirements for bioreactors. One reason for the small economic impact is that the final rule bioreactor provisions will require gas collection and control for only the same landfills that are already required to install collection and control systems under the EG/NSPS and the final rule. It will not change the number of landfills that must apply controls.

In the analysis described in the supplemental proposal (67 FR 36460, May 23, 2002), we found that greater emissions reductions are achieved by timely control of bioreactor landfills. The analysis also concludes that the bioreactor provisions will not increase the costs of control for most landfills compared to the previous EG/NSPS and final rule cost analyses, and some landfills with bioreactors will experience reduced control costs. We expect the number of bioreactors to increase over the next few years given their potential environmental and economic benefits, and pending regulatory clarifications. A regulation proposed under 40 CFR 258 (67 FR 39662) will provide approved States the ability to issue research, development, and demonstration permits to allow liquids other than leachate to be recirculated into bioreactor landfills. Promulgation of the regulation will lift a barrier for some landfills to become bioreactors and, therefore, is likely to result in an increase of bioreactor landfills. Overall, the bioreactor provisions of the final rule will have minimal economic impacts and may in fact have an overall beneficial economic impact. Additional information on this analysis, including example cases examined, HAP emissions reductions, and NMOC emissions reductions, are contained in Docket No. A–98–28 and in the supplemental proposal (67 FR 36460).

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final rule is not a ''significant regulatory action'' because the final rule will not have an annual effect on the economy of $100 million or more and does not impose any additional control requirements above the 1996 EG/NSPS. We considered the 1996 EG/NSPS to be ''significant'' because the 1996 EG/NSPS were expected to have an annual effect on the economy in excess of $100 million. We submitted the 1996 EG/NSPS to OMB for review (61 FR 9905, March 12, 1996). The rule promulgated today is projected to have no significant impact above the 1996 EG/NSPS. Consequently, the final rule was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132 (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.''

The final 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. We have concluded the final rule may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by the city and county governments in complying with the mandate. However, it will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local governments in developing the 1996 EG/NSPS. The EPA consulted extensively with State and local governments early in the process of developing the proposed regulations to permit them to have meaningful and timely input into its development. Because the control requirements of the final rule are substantially the same as those developed in 1996, the previous consultations still apply. In addition, State and local government agencies participated in a conference call on the bioreactor provisions of the final rule, and provided comments on the proposal, which we considered. For a discussion of our consultations with State and local governments, the nature of the governments' concerns, and our position supporting the need for the specific control requirements included in both the EG/NSPS and the final rule, see the preamble to the 1996 EG/NSPS (60 FR 9918, March 12, 1996).

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 2000), requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175. Information received from the Regions during development of the Federal Plan showed no landfills on tribal land large enough to require control under the NSPS or the final rule. Thus, Executive Order 13175 does not apply to the final rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental

health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret 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 final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the UMRA of 1995, 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, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by 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 us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The average total annual cost of the final rule for any year has been estimated to be less than $2.2 million. Thus, the final rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small government. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 United States Code (U.S.C.). 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of the final rule on small entities, small entities are defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by North American Industrial Classification System (NAICS) codes 562212 and 924110 with annual receipts less than 10 million dollars; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small entities will experience little impact since the final rule relies on the requirements specified in 40 CFR part 60, subparts Cc and WWW. Additional requirements for the final rule are limited to a slight increase in the reporting frequency of some reports and the development of a SSM plan. This increase in requirements leads to an increase in annual costs to each affected landfill of $1700 (1998 dollars), an increase of less than 0.001 percent of the tipping fees taken in by a landfill of average size nationally. Hence, the estimated impacts to small communities, organizations, and firms from the final rule should be insignificant. For more information on the economic impacts, refer to the economic analysis in the docket.

Although the final rule for MSW landfills will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of the final rule on small entities. To that end, we have evaluated the operational practices, collection systems and control systems required by 40 CFR part 60, subparts Cc and WWW, for co-control environmental benefits. Since the requirements in 40 CFR part 60, subparts Cc and WWW, adequately address the emissions of HAP while controlling landfill gas, we are using these same requirements with a slight increase in reporting activity/frequency for the final rule. In addition to the reduction effort, we performed a number of outreach activities to interact with small entities during the development of the rule. We held formal stakeholder meetings. In addition, we presented rule related information at national conferences sponsored by the trade organizations for these entities, and we requested the establishment of an electronic link between the International City/County Management Association website and our rule development website. Through the efforts discussed above, small entities have been engaged in the rulemaking effort.

H. Paperwork Reduction Act

The information collection requirements in the final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA,

and a (ICR No. 1938.02) copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, 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 would be used to ensure that the requirements for the rule are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable us to identify MSW landfills that may not be in compliance with this standard. Based on reported information, we would decide which landfills should be inspected and what records or processes should be inspected. The records that owners or operators of MSW landfills maintain would indicate to us whether personnel are operating and maintaining control equipment properly.

The final rule is projected to affect approximately 1,331 MSW landfills in the first year. The estimated average annual burden for industry for the first 3 years after promulgation of this NESHAP would be 39,360 person-hours annually. There will be $13,128 of operation and maintenance costs associated with monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 21,105 hours with a cost of $843,150 (including travel expenses) per year.

Burden means 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.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies such as EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable VCS.

The final rule references 40 CFR part 60, subpart WWW—Standards of Performance for Municipal Solid Waste Landfills. Since there are no new standard requirements in the final rule, and there are no new technical standard requirements resulting from specifying subpart WWW in the final rule, we are not adopting any VCS in the final rule. Landfills have been using the methods in 40 CFR part 60, subpart WWW since March 1996 and are familiar with these technical standards. In addition, no new VCS have been identified, although comments on applicable VCS were requested at the time of proposal. We received no comments on the subject. Also, landfills may request approval to use alternative testing or monitoring methods, as stated in the final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), and, therefore, will be effective January 16, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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 a new subpart AAAA to read as follows:

Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

Sec.

What This Subpart Covers

63.1930 What is the purpose of this subpart?
63.1935 Am I subject to this subpart?
63.1940 What is the affected source of this subpart?
63.1945 When do I have to comply with this subpart?
63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?
63.1950 When am I no longer required to comply with this subpart?
63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

Standards

63.1955 What requirements must I meet?

General and Continuing Compliance Requirements

63.1960 How is compliance determined?
63.1965 What is a deviation?
63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Notifications, Reports and Records

63.1980 What records and reports must I keep and submit?

Other Requirements and Information

63.1985 Who enforces this subpart?
63.1990 What definitions apply to this subpart?

Tables to Subpart AAAA of Part 63

Table 1 of Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

What This Subpart Covers

§ 63.1930 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for existing and new municipal solid waste (MSW) landfills. This subpart requires all landfills described in § 63.1935 to meet the requirements of 40 CFR part 60, subpart Cc or WWW and requires timely control of bioreactors. This subpart also requires such landfills to meet the startup, shutdown, and malfunction (SSM) requirements of the general provisions of this part and provides that compliance with the operating conditions shall be demonstrated by parameter monitoring results that are within the specified ranges. It also includes additional reporting requirements.

§ 63.1935 Am I subject to this subpart?

You are subject to this subpart if you meet the criteria in paragraph (a) or (b) of this section.

(a) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition and meets any one of the three criteria in paragraphs (a)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC as calculated according to § 60.754(a) of the MSW landfills new source performance standards in 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan that applies to your landfill.

(b) You are subject to this subpart if you own or operate a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition, that includes a bioreactor, as defined in § 63.1990, and that meets any one of the criteria in paragraphs (b)(1) through (3) of this section:

(1) Your MSW landfill is a major source as defined in 40 CFR 63.2 of subpart A.

(2) Your MSW landfill is collocated with a major source as defined in 40 CFR 63.2 of subpart A.

(3) Your MSW landfill is an area source landfill that has a design capacity equal to our greater than 2.5 million Mg and 2.5 million m^3 and that is not permanently closed as of January 16, 2003.

§ 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is a MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor.

(b) A new affected source of this subpart is an affected source that commenced construction or reconstruction after November 7, 2000. An affected source is reconstructed if it meets the definition of reconstruction in 40 CFR 63.2 of subpart A.

(c) An affected source of this subpart is existing if it is not new.

§ 63.1945 When do I have to comply with this subpart?

(a) If your landfill is a new affected source, you must comply with this subpart by January 16, 2003 or at the time you begin operating, whichever is last.

(b) If your landfill is an existing affected source, you must comply with this subpart by January 16, 2004.

(c) If your landfill is a new affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(d) If your landfill is an existing affected source and is a major source or is collocated with a major source, you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 13, 2004, whichever occurs later.

(e) If your landfill is a new affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements of §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW.

(f) If your landfill is an existing affected source and is an area source meeting the criteria in § 63.1935(a)(3), you must comply with the requirements in §§ 63.1955(b) and 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 16, 2004, whichever occurs later.

§ 63.1947 When do I have to comply with this subpart if I own or operate a bioreactor?

You must comply with this subpart by the dates specified in § 63.1945(a) or (b) of this subpart. If you own or operate a bioreactor located at a landfill that is not permanently closed as of January 16, 2003 and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must install and operate a collection and control system that meets the criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan according to the schedule specified in paragraph (a), (b), or (c) of this section.

(a) If your bioreactor is at a new affected source, then you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

(b) If your bioreactor is at an existing affected source, then you must install and begin operating the gas collection and control system for the bioreactor by January 17, 2006 or by the date your bioreactor is required to install a gas collection and control system under 40 CFR part 60, subpart WWW, the Federal plan, or EPA approved and effective State plan or tribal plan that applies to your landfill, whichever is earlier.

(c) If your bioreactor is at an existing affected source and you do not initiate liquids addition to your bioreactor until later than January 17, 2006, then you

must meet the requirements in paragraphs (c)(1) and (2) of this section:

(1) Install the gas collection and control system for the bioreactor before initiating liquids addition.

(2) Begin operating the gas collection and control system within 180 days after initiating liquids addition or within 180 days after achieving a moisture content of 40 percent by weight, whichever is later. If you choose to begin gas collection and control system operation 180 days after achieving a 40 percent moisture content instead of 180 days after liquids addition, use the procedures in § 63.1980(g) and (h) to determine when the bioreactor moisture content reaches 40 percent.

§ 63.1950 When am I no longer required to comply with this subpart?

You are no longer required to comply with the requirements of this subpart when you are no longer required to apply controls as specified in 40 CFR 60.752(b)(2)(v) of subpart WWW, or the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill.

§ 63.1952 When am I no longer required to comply with the requirements of this subpart if I own or operate a bioreactor?

If you own or operate a landfill that includes a bioreactor, you are no longer required to comply with the requirements of this subpart for the bioreactor provided you meet the conditions of either paragraphs (a) or (b).

(a) Your affected source meets the control system removal criteria in 40 CFR 60.752(b)(2)(v) of part 60, subpart WWW or the bioreactor meets the criteria for a nonproductive area of the landfill in 40 CFR 60.759(a)(3)(ii) of part 60, subpart WWW.

(b) The bioreactor portion of the landfill is a closed landfill as defined in 40 CFR 60.751, subpart WWW, you have permanently ceased adding liquids to the bioreactor, and you have not added liquids to the bioreactor for at least 1 year. A closure report for the bioreactor must be submitted to the Administrator as provided in 40 CFR 60.757(d) of subpart WWW.

(c) Compliance with the bioreactor control removal provisions in this section constitutes compliance with 40 CFR part 60, subpart WWW or the Federal plan, whichever applies to your bioreactor.

Standards

§ 63.1955 What requirements must I meet?

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan to install a collection and control system, you must comply with the requirements in §§ 63.1960 through 63.1985 and with the general provisions of this part specified in table 1 of this subpart.

(c) For approval of collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions, you must follow the procedures in 40 CFR 60.752(b)(2). If alternatives have already been approved under 40 CFR part 60 subpart WWW or the Federal plan, or EPA approved and effective State or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in Subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1980(a) and (b), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3 hour monitoring block average.

(d) If you own or operate a bioreactor that is located at a MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must meet the requirements of paragraph (a) and the additional requirements in paragraphs (d)(1) and (2) of this section.

(1) You must comply with the general provisions specified in Table 1 of this subpart and §§ 63.1960 through 63.1985 starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area, instead of the schedule in 40 CFR 60.752(b)(2)(ii)(A)(*2*).

General and Continuing Compliance Requirements

§ 63.1960 How is compliance determined?

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data, collected under 40 CFR 60.756(b)(1), (c)(1), and (d) of subpart WWW, are used to demonstrate compliance with the operating conditions for control systems. If a deviation occurs, you have failed to meet the control device operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop and implement a written SSM plan according to the provisions in 40 CFR 63.6(e)(3). A copy of the SSM plan must be maintained on site. Failure to write, implement, or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

§ 63.1965 What is a deviation?

A deviation is defined in § 63.1990. For the purposes of the landfill monitoring and SSM plan requirements, deviations include the items in paragraphs (a) through (c) of this section.

(a) A deviation occurs when the control device operating parameter boundaries described in 40 CFR 60.758(c)(1) of subpart WWW are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

(c) A deviation occurs when a SSM plan is not developed, implemented, or maintained on site.

§ 63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that the data collected during the events listed in paragraphs (a), (b), (c), and (d) of this section are not to be included in any average computed under this subpart:

(a) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

(b) Startups.

(c) Shutdowns.

(d) Malfunctions.

Notifications, Records, and Reports

§ 63.1980 What records and reports must I keep and submit?

(a) Keep records and reports as specified in 40 CFR part 60, subpart WWW, or in the Federal plan, EPA approved State plan or tribal plan that implements 40 CFR part 60, subpart Cc, whichever applies to your landfill, with one exception: You must submit the annual report described in 40 CFR 60.757(f) every 6 months.

(b) You must also keep records and reports as specified in the general provisions of 40 CFR part 60 and this part as shown in Table 1 of this subpart. Applicable records in the general provisions include items such as SSM plans and the SSM plan reports.

(c) For bioreactors at new affected sources you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(a)(2) of this subpart.

(d) For bioreactors at existing affected sources, you must submit the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) within 180 days after the compliance date specified in § 63.1947(b) of this subpart, unless you have previously submitted a compliance report for the bioreactor required by 40 CFR part 60, subpart WWW, the Federal plan, or an EPA approved and effective State plan or tribal plan.

(e) For bioreactors that are located at existing affected sources, but do not initiate liquids addition until later than the compliance date in § 63.1947(b) of this subpart, you must submit the initial semiannual compliance report and performance tests results described in 40 CFR 60.757(f) within 180 days after the date you are required to begin operating the gas collection and control system by § 63.1947(c) of this subpart.

(f) If you must submit a semiannual compliance report for a bioreactor as well as a semiannual compliance report for a conventional portion of the same landfill, you may delay submittal of a subsequent semiannual compliance report for the bioreactor according to paragraphs (f)(1) through (3) of this section so that the reports may be submitted on the same schedule.

(1) After submittal of your initial semiannual compliance report and performance test results for the bioreactor, you may delay submittal of the subsequent semiannual compliance report for the bioreactor until the date the initial or subsequent semiannual compliance report is due for the conventional portion of your landfill.

(2) You may delay submittal of your subsequent semiannual compliance report by no more than 12 months after the due date for submitting the initial semiannual compliance report and performance test results described in 40 CFR 60.757(f) for the bioreactor. The report shall cover the time period since the previous semiannual report for the bioreactor, which would be a period of at least 6 months and no more than 12 months.

(3) After the delayed semiannual report, all subsequent semiannual reports for the bioreactor must be submitted every 6 months on the same date the semiannual report for the conventional portion of the landfill is due.

(g) If you add any liquids other than leachate in a controlled fashion to the waste mass and do not comply with the bioreactor requirements in §§ 63.1947, 63.1955(c) and 63.1980(c) through (f) of this subpart, you must keep a record of calculations showing that the percent moisture by weight expected in the waste mass to which liquid is added is less than 40 percent. The calculation must consider the waste mass, moisture content of the incoming waste, mass of water added to the waste including leachate recirculation and other liquids addition and precipitation, and the mass of water removed through leachate or other water losses. Moisture level sampling or mass balances calculations can be used. You must document the calculations and the basis of any assumptions. Keep the record of the calculations until you cease liquids addition.

(h) If you calculate moisture content to establish the date your bioreactor is required to begin operating the collection and control system under § 63.1947(a)(2) or (c)(2), keep a record of the calculations including the information specified in paragraph (g) of this section for 5 years. Within 90 days after the bioreactor achieves 40 percent moisture content, report the results of the calculation, the date the bioreactor achieved 40 percent moisture content by weight, and the date you plan to begin collection and control system operation.

Other Requirements and Information

§ 63.1985 Who enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency as well as the U.S. EPA has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a 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 as follows. Approval of alternatives to the standards in § 63.1955. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

§ 63.1990 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, 40 CFR part 60, subparts A, Cc, and WWW; 40 CFR part 62, subpart GGG, and subpart A of this part, and this section that follows:

Bioreactor means a MSW landfill or portion of a MSW landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

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 emissions limitation (including any operating limit) or work practice standard;

(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 limitation, (including any operating limit), or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

Emissions limitation means any emission limit, opacity limit, operating limit, or visible emissions limit.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal plan means the EPA plan to implement 40 CFR part 60, subpart Cc for existing MSW landfills located in States and Indian country where State plans or tribal plans are not currently in effect. On the effective date of an EPA approved State or tribal plan, the Federal plan no longer applies. The Federal plan is found at 40 CFR part 62, subpart GGG.

Municipal solid waste landfill or MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes (see § 257.2 of this chapter) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion.

Tribal plan means a plan submitted by a tribal authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 to implement and enforce 40 CFR part 60, subpart Cc.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As stated in §§ 63.1955 and 63.1980, you must meet each requirement in the following table that applies to you.

TABLE 1 OF SUBPART AAAA OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 Citation	Description	Explanation
63.1(a)	Applicability: general applicability of NESHAP in this part.	Affected sources are already subject to the provisions of paragraphs (a)(10)–(12) through the same provisions under 40 CFR, part 60 subpart A.
63.1(b)	Applicability determination for stationary sources.	
63.1(e)	Title V permitting.	
63.2	Definitions.	
63.4	Prohibited activities and circumvention	Affected sources are already subject to the provisions of paragraph (b) through the same provisions under 40 CFR, part 60 subpart A.
63.5(b)	Requirements for existing, newly constructed, and reconstructed sources.	
63.6(e)	Operation and maintenance requirements, startup, shutdown and malfunction plan provisions.	
63.6(f)	Compliance with nonopacity emission standards	Affected sources are already subject to the provisions of paragraphs (f)(1) and (2)(i) through the same provisions under 40 CFR, part 60 subpart A.
63.10(b)(2)(i)–(b)(2)(v)	General recordkeeping requirements.	
63.10(d)(5)	If actions taken during a startup, shutdown and malfunction plan are consistent with the procedures in the startup, shutdown and malfunction plan, this information shall be included in a semi-annual startup, shutdown and malfunction plan report. Any time an action taken during a startup, shutdown and malfunction plan is not consistent with the startup, shutdown and malfunction plan, the source shall report actions taken within 2 working days after commencing such actions, followed by a letter 7 days after the event.	
63.12(a)	These provisions do not preclude the State from adopting and enforcing any standard, limitation, etc., requiring permits, or requiring emissions reductions in excess of those specified.	
63.15	Availability of information and confidentiality.	

[FR Doc. 03–88 Filed 1–15–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0336; FRL–7284–8]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION.** These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for

pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective January 16, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0336, must be received by EPA on or before February 18, 2003.

ADDRESSES: Written objections and hearing requests 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: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

Pesticide/CFR cite	Contact person
Sodium chlorate; 180.1020 Zinc phosphide; 180.284	Libby Pemberton (703) 308–9364
Fenhexamid; 180.553 *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; 180.527	Barbara Madden (703) 305–6463
Bifenthrin; 180.442	Andrea Conrath (703) 308–9356
Tebufenozide; 180.482 Lambda-cyhalothrin; 180.438 Sulfentrazone; 180.498 Spinosad; 180.495 2,4-D; 180.142	Andrew Ertman (703) 308–9367
Mancozeb;180.176	Dan Rosenblatt (703) 308–9366

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or State Government Entity, (NAICS 9241), i.e., Department of Agriculture, Environment, etc.

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–2002–0336. 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18 . Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that

was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *2,4-D*. EPA has authorized under FIFRA section 18 the use of 2,4-D on wild rice for control of water plantain in Minnesota. This regulation extends time-limited tolerances for residues of the herbicide 2,4-dichlorophenoxyacetic acid and its metabolites in or on wild rice at 0.1 parts per million (ppm) for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of September 5, 1997 (62 FR 46900) (FRL–5738–9).

2. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on citrus for control of weevils in Texas and Florida. This regulation extends time-limited tolerances for residues of the insecticide bifenthrin in or on citrus, dried pulp and citrus, oil at 0.3 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of December 16, 1998 (63 FR 69200) (FRL–6048–1).

3. *N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide*. EPA has authorized under FIFRA section 18 the use of *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide on wheat and triticale for control of ryegrass in Idaho, Oregon, and Washington. This regulation extends a time-limited tolerance for combined residues of the herbicide *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on wheat grain at 1 ppm, wheat forage at 10 ppm, wheat hay at 2 ppm, wheat straw at 0.5 ppm, meat and fat of cattle, goats, horses, hogs, and sheep at 0.05 ppm, meat byproducts (other than kidney) of cattle, goats, horses, hogs, and sheep at 0.10 ppm and kidney of cattle, goats, horses, hogs, and sheep at 0.50 ppm for an additional 1–year, 11 months. These tolerances will expire and are revoked on June 30, 2005. Time-limited tolerances were originally published in the **Federal Register** of August 6, 1999 (64 FR 42839) (FRL–6091–9).

4. *Fenhexamid*. EPA has authorized under FIFRA section 18 the use of fenhexamid on pears for control of gray mold in California. This regulation extends a time-limited tolerance for residues of the fungicide fenhexamid, (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide in or on pears at 15 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of November 21, 2000 (65 FR 69876) (FRL–6752–4)

EPA has received objections to tolerances it established for 2,4-D, and fenhexamid on different food commodities. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for 2,4-D, and fenhexamid while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60–day public comment period on them in the **Federal Register** of June 19, 2002 (67 FR 41628) (FRL–7167–7). That comment period was extended until October 16, 2002 (September 17, 2002, 67 FR 58536) (FRL–7275–3), and EPA is now examining the extensive comments received. Second the nature of the current actions are extremely time-sensitive as they address emergency situations. Third the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with extending the tolerances for 2,4-D, and fenhexamid.

5. *Lambda-Cyhalothrin*. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on barley for control of the Russian wheat aphid and cutworms in Idaho, Colrado, Wyoming, and Montana. This regulation extends a time-limited tolerance for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on barley grain at 0.05 ppm, barley bran at 0.2 ppm, and barley hay and straw at 2.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of October 29, 1997 (62 FR 56095) (FRL–5745–5)

6. *Mancozeb*. EPA has authorized under FIFRA section 18 the use of mancozeb on ginseng for control of stem and leaf blight in Wisconsin. This regulation extends a time-limited tolerance for combined residues of the fungicide mancozeb, calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea (ETU) in or on ginseng at 2.0 ppm for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2004. A time-limited tolerance was originally published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5)

7. *Sodium chlorate*. The state of Arkansas availed itself of the authority to declare the existence of a crisis situation, thereby authorizing use under FIFRA section 18 of sodium chlorate on wheat as a defoliant or desiccant to aid in the harvest of wheat. This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the defoliant/desiccant sodium chlorate in or on wheat for an additional 2–year period. This exemption from the requirement of a tolerance will expire and is revoked on December 31, 2004. A time-limited exemption from the requirement of a tolerance was originally published in the **Federal Register** of December 3, 1997 (62 FR 63858) (FRL–5754–1)

8. *Spinosad*. EPA is authorizing under FIFRA section 18 the use of spinosad on all agricultural commodities when

applied in connection with quarantine eradication programs directed by state agricultural officials for control of quarantined fruit fly species, such as the Mediterranean fruit fly in California. This regulation extends a time-limited tolerance for residues of the insecticide spinosad, Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b,tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione, in or on all agricultural commodities where a separate higher tolerance is not already established at 0.02 ppm for an additional 4–year period. This tolerance will expire and is revoked on December 31, 2006. A time-limited tolerance was originally published in the **Federal Register** of July 21, 1999 (62 FR 39053) (FRL–6086–7)

9. *Spinosad*. EPA has authorized under FIFRA section 18 the use of spinosad on alfalfa for control of armyworms in Texas and New Mexico and pastureland and rangeland for control of armyworms in Arkansas, Mississippi, Texas, Tennessee and Georgia. This regulation extends time-limited tolerances for combined residues of the herbicide spinosad, Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)- tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b,tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione in or on alfalfa forage at 4.0 ppm; alfalfa hay at 4.0 ppm; cattle fat at 15.0 ppm; cattle, meat byproducts at 3.50 ppm; cattle meat at 0.60 ppm; egg at 0.030 ppm; goat fat at 15.0 ppm; goat meat byproducts at 3.50 ppm; goat meat at 0.60 ppm; grass forage at 7.0 ppm; grass hay at 7.0 ppm; hog fat at 15.0 ppm; hog meat byproducts at 3.50 ppm; hog meat at 0.60 ppm; horse fat at 15.0 ppm; horse meat byproducts at 3.50 ppm; horse, meat at 0.60 ppm; sheep fat at 15.0 ppm; sheep meat byproducts at 3.50 ppm; and sheep meat at 0.60 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. A time-limited tolerance was originally published for sunflowers in the **Federal Register** of January 9, 2001 (66 FR 1592) (FRL–6760–2).

10. *Sulfentrazone*. EPA has authorized under FIFRA section 18 the use of sulfentrazone on horseradish for control of weeds in Wisconsin, Minnesota, and Illinois; sugarcane for control of weeds in Louisiana; and sunflowers for control of weeds in Montana, North Dakota, Minnesota, Wyoming, Texas, Nebraska, Oklahoma, Missouri, South Dakota, Kansas, and Colorado. This regulation extends a time-limited tolerance for combined residues of the herbicide sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]methanesulfonamide, and its metabolites 3-hydroxymethyl sulfentrazone (HMS) and 3-desmethyl sulfentrazone (DMS) in or on horseradish, roots at 0.1 ppm, sugarcane at 0.05 ppm, and sunflower at 0.1 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. A time-limited tolerance was originally published for sunflowers in the **Federal Register** of September 21, 1999 (64 FR 51060) (FRL–6097–8). Time-limited tolerances were originally published for horseradish and sugarcane in the **Federal Register** of November 9, 2000 (65 FR 67272) (FRL–6751–7).

11. *Tebufenozide*. EPA has authorized under FIFRA section 18 the use of tebufenozide on sweet potatoes for control of armyworms in Mississippi, Louisiana, and North Carolina. This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on sweet potatoes at 0.25 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2005. A time-limited tolerance was originally published in the **Federal Register** of December 18, 1998 (63 FR 70030) (FRL–6049–4)

12. *Zinc phosphide*. EPA has authorized under FIFRA section 18 the use of zinc phosphide on timothy, alfalfa, and clover for control of vole complex in Washington. This regulation extends time-limited tolerances for residues of the rodenticide zinc phosphide in or on alfalfa (forage and hay); clover (forage and hay); and timothy (forage, hay and seed) at 1; 0.1; and 0.1 ppm, respectively, for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. Time-limited tolerances were originally published in the **Federal Register** of August 25, 1998 (63 FR 45176) (FRL–6021–6) and February 23, 2000 (65 FR 8872) (FRL–6489–8).

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0336 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 18, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the

public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0336, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established under section 408(l)(6) of the FFDCA in response to an exemption under FIFRA section 18, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal

Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 24, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.142 [Amended]

2. In § 180.142, in the table to paragraph (b), the entry for wild rice is amended by revising the expiration date to read ''12/31/05.''

§ 180.176 [Amended]

3. In § 180.176, in the table to paragraph (b), the entry for ginseng is amended by revising the expiration date to read ''12/31/04.''

§ 180.284 [Amended]

4. In § 180.284, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; clover, forage, clover, hay; timothy, forage; timothy, hay; and timothy, seed are amended by revising the expiration dates to read ''12/31/05.''

§ 180.438 [Amended]

5. In § 180.438, in the table to paragraph (b),the entries for barley, bran; barley, grain; barley, hay; and barley, straw are amended by revising the expiration dates to read ''12/31/05.''

§ 180.442 [Amended]

6. In § 180.442, in the table to paragraph (b), the entries for citrus, dried pulp; and citrus, oil are amended by revising the expiration dates to read ''12/31/04.''

§ 180.482 [Amended]

7. In § 180.482, in the table to paragraph (b), the entry for sweet potato, roots is amended by revising the expiration date to read ''12/31/05.''

§ 180.495 [Amended]

8. In § 180.495, in the table to paragraph (b), the entries for alfalfa, forage; alfalfa, hay; cattle, fat; cattle, meat byproducts; cattle, meat; egg; goat, fat; goat, meat byproducts; goat, meat; grass, forage; grass, hay; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; peanut, hay; poultry, fat; sheep, fat; sheep, meat byproducts; and sheep, meat are amended by revising the expiration date to read ''12/31/05'' and the entry for ''all commodities in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established'' is amended by revising the expiration date to read ''12/31/06.''

§ 180.498 [Amended]

9. In § 180.498, in the table to paragraph (b), the entries for horseradish, roots; sugarcane; and sunflower are amended by revising the expiration date to read ''12/31/05.''

§ 180.527 [Amended]

10. In § 180.527, in the table to paragraph (b), the entries for cattle, fat; cattle, kidney; cattle, meat; cattle, meat byproducts; goat, fat; goat, kidney; goat, meat; goat, meat byproducts; hog, fat; hog, kidney; hog, meat; hog, meat byproducts; horse, fat; horse, kidney; horse, meat; horse, meat byproducts; sheep, fat; sheep, kidney; sheep, meat; sheep, meat byproducts; wheat, forage; wheat, grain; wheat, hay; and wheat, straw are amended by revising the expiration date to read ''6/30/05.''

§ 180.553 [Amended]

12. In § 180.553, in the table to paragraph (b), the entry for pear is amended by revising the expiration date to read ''12/31/04.''

§ 180.1020 [Amended]

13. In § 180.1020, in the table to paragraph (b), the entry for wheat is amended by revising the expiration date to read ''12/31/04.''

[FR Doc. 03–969 Filed 1–15–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7438–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the ATSF Clovis, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the ATSF Clovis, Superfund Site (Site), located in Clovis, New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New Mexico, through the New Mexico Environment Department because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective March 17, 2003 unless EPA receives significant adverse or critical comments by February 18, 2003. If adverse comments are received, EPA will publish timely withdrawal of the direct final deletion in the **Federal Register** informing the pubic that the deletion will not take effect.

ADDRESSES: Comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX, 75202–2733, (214) 665–8157

or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas, 75202–2733, (214) 665–6427, Monday through Friday, 7:30 a.m. to 4:30 p.m; New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, Monday through Friday, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Oral comments will also be received through this date and should be directed to: Ms. Petra Sanchez, Remedial Project Manager, (6SF–LT), *sanchez.petra @epa.gov,* U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6686 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 6 is publishing this direct final notice of deletion of the ATSF Clovis, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in the § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the ATSF Clovis, Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State of New Mexico on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of New Mexico concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location

The ATSF Clovis Superfund Site is locally known as the Santa Fe Lake. The affected site is a natural playa lake originally owned by Atchison, Topeka and Santa Fe Railway Company (AT&SF). As a result of a merger, Burlington Northern Santa Fe Railway Company (BNSF) now owns and operates the site and is the potentially responsible party (PRP). The ATSF Clovis site is approximately 140 acres in size and is located approximately one mile south of the BNSF railyard in Clovis, Curry County, New Mexico.

Site History

The playa lake is approximately 40 acres in size and is located near the center of the site. Surrounding land use is primarily agricultural in nature, with a small residential area located to the east of the site. Over the years, storm water run-off and wastewater discharge from the railyard was directed to the

lake. Wastewater generating sources at the railyard have included hopper car washing operations, boiler blow downs, sanitary sewers, and the oil/water separators at the diesel fueling racks. Although the railyard was constructed in the early 1900's, the majority of the discharge to the lake occurred between 1962 and 1982. Investigations of the lake water and underlying sediments were performed from 1979 to 1982 by EPA and AT&SF. In November 1981, the site was proposed for the National Priorities List (NPL). In September 1983, the site was listed on the NPL as ''ATSF (Clovis)'' with a Hazard Ranking System score of 33.62.

Remedial Investigation and Feasibility Study (RI/FS)

A Remedial Investigation (RI) of the site was conducted in 1987 and 1988 and included analyses of soil, sediment, lake water and ground water samples. Four wells were installed surrounding the lake for monitoring the ground water in the immediate vicinity of the lake. Additional samples were collected from water supply wells in the area for statistical comparison to the sample collected from the on-site wells.

Soil, sediment, lake water, and ground water samples were analyzed for the parameters listed in the Administrative Order on Consent (Consent Order) issued in 1983. The RI report was finalized in August 1988. The RI listed the parameters of potential concern (those compounds present above background values), as follows:

Soils: Barium; Boron; Chloride; Hydrocarbons; Phenolics; Sulfate;

Sediments: Boron; Chromium; Hydrocarbons; Lead; Phenolics; Total Organic Carbon;

Lake Water: Arsenic; Boron; Cadmium; Chromium; Fluoride; Lead; Phenolics; Total Dissolved Solids; Total Organic Carbon

Ground Water: Calcium; Chloride; Fluoride; Magnesium; Sodium; Sulfate; Total Dissolved Solids; Total Organic Carbon; Total Alkalinity; Bicarbonate; Conductivity.

Background values were determined through collection and analysis of ground water samples from area wells, lake water samples from area playa lakes and soil samples from unaffected areas at the site. A comparison of analytical results from the various samples collected at the site to the background analytical results was presented in the RI.

The range of concentrations of chromium and hydrocarbons in samples collected for the RI were as follows:

Media	Total chromium	Leachable chromium	Hydrocarbons
Soils, Sediments, Lake Water	5.1 to 15 mg/kg, 35 to 150 mg/kg, 0.012 to 0.059 mg/L.	<0.009 to 0.042 mg/L, 0.028 to 0.043 mg/L, not analyzed.	<5 to 3,300 mg/kg, 4,700 to 35,000 mg/kg, <0.2 mg/L.

Subsequent sampling of soils and sediments was performed to speciate the chromium and hydrocarbons. The analytical results of the subsequent sampling were used to refine the health risk assessment, which confirmed that the only potential health risk pathway was through inhalation of wind-blown dust. These results were presented in an addendum to the RI report dated September 1988.

Additional ground water sampling occurred following submittal of the RI report, at the request of the New Mexico Environmental Improvement Division (NMEID). The results of the additional sampling indicated that several monitored parameters were statistically higher in the on-site wells when compared to the background wells. However, none of the parameters were found to present a health risk. Therefore, it was determined that ground water remediation was not required. These results were presented in a second addendum to the RI report dated November 1988.

A Feasibility Study (FS) was conducted in conjunction with the RI in July 1988. The remedial alternatives focused on remediation of soils and sediments to remove the potential health risk through inhalation of wind-blown dust. Because any action involving the lake bottom sediments would require prior removal of water from the lake, management and remediation of the lake water was also a component of the remedial alternatives addressed in the FS. Since the addendums to the RI did not change any conclusions drawn in the RI and did not add any contaminants of concern to the remedial action required, no revision to the FS was required.

Characterization of Risk

An analysis of health and environmental effects was performed as part of the RI. This analysis evaluated each potential parameter of concern for health and environmental effects. It was determined that the following parameters had the potential to pose a health risk:

Soils: Barium; Hydrocarbons; Phenolics;

Sediments: Chromium; Hydrocarbons; Lead; Phenolics

Lake Water: Arsenic; Cadmium; Chromium; Lead; Phenolics;

None of the parameters detected in ground water were determined to pose a risk to human health and thus ground water was eliminated as a possible human exposure pathway. An evaluation of the risk to human health through the remaining exposure pathways was conducted for those parameters that had a potential to pose a health risk. The evaluation indicated that the only constituents found in the lake water, lake bottom sediments, and surrounding soils that had a potential health risk were chromium and hydrocarbons through inhalation of wind-blown dust.

Record of Decision Findings

On September 23, 1988, the Regional Administrator approved a Record of Decision (ROD), which summarized the findings of the RI and FS and stated what the selected remedial action included. The ROD identified the major concern for this site was the potential threat to the ground water. The ROD further stated that the results of the RI data were reviewed and EPA determined that the lake did not pose a current threat to the City water supply, but may pose a future threat if the source of contamination is not eliminated. An additional concern was stated about reduction in the water level in the lake, resulting in an increased risk from inhalation of dust produced from exposed sediments. Therefore, the following elements were selected for remedial action:

- Lake Water—Pumping, Evaporation and Disposal of Residue;
- Sediments—Dredge, On-site Biodegradation, Cap Land Treatment Area and Revegetation of Dredged Areas; and,
- Soil—In-situ Biodegradation and Revegetation.

The selected remedy resulted in the removal of the lake water (through evaporation), the removal or reduction of hydrocarbons (through biodegradation and landfarming), and isolation of metals (through placement in a capped treatment area). Thus, the selected remedy addressed both objectives (removal of future threat to

ground water and removal of exposure via inhalation of wind-blown dust). Criteria to evaluate the effectiveness of the selected remedy were developed subsequent to the ROD.

Response Actions

The selected remedy was implemented through use of a phased approach. The remedy included biodegradation of hydrocarbons through landfarming to treat the soil and sediments. A pilot study was conducted during the summer of 1991 to determine the parameters required to produce maximum degradation of contaminants. Because the primary contaminant of concern was petroleum hydrocarbons, biodegradation through landfarming was known to be effective. The focus of the pilot study was to determine the optimum mixture of water, air, nutrients, and microorganisms. The results of the pilot study indicated that there was no significant increase in biodegradation through the addition of commercially developed microorganisms and that the microorganisms present at the site were sufficient to produce effective removal of contaminants.

The biodegradation of soils and sediments began in June 1992 and continued until October 1999. The volume of lake bottom sediments treated was 57,245 cubic yards and the volume of soils treated was 125,235 cubic yards. All of the sediments were treated and placed in the On-site Storage Facility (OSF). Of the soil treated, 86,515 cubic yards met the cleanup criteria and remained in place while 38,720 cubic yards met the stabilization criteria (which is above the cleanup criteria) and was placed in the OSF for final storage. The design included the use of a dike and moat system to prevent surface water run-on into the lake basin area to allow for evaporation of the lake water and prevent surface water run-on to the treatment areas. The remedy design also incorporated the use of a spray evaporation system. The purpose of the system was to collect lake water and run-off from the treatment irrigation system and to route that water through fine mist spray nozzles to enhance evaporation.

The ROD stated that the lake water would be sprayed over the 26-acre beach area for evaporation. During the final remedial design, it was determined that evaporation would be more effective through a evaporation system that allow for continued management of storm water and irrigation water run-off throughout the bioremediation phase. Three treatment areas, divided into eleven treatment sections, were designated in order to optimize and track treatment of contaminated materials. Each beach treatment area was approximately 2.25 acres in size. To provide adequate moisture for treatment within each of the treatment sections, three separate irrigation systems were designed and installed. In addition, the irrigation system for bioremediation, also provided adequate moisture for purposes of dust control.

On-site Storage Facility—The OSF was designed to hold all treated sediments and any treated soils that stabilized prior to meeting the cleanup criteria. The Land Treatment Area described in the ROD was refined and referred to as the OSF. The primary differences between the OSF and the Land Treatment Area described in the ROD are:

- The impermeable layer of the cap was changed to high-density polyethylene (HDPE) rather than poly-vinyl chloride (PVC) due to its better durability and applicability to the site conditions.
- The depth of the excavated floor of the OSF and the height of the containment dikes were expanded beyond those of the Land Treatment Area but did not significantly change the purpose or effectiveness of the OSF. The modification incorporated a refined estimate of the volume of sediments present in the lake bottom.

Additionally, the development of a cleanup standard for the site allowed in-situ treatment of some soils. Treated soils that met the cleanup standard remained in place within the former lake basin and beach areas.

The volume of the OSF was calculated to hold all of the treated sediments and any treated soils that did not meet the cleanup criteria. An area approximately 5 acres in size was excavated to 5 feet below grade at a slope of approximately 2 percent. Following treatment and placement of all materials to be held in the OSF, the design required the OSF to be capped. The cap was designed to consist of an HDPE liner to provide an impermeable layer, with an overlying geotextile to provide for drainage of infiltrated liquids away from the liner, followed by a 12-inch soil protective layer, covered by 6 inches of topsoil. The design required vegetation of the topsoil layer with native grasses. Construction of the OSF, with the exception of the cap, was completed in May 1993.

Sediments were treated within the OSF beginning in September 1993, following placement of a layer of treated soils to provide a ''bioseed'' of microbial organisms to enhance treatment. Treated sediments remained in place within the OSF, with subsequent layers of sediments applied for additional treatment. Throughout the treatment phase, treated soils that met the stabilization criteria were placed in the OSF. Treatment of all sediments and soils was completed in October 1999. As stated previously, a total of 57,245 cubic yards of treated sediment and 38,720 cubic yards of treated soil that met the stabilization criteria is stored in the OSF.

Closure of the OSF, as well as the rest of the site, began in June 2000. Any soils that met the stabilization criteria that had not already been placed in the OSF were moved to the OSF at this time. As per the design for site restoration, construction debris removed from the treatment areas was buried within the OSF. A layer of clean soil was placed on top of the treated material and buried debris to provide a stable base for the cap. The OSF was capped as described above and construction of the cap was completed in October 2000.

Cleanup Standards

- Definition of the cleanup level of 1,000 mg/kg total recoverable petroleum hydrocarbons (TRPH);
- Definition of a stabilization criteria (less than 10 percent degradation in any two of three consecutive confirmation sampling events);
- Contaminated soils were defined as materials that are firm and coarse-grained, containing TRPH above 1,000 mg/kg;
- Sediments were defined as materials that are soft and fine-grained, located within the 4212 elevation contour present at the start of treatment;
- Layout of treatment areas within the original beach area and, later, within the original lake basin;
- Definition of the active biodegradation season as March 1 through October 31 of each treatment year;
- Method of biodegradation (aeration of soil through weekly use of disc or till-oll, maintaining moisture content between 15 and 25 percent, maintaining pH near neutral, and maintaining proper nutrient levels);
- Construction of the OSF to store all treated sediments and soils that were treated, but contained TRPH above 1,000 mg/kg (the OSF was a refinement of the Land Treatment Area discussed in the ROD);
- Addition of the option to treat sediments on top of previously treated soils, or in the OSF, rather than only in the ''treatment area'' referenced in the ROD, with a requirement that confirmation sampling of the underlying previously treated soils be conducted

following treatment of the sediments; and

• Specific sampling procedures for tracking of biodegradation.

• The remedial action to address chromium (trivalent chromium) was to isolate the sediments within the OSF.

• Confirmatory sampling was performed throughout the remediation process.

Restoration of the Site—The design included removal of the upper portion of the run-on control dike, removal of the spray evaporation system, removal of the irrigation systems, and grading of the former lake basin area to drain. The ROD stated that the moat would be filled with the material from the run-on control dike. However, the U.S. Fish and Wildlife Service (USFWS) reviewed the design for restoration as the lead trustee for a Natural Resources Damages claim filed for this site. During the review process, the USFWS requested that the moat remain in place to intercept rainfall run-off from the surrounding watershed and minimize the volume of water ponding within the former lake basin. This request was incorporated into the final restoration design, along with covering the lowest portion of the basin with approximately 6 inches of clean soil. These alterations assured the USFWS that the potential for exposure of wildlife to low-level contaminants (below the cleanup standard) would be minimized.

BNSF and the trustees reached oral agreement on the basic terms of the Natural Resource Damages Claim, including cash settlement. The parties have exchanged drafts of the settlement documents and expect to agree upon the settlement documents, including a Consent Decree, during 2002. The Consent Decree must then be entered by the U.S. District Court for the District of New Mexico.

The restoration design included vegetation of disturbed areas with native grasses. A center-point irrigation system was originally designed to provide maximum coverage of the former lake basin, dike and moat areas during bioremediation treatment, but is currently being used for site restoration. The restoration design included a planting schedule and provisions to re-seed if the vegetation was not sufficiently established following the initial planting.

Monitoring Effectiveness and Compliance

The monitoring program for the bioremediation phase of the remedial action included treatment monitoring and compliance monitoring. The treatment monitoring portion of the program included:

• Analyzing soil or sediment samples from each treatment area for hydrocarbons to determine the progress of bioremediation within that area;

• Analyzing soil or sediment samples from each treatment area for nutrients to determine if nutrient amendments (addition of fertilizer) was required; and

• Measurements of soil moisture in each treatment area to determine if irrigation was required.

The compliance monitoring portion of the program included:

• Analyzing soil core samples collected from 5 feet below the beach and lake treatment areas for all contaminants of concern to determine if migration of contaminants was occurring as a result of treatment processes; and

• Analyzing ground water samples collected from on-site wells to determine if any impact on ground water occurred as a result of treatment processes.

The analysis of health and environmental effects performed as part of the RI showed that the only contaminants of concern were hydrocarbons and chromium. However, the compliance monitoring program included additional contaminants that might potentially pose a health risk. The contaminants included in the compliance monitoring program were: Arsenic; Barium; Cadmium; Chromium; Lead; Hydrocarbons; and Phenolics.

Chloride was included in the monitoring program at the request of the New Mexico Environment Department because it was present above the secondary drinking water standard. Other parameters listed in the Consent Order were boron, fluoride, sulfate, total dissolved solids, and total organic carbon. These parameters were demonstrated not to be of concern during the RI/FS phase and were not included in the monitoring program.

The ROD required that ground water monitoring would continue after the completion of treatment.

Operation and Maintenance

BNSF will perform O&M activities at the site, including routine inspections, maintenance of the site fence, maintenance of vegetation, maintenance of the OSF cap, and ground water monitoring with EPA oversight.

To fully assess the impermeability of the OSF cap, two additional monitoring wells will be installed this fall: one immediately up-gradient of the OSF and one immediately down-gradient of the OSF. These wells will be sampled on the same schedule as the other site wells for the same parameters.

BNSF will limit access to the OSF at all times. BNSF will institute a covenant to prevent installation of water supply wells or any construction activities within the limits of the OSF. The covenant is not a requirement of the ROD and is a voluntary agreement between BNSF and EPA as part of the Operation and Maintenance Plan for the site.

Five-Year Review

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B-P, (''Comprehensive Five-Year Review Guidance,'' June 2001), a five-year review will be conducted at this site. The directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite will not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy. The first five-year review was completed on September 30, 1998. The next Five-Year Review will be completed no later than September 30, 2003.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of New Mexico, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective March 17, 2003 unless EPA receives adverse comments by February 18, 2003. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this

direct final notice of deletion before the effective date of the deletion and it will not take effect . The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 23, 2002.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under New Mexico by removing the site name ''AT&SF (Clovis)'' and the city ''Clovis.''

[FR Doc. 03–733 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 02–3565]

Petition for Declaratory Ruling Regarding the Applicability of E911 Phase II Requirements for Wireless Handsets to In-Vehicle, Embedded Telematics Units, Comments Invited

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for declaratory ruling.

SUMMARY: The Commission seeks comment on a petition for ruling from OnStar Corporation, seeking clarification that embedded telematics units are not ''handsets'' as that term is used in the Commission's orders in this proceeding, and that such units are not included in calculating the wireless licensee's enhanced 911 Phase II handset activation compliance requirements. The action is taken to establish a record on which to base a response to OnStar Corporation's request.

DATES: Comments are due on or before January 24, 2003, and reply comments are due on or before February 7, 2003.

FOR FURTHER INFORMATION CONTACT: David Siehl, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. On December 3, 2002, the OnStar Corporations (OnStar) filed a Petition for Ruling (Declaratory Ruling Petition), seeking clarification that (1) embedded telematics units are not ''handsets'' as that term is used in the Commission's orders in CC Docket No. 94–102, and (2) such units are not included in calculating the wireless licensee's E911 Phase II handset activation compliance requirements.

2. In the Wireless E911 Third Report and Order, the Commission adopted rules that imposed requirements on wireless carriers who employ a Phase II location technology requiring new, modified or upgraded handsets (such as Global Positioning Systems (GPS)-based technologies). (64 FR 60126, November 4, 1999.) These requirements included deployment schedules, penetration rates, interoperability criteria, and standards for Phase II location accuracy and reliability. The Wireless E911 Third Report and Order also amended § 20.3 of the Commission's rules to define location-capable handsets as ''portable or mobile phones that contain special location-determining hardware and/or software, which is used by a licensee to locate 911 calls.''

3. OnStar asserts that embedded telematics devices should not be treated as handsets and, therefore, not be subject to the Commission's E911 Phase II requirements at this time. OnStar contends that the assumptions concerning conventional handset technology on which the Commission's E911 Phase II decisions are based are not applicable to embedded telematics devices. OnStar asserts that embedded telematics developed around the use of autonomous (stand-alone) GPS while handset based Phase II technology has developed around a network assisted Global Positioning System/Advanced Forward Link Trilateration (AGPS/AFLT) handset solution.

4. In addition, OnStar contends that embedded telematics units should not be treated as handsets in calculating compliance with the underlying wireless licensee's handset activation requirements. OnStar submits that although handsets have relatively short lifecycles and are independent units routinely exchanged, retrofitting existing embedded analog telematics units with digital units is much more costly given technology and accessibility factors. OnStar contends that wireless carriers serving large populations of telematics units will lose the benefit of the five percent margin for handset compliance for E911 Phase II by December 31, 2005, with respect to ''true handsets,'' and may even exceed the five percent margin with telematics units alone.

5. We seek comment on the issues raised by the Declaratory Ruling Petition. Interested parties may file comments to the Petition on or before January 24, 2003. Reply comments are due February 7, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

6. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved with regard to the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

7. 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. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties 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. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

8. Parties who choose to file by paper must file an original and four copies of each filing. 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. In addition, a diskette copy should be sent to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

9. The full text of the Declaratory Ruling Petition, and responsive comments will be 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. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*. This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro*. For further information concerning this proceeding, contact David Siehl or Patrick Forster, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310 (voice) or (202) 418–1169 (TTY).

Federal Communications Commission.

Kathleen O'Brien-Ham,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 03–947 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 68, No. 11

Thursday, January 16, 2003

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (Commission) is extending the comment period for the advance notice of proposed rulemaking (ANPR) with respect to providing additional exemptions from registration as a commodity pool operator (CPO) or commodity trading advisor (CTA). The new deadline for submitting public comments is January 23, 2003.

DATES: Written comments must be received on or before January 23, 2003.

ADDRESSES: Comments on the advance notice of proposed rulemaking should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions.''

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5536, or (202) 418–5547, respectively; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION: On November 13, 2002, the Commission published the ANPR,[1] which sought comment on two specific proposals that the Commission had received to provide additional exemption from registration as a CPO, and on a proposal that would provide additional exemption from registration as a CTA. The ANPR also provided temporary CPO and CTA registration no-action relief, provided certain specified criteria were met. The ANPR established a 60-day period for submitting public comment, ending January 13, 2003.

By letter dated January 9, 2003, a membership organization for futures and securities investment professionals requested an extension of the ANPR's comment period until January 23, 2003, so that additional parties who could not meet the original January 13 deadline could submit comment letters. The request claims that granting the extension would provide the Commission with additional public comments with which to proceed with the contemplated rulemaking. This, in turn, would facilitate a comprehensive treatment of related issues.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to extend the comment period for the ANPR for an additional ten days to January 23, 2003.

Issued in Washington, DC, on January 10, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–894 Filed 1–15–03; 8:45 am]

BILLING CODE 6351–01–M

[1] 67 FR 68785.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 80N–0280]

RIN 0910–AA01

Over-the-Counter Vaginal Contraceptive Drug Products Containing Nonoxynol 9; Required Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new labeling warning statements for all over-the-counter (OTC) vaginal contraceptive drug products containing nonoxynol 9. These warning statements will advise consumers that vaginal contraceptives containing nonoxynol 9 do not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against getting other sexually transmitted diseases (STDs). The warnings will also advise consumers that frequent use of vaginal contraceptives containing nonoxynol 9 can increase vaginal irritation. Increased vaginal irritation from use of nonoxynol 9 may increase the possibility of transmission of the AIDS virus (HIV) and STDs from infected partners. The agency is requesting public comment on the proposed labeling statements and how such information could best be presented in labeling. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by April 16, 2003. Submit written or electronic comments on the agency's economic impact determination by April 16, 2003. Please see section IX of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Arlene Solbeck, Center for Drug

Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the advance notice of proposed rulemaking (ANPRM) for OTC vaginal contraceptive drug products (45 FR 82014, December 12, 1980), the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel) placed nonoxynol 9 in category I (safe and effective). However, the Panel concluded that the contraceptive effectiveness of active ingredients cannot be considered separately from the vehicle and recommended that FDA require in vitro testing to determine the spermicidal effectiveness of each final formulation before marketing. In the preamble to the Panel's report (45 FR 82014), the agency stated that in vitro testing alone is an inadequate measure of a vaginal contraceptive product's effectiveness in humans. The agency explained that clinical trials of each product or final formulation may be the only certain predictor of its effectiveness in humans. The agency added that if clinical trials are necessary, manufacturers may be required to submit a new drug application (NDA) or supplement an existing NDA.

In the notice of proposed rulemaking (NPRM) for OTC vaginal contraceptive drug products (60 FR 6892, February 3, 1995), the agency proposed that manufacturers of OTC vaginal contraceptive drug products obtain approved NDAs for marketing of their products. The agency proposed this action because effectiveness of these products is dependent upon the final formulation. Therefore, the agency proposed that each product be tested in appropriate clinical trials under actual conditions of use.

In response to the NPRM, the agency is aware of ongoing clinical trials of vaginal contraceptives containing nonoxynol 9 (Refs. 1, 2, and 3). Pending the completion and analysis of these clinical trials, the agency is allowing the continued marketing of these products under the ongoing OTC drug review. These issues were discussed at the November 22, 1996, Nonprescription Drugs Advisory Committee (NDAC) meeting. NDAC concurred with the agency to allow interim marketing of nonoxynol 9 containing vaginal spermicides pending results from the proposed trials (Ref. 1). However, based on the studies discussed in section I of this document, the agency believes that vaginal contraceptive drug products containing nonoxynol 9 need to be labeled to inform users of these products that nonoxynol 9 does not prevent the transmission of the AIDS virus (HIV) and other STDs. Furthermore, users should be informed that frequent use of nonoxynol 9 can cause vaginal irritation and possibly increase the risk of becoming infected with the AIDS virus (HIV) and other STDs from infected partners. This rulemaking addresses certain safety concerns with the use of nonoxynol 9.

Nonoxynol 9 is a nonionic surfactant that works as a vaginal contraceptive by damaging the cell membrane of sperm. It has been shown in certain in vitro studies to damage the cell wall of certain STD pathogens and to have activity against certain bacterial and viral STD pathogens, including HIV. However, based on the in vivo data described in section I of this document, the agency believes that this same cell membrane damaging effect can damage the vaginal and cervical epithelium (cell lining). Thus, nonoxynol 9 can have a negative impact on the vaginal lining and may increase the user's risk of getting STD/HIV and other genital infections. Irritation includes the range of physical findings from mild inflammation to epithelial disruption (damage to cells lining the vagina or cervix). Vaginal irritation may be symptomatic (with symptoms such as itching and burning) to asymptomatic (no symptoms).

Because nonoxynol 9 kills the AIDS virus (HIV) and other STD pathogens in vitro, it has been suggested, over the years, that the drug might help prevent or reduce the risk of transmission of the AIDS virus and other STDs in humans. Information currently available to the general public creates the misperception that nonoxynol 9 might help decrease the risk of becoming infected with the AIDS virus and other STDs (Refs. 4 through 7). Thus, the agency believes that this proposed rule is necessary to provide a clear, consistent message that nonoxynol 9 is not only ineffective in preventing HIV transmission, but that it could facilitate transmission of the disease.

At the International AIDS Conference (July 9–14, 2000), researchers from the Joint United Nations Programme on AIDS (UNAIDS) presented the preliminary findings of a 4-year study conducted in a very high-risk population of 991 HIV negative female sex workers in Africa and Thailand to determine the effectiveness of a nonoxynol 9 gel (versus placebo) in preventing the transmission of HIV and STDs (Ref. 8). The test product contained 52.5 milligrams (mg) of nonoxynol 9 and a polymer with bioadhesive properties. The placebo contained only the polymer. Participants could be enrolled in the study if they did not use intravenous drugs or intravaginal spermicides other than the study drug. The participants reported an average of 3.6 partners per day and about 70 coital acts per month during the study. Condom use was encouraged. The preliminary study findings showed that women who used nonoxynol 9 gel had a higher incidence of new HIV infections (59) than those who used the placebo gel (41). Further, the more frequently women used only the nonoxynol 9 gel (without a condom to protect themselves), the higher their risk of becoming infected. Researchers also found that women who used nonoxynol 9 had more vaginal lesions, which might have facilitated the HIV transmission. Based on these preliminary study findings, on August 4, 2000, the Centers for Disease Control and Prevention (CDC) issued a letter (Ref. 9) stating ''given that N-9 [nonoxynol 9] has now been proven ineffective against HIV transmission, the possibility of risk, with no benefit, indicates that N-9 should not be recommended as an effective means of HIV prevention.'' The final results of this study were recently published (Ref. 10) and substantiate the preliminary findings. The investigators stated that their data support the following conclusions: (1) Nonoxynol 9 increased the risk of HIV infection compared to placebo; (2) nonoxynol 9 had an adverse effect on vaginal epithelium when used frequently, thus increasing women's susceptibility to HIV; and (3) at low frequency use, nonoxynol 9 had no effect, either positive or negative, on HIV infection.

Earlier studies (Refs. 11 through 14) suggested that nonoxynol 9 vaginal spermicides may reduce gonococcal and chlamydial cervical infection and may even reduce the incidence of HIV infection. However, most of these studies did not assess the risk of acquiring HIV and the investigators stressed the need for more definitive randomized clinical trials. More recently, the International AIDS Conference report and the CDC letter (Refs. 8 and 9) have raised concerns that frequent use of nonoxynol 9 can increase vaginal and genital irritation and increase the risk of HIV transmission. Based on these safety concerns, the agency has reviewed studies on nonoxynol 9 conducted in Africa, Thailand, South America, Belgium, the Netherlands, and the United States that address the toxicity of

the vaginal use of nonoxynol 9 in relation to dose, frequency of use, and the risk of becoming infected with STD/HIV.

Amaral et al. (Ref. 15) studied nonoxynol 9 in 18 women who were randomly and blindly assigned to an acid-buffering bioadhesive gel containing either 0 percent, 2.5 percent (125 mg), or 5 percent (250 mg) nonoxynol 9. Exclusion factors included a history of STD in the last 12 months, using any vaginal product within 7 days before admission to the study, or a known allergy to nonoxynol 9. Subjects were asked to abstain from sexual intercourse 48 hours before admission and during the study and not to use any other intravaginal products during the study. One dose of the assigned gel was administered vaginally daily for 6 days. No irritation or symptoms were reported by users of the acid-buffering bioadhesive gel without nonoxynol 9. Erythema in the vulva, cervix, and vagina was noted in all subjects using the acid-buffering vehicle containing nonoxynol 9 (2.5 percent and 5 percent). No signs of de-epithelialization or ulcers were seen in any of the subjects. However, the authors concluded that the acid-buffering vehicle did not protect the cervix, vagina, and vulva from the irritation caused by nonoxynol 9.

Stafford et al. (Ref. 16) studied the effects of daily use for 7 days of a nonoxynol 9 (100 mg) containing gel versus placebo gel in 40 women who were not currently using any intravaginal products, did not have a current STD, had no history of genital ulcerative disease, and were not known to be HIV seropositive. The subjects were asked to avoid sexual intercourse during the treatment period. The nonoxynol 9 group had increased symptoms of irritation. Colposcopic (use of a magnifying instrument) and histologic (microscopic) examination of vaginal and cervical tissue showed evidence of inflammation in the genital tract. Also, a temporary reduction in the number of lactobacilli (bacteria found in the normal vaginal flora that appear to offer protective effects against the overgrowth of certain organisms that cause infection) was seen more frequently in the women using the nonoxynol 9 gel.

Rosenstein et al. (Ref. 17) studied the effect on normal vaginal flora of three intravaginal microbicides (dextrin sulfate, nonoxynol 9, or docusate sodium, in a gel dosage form) in three separate placebo-controlled studies. In these studies, women using dextrin sulfate gel were asked to insert 5 milliliters of the gel intravaginally for 4 consecutive nights and women using nonoxynol 9 gel and docusate sodium gel were asked to insert the respective gels for 7 consecutive nights. A reduction of lactobacilli occurred in 56 percent of women who used nonoxynol 9 and 63 percent of women who used docusate sodium. Women using nonoxynol 9 were also significantly more likely to become colonized abnormally than those using placebo. It appeared that women were more likely to have their vaginal flora return to normal after nonoxynol 9 treatment if the lactobacilli had not been depleted. The authors expressed concern that continuous use of nonoxynol 9 would cause the vaginal flora to be altered persistently and, together with an increased risk of vaginal mucosal inflammation, could induce susceptibility to urinary and gynecological infection. The authors noted that it was essential that potential microbicides be examined for activity against normal vaginal flora.

In a single-blind crossover study of 33 women, Poindexter et al. (Ref. 18) compared three OTC vaginal spermicide formulations containing nonoxynol 9: A polycarbophil-based gel with 50 mg of nonoxynol 9, a cellulose-based gel with 100 mg of nonoxynol 9, and a polyurethane sponge with 1,000 mg of nonoxynol 9. The subjects refrained from coitus for 3 days prior to and during the 7 consecutive days of the treatment period. There was a 21-day washout period between each treatment. New gynecological abnormalities occurred in all three groups using nonoxynol 9. Abnormalities observed included redness, white epithelium, ulceration, mosaic petechiae, and squamous metaplasia. Redness was the most common abnormality. Ulceration was noted in 2 of the 31 users of the nonoxynol 9 cellulose-based gel formulation. The authors noted that the abnormal effects of the vaginal spermicides were more profound on the cervical mucosa than the vulvo-vaginal mucosa.

Coggins et al. (Ref. 19) studied the safety of three vaginal spermicides containing nonoxynol 9: Film (70 mg), suppositories (150 mg), and gel (200 mg). Each woman used each product for a 4-week period and reported to the study center every 2 weeks. The authors did not indicate if there was a washout period between treatments. To avoid the potential for irritation from frequent use of nonoxynol 9 containing products, only women whose average coital frequency was one or fewer acts of intercourse per day were eligible to be enrolled. In this study, no ulcers or genital lesions were detected and clinical signs of irritation were fairly uncommon and not frequent when compared to baseline. The authors concluded that these products are safe for low frequency use.

Watts et al. (Ref. 20) evaluated the effects of nonoxynol 9 on the vaginal flora and epithelium of 48 women (16 in each group) after application of a single dose and in the absence of sexual intercourse. Quantitative vaginal cultures and colposcopy were done at baseline and at 0.5, 4, 24, 48, and 72 hours after insertion of one of three commercially available vaginal spermicides containing nonoxynol 9 (200-mg gel, 52.5-mg gel, or 70-mg film). Symptoms and colposcopic abnormalities were rare after use of nonoxynol 9. The proportion of women with *Escherichia coli* (*E. coli*) increased with the gel containing 200 mg of nonoxynol 9 per dose and the concentration of *E. coli* increased with all of the test products. The authors noted that the transient decreased concentration of lactobacilli and increased levels of *E. coli* seen with all three test products are of concern and likely are intensified and perpetuated with repeated use of nonoxynol 9 as a microbicide. The authors suggested that adverse effects may be enhanced with frequent or chronic use and that chronic use may cause changes in the vaginal flora that may lead to urinary tract infection and other resultant complications.

Niruthisard et al. (Ref. 21) conducted a double-blind, local toxicity study on the effects of frequent use of nonoxynol 9 in 20 women who were not considered to be at high risk for STDs. Fifteen women used 150-mg nonoxynol 9 containing suppositories and 5 women used placebos (lubricating suppositories) inserted vaginally hourly for 4 consecutive hours each day for 14 consecutive days. The study concluded that none of the women who used the placebo suppositories had abnormal physical findings. Six women who used the nonoxynol 9 suppositories had physical findings, including epithelial disruption and/or bleeding. In four women, the break in the cervical epithelium appeared to be the result of the sloughing of a thin layer of cells. One woman had bleeding and sloughing of her vaginal mucosa and another had a severe reaction on her cervix that was bleeding and edematous. All of these adverse events resolved within 1 week of stopping nonoxynol 9 use. The authors cautioned that this pilot study should be confirmed by other trials and that these findings may not be extrapolated to other situations of nonoxynol 9 use.

Roddy et al. (Ref. 22) followed up with a study in 175 women to evaluate effects of dosing on vaginal and cervical irritation using a vaginal suppository with 150 mg of nonoxynol 9 at various dosing frequencies for 2 weeks. The women agreed to refrain from sexual intercourse and douching during the study period. Clinical signs of genital irritation included erythema and epithelial disruption. Erythema in the vagina was the major clinical sign noted. Epithelial disruption was defined as a break in the epithelium lining of the vulva, vagina, or cervix. Women with vulvar irritation also had vaginal and cervical irritation. The symptoms that were attributed to genital irritation included dysuria, genital itching, and burning. The irritation from using nonoxynol 9 every other day was no different than using the placebo. Use of nonoxynol 9 once or twice a day increased the rate of epithelial disruption. Use of nonoxynol 9 four times a day increased the rate of epithelial disruption about five times that of the placebo. However, the authors noted that having symptoms was not predictive of clinical signs and women with obvious clinical signs did not always report symptoms. The authors stated that there is no conclusive evidence of a dose response, but the data suggest a stepwise increase in signs of irritation with an increasing number of doses per day.

Van Damme et al. (Ref. 23) conducted a multicenter, randomized, double-blind, controlled trial with three groups (52.5-mg nonoxynol 9 gel, placebo gel, and a no-treatment control), examining the use of a lower dose of nonoxynol 9 in 534 women at low risk of HIV infection. The subjects were healthy women with no evidence of STDs and no clinical or colposcopic abnormalities. The subjects were to apply the study products once daily at the same time each day for 14 days and were allowed to have sexual intercourse. Incidences of genital symptoms such as vaginal discharge, erythema, lesions, and petechial hemorrhage (the most frequent abnormality reported) were significantly greater in the group using the nonoxynol 9 gel than the other groups. Women in the group using the nonoxynol 9 gel were significantly more likely to develop a lesion than those in either the placebo or no-treatment group. The authors noted that the clinical significance is unclear with regard to the excess incidence of petechial hemorrhage in the nonoxynol 9 group and of other types of lesions that were not associated with epithelial disruption. The authors stated that, in theory, it is possible that any type of genital lesion may increase a woman's risk of becoming infected with HIV, especially if it serves as a focus for the recruitment of HIV-infectable inflammatory cells. However, they stated that whether this is of significance will need to be ascertained by large-scale intervention trials in populations at high risk of HIV infection.

The incidence of ulceration, abrasion, and STD or other genital infections was low for all three treatment groups. The authors suggested that these findings were the result of the once a day application of the nonoxynol 9 and that at this frequency of use the nonoxynol 9 gel can be considered safe. The authors also stated that having established the safety of a single application, it was important to evaluate the effects of multiple doses. They noted that a study, which was not cited, involving the application of the same nonoxynol 9 gel four times daily had recently been completed.

Kreiss et al. (Ref. 24) studied 138 HIV seronegative female sex workers at very high risk of HIV seroconversion who were randomly assigned to a nonoxynol 9 (1,000 mg) containing vaginal sponge or placebo (glycerin vaginal suppository containing mineral oil, subsequently a water-based vaginal cream was used). Subjects were instructed to insert a sponge before the first sex partner each day, replace the sponge after every two to three partners, and remove the sponge 6 hours after the last sex partner. All subjects were intensively counseled and urged to have each sexual partner use condoms. Women in the study used the sponge an average of 14 times per week. Women were asked to return for followup at monthly intervals or more frequently if needed. The duration range for followups was between 1 and 46 months. The mean (average) duration period of followup was 14 months for the nonoxynol 9 group and 17 months for the placebo group. Spermicide-attributed complaints, mostly vulvar irritation, burning, and ulceration, were reported in 47 percent of the nonoxynol 9 users and 7 percent of the placebo users. There was a higher seroconversion (i.e., testing showing conversion from HIV negative to HIV positive) in women using the nonoxynol 9 containing sponge than the placebo product. Because of concern regarding the adverse local effects of the nonoxynol 9 (1,000 mg) containing sponge, and its potential for increasing the risk of HIV transmission, rather than being protective, the study was prematurely terminated.

Martin et al. (Ref. 25) studied the use of a nonoxynol 9 gel (52.5 mg) in 52 HIV seronegative female sex workers. Subjects had to be free of STDs and any evidence of genital epithelial disruption, and had to report 100 percent compliance with condom use. Subjects were randomized to the nonoxynol 9 gel or to a placebo group and used one applicatorful per day. After a 14-day washout period, the subjects used the other treatment for 14 days. Subjects were evaluated by a questionnaire and physical examinations, including colposcopy. The authors concluded that daily application of the 52.5-mg nonoxynol 9 gel was safe, but they made no extrapolations to more frequent use. However, the authors acknowledged the shortness of the duration of use and that the power of this study to detect a small increase in epithelial toxicity might be limited.

Roddy et al. (Ref. 26) studied the use of a nonoxynol 9 containing film as a vaginal microbicide in 1,295 HIV-negative female sex workers. In a double-blind, placebo-controlled study, the subjects were instructed to have their male sexual partners use latex condoms and were randomly assigned to use either the nonoxynol 9 film or a placebo film. At monthly followup visits, the women were examined with a colposcope for genital lesions and were tested for gonorrhea, chlamydia, and HIV infection. Seventy-three percent of the women remained in the study for 12 months with a mean followup period of approximately 14 months. The authors concluded that the use of the nonoxynol 9 vaginal film did not reduce the rate of new HIV, gonorrhea, or chlamydia infection even in those that used latex condoms and who received treatment for STDs.

Van Damme et al. (Ref. 27) looked at more frequent use of the nonoxynol 9 (52.5 mg) gel among 320 HIV-seronegative female sex workers who did not have clinical STDs, genital ulcers, or abrasions, did not use illicit drugs, and participated in a 100 percent condom-use program. The study was designed as a randomized, placebo-controlled, triple-blind trial to assess the effect of nonoxynol 9 gel in the prevention of HIV/STD infection. Subjects were instructed to apply the test product or the placebo (gel vehicle without the nonoxynol 9) and to have their male sexual partners use a condom for every sex act. There were major differences in condom use between the study centers. The mean number of applicators of the daily gel use was 1.2 and 1.3, respectively, in the treatment and placebo groups. Colposcopy

examinations showed that vaginal irritation, such as ulcerations, abrasions (on the cervix and external genitalia), lesions, and erythema, was observed in both the treatment and the placebo groups. However, based on the number and incidences of colposcopic lesions per followup period of up to 12 weeks, the incidence of colposcopic lesions was low and there was no difference between the treatment groups. The authors reported that in both groups the chance of having a lesion increased with an increase in the mean daily use of the product. The authors concluded that multiple daily use of the nonoxynol 9 containing gel did not show an increase of local toxicity over the placebo gel.

Rustomjee et al. (Ref. 28) studied a vaginal contraceptive film containing 72 mg of nonoxynol 9 versus a glycerin placebo film in a randomized, double-blind, crossover trial. The 20 subjects were female sex workers, and HIV infection was not an exclusion criteria. Subjects used either the treatment film or placebo film for 1 month and, after a 1-month film-free washout period, used the other film for the last month. Condoms were provided. The differences in signs and symptoms of genital lesions from use of the nonoxynol 9 film and the placebo film did not reach statistical significance. However, the authors cautioned that the clinical findings of an increase in minor erythematous genital lesions in the nonoxynol 9 group, together with an increased HIV viral load associated with the presence of a minor genital lesion, is worrisome.

In summary, many of the studies (Refs. 8, 15 through 18, 20 through 24, and 28) suggest that nonoxynol 9 vaginal contraceptive formulations can increase the chances of vaginal and genital tract irritation, and cause disruption of the vaginal epithelium or the vaginal flora. Some studies (Refs. 8, 20, 22, and 23) suggest the risk of these adverse events can be increased by frequent and/or chronic use. One study (Ref. 25) concluded that once a day use was safe, but noted that the power to detect a small increase in epithelial toxicity may be limited by the short duration of use. Investigators in one study (Ref. 27) concluded that multiple daily use of nonoxynol 9 (52.5 mg) gel was safe, but in a previous study (Ref. 23) of nonoxynol 9 (52.5 mg) gel in women with low risk of HIV infection, the investigators concluded that women using nonoxynol 9 gel were significantly more likely to develop lesions than those in the placebo or no-treatment groups. The authors stated that large scale intervention trials were needed to determine if genital lesions increase the risk of acquiring HIV infection.

Several studies suggested a causal link between the frequency of use of nonoxynol 9, increased vaginal irritation, and the possibility that vaginal irritation (such as the disruption of the vaginal epithelium) may increase the risk of transmission of the AIDS virus (HIV) and other STDs. The preliminary findings of a study on nonoxynol 9 (52.5 mg) gel presented at the International AIDS Conference in July 2000 (Ref. 8) suggested that nonoxynol 9 does not prevent the transmission of HIV and other STDs and may facilitate the transmission of these pathogens. Another study (Ref. 26) concluded that the use of a nonoxynol 9 containing film did not reduce the rate of new HIV, gonorrhea, or chlamydia infection even when latex condoms were used. Other studies (Refs. 20, 24, and 28) also suggested that the adverse effects of nonoxynol 9 on the vaginal flora and epithelium may increase the risk of transmission of the AIDS virus (HIV), certain other STDs, and/or genital infections. The studies in high risk populations (sex workers) (Refs. 8, 24, 25, 27, and 28) suggested the possibility that the frequency of use of nonoxynol 9 can increase vaginal irritation and epithelium disruption. Such increased irritation may increase the risk of becoming infected with STDs, including the AIDS virus (HIV) from infected partners.

The CDC, on May 10, 2002, published a report containing a recommendation that women, particularly those at risk for HIV or STDs, be informed that nonoxynol 9 contraceptives do not protect against these infections (Ref. 29). The CDC report described the extent of nonoxynol 9 contraceptive use in women in 1999 and summarized recent publications on nonoxynol 9 and HIV/STDs. According to this report, most women in the United States with HIV become infected through sexual transmission. Thus, the report underscores the importance of alerting women about the safety concerns surrounding nonoxynol 9.

On June 28, 2002, the World Health Organization (WHO) issued revised public health guidelines for the use of nonoxynol 9 for HIV and STD prevention and for pregnancy prevention in populations at high risk for HIV (Ref. 30). The guidelines were based on a review of current clinical safety and effectiveness data on nonoxynol 9 (Ref. 31). The WHO guidelines advised that ''Spermicides containing nonoxynol 9 do not protect against HIV infection and may even increase the risk of HIV infection in women using these products frequently.'' The guidelines also advised women at high risk of HIV infection against using nonoxynol 9 spermicides for contraception.

Based on safety concerns, the agency considers it important to alert users of OTC vaginal contraceptives containing nonoxynol 9 that these products do not prevent transmission of the AIDS virus (HIV) and other STDs, and that frequent use of these products can increase vaginal irritation, which may increase the risk of getting certain STDs, including the AIDS virus (HIV) from infected partners. The agency also believes that product labeling should include a statement to encourage the use of condoms as a method to help reduce the risk of becoming infected with the AIDS virus (HIV) and other STDs.

FDA's proposal to require these warnings and other information does not require a finding that any or all of the OTC drug products that contain nonoxynol 9 actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings and other information repudiate the OTC drug monographs under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that these additional warnings and other information are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks, and reflects our conclusion that even a potential link between the use of nonoxynol 9 and serious adverse health consequences warrants this action (see CFR 330.10(a)).

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

In the NPRM (60 FR 6892 at 6901), the agency stated that consumers should be warned about possible allergic reactions such as burning and itching of the vagina and penis that may occur when using vaginal contraceptive drug products. The agency recommended that the following warning be included in the labeling: ''If you or your partner develops irritation, such as burning or itching in the genital area, stop using this product. If irritation continues,

contact your physician.'' At the November 22, 1996, NDAC meeting (Ref. 1), the committee also noted that penile irritation could occur. The agency is aware that the labeling of most OTC marketed vaginal spermicides containing nonoxynol 9 bears a warning to stop use and ask a doctor if irritation of the vagina or penis occurs or continues. In this document, the agency is proposing a similar warning. The agency is not aware of any data that suggest increased penile irritation from frequent use of nonoxynol 9 may increase the risk of getting STDs from infected female partners. However, the agency encourages more research and studies to evaluate this potential safety concern.

II. The Agency's Proposal

The agency is proposing to amend part 201 (21 CFR part 201) by adding § 201.325 entitled ''Over-the-counter drugs for vaginal contraceptive use containing nonoxynol 9 as the active ingredient; required warnings.'' This section would require new warnings for all OTC vaginal contraceptive drug products containing nonoxynol 9 as the active ingredient, whether marketed under an NDA or the ongoing OTC drug review. The agency is proposing to require the following warnings be added to the labeling of all marketed OTC vaginal contraceptives containing nonoxynol 9: ''Sexually transmitted diseases (STDs) alert [heading in bold type]: This product does not [this word highlighted in bold type] protect against the AIDS virus (HIV) or other sexually transmitted diseases (STDs).''

Based on the studies, the agency is also proposing a warning to inform users of OTC vaginal spermicides containing nonoxynol 9 that frequent use can increase vaginal irritation and may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. The statements would also quantify the definition of ''frequent use'' by adding ''(more than once a day)''. The proposed warning states:

Ask a doctor before use if you have [heading in bold type] a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of becoming infected with the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.

The agency is also proposing a warning to stop use and ask a doctor if irritation of the vagina or penis occurs. The agency recommended a similar warning in the NPRM (60 FR 6892 at 6901): ''If you or your partner develops irritation, such as burning or itching in the genital area, stop using this product. If irritation continues, contact your physician.'' The agency is revising that warning in this document to state: ''Stop use and ask a doctor if [heading in bold type] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis.'' Further, the warning that reads ''For vaginal use only'' needs to be included in accordance with the requirements in § 201.66(c)(5)(i).

Because of the public health concerns regarding the transmission of STDs and the AIDS virus (HIV), the agency believes that manufacturers should inform consumers as soon as possible that nonoxynol 9 does not protect against the AIDS virus (HIV) and that frequent use of nonoxynol 9 can increase vaginal irritation. FDA encourages manufacturers of all OTC vaginal contraceptive drug products containing nonoxynol 9 to implement the agency's proposed labeling warnings voluntarily as soon as possible, subject to the possibility that FDA may change the wording of the statements, as a result of comments submitted in response to this proposal. The agency considers these warnings important to the safe use of OTC vaginal contraceptive drug products containing nonoxynol 9.

Because there is no final monograph for these products at present, manufacturers of OTC vaginal contraceptive drug products containing nonoxynol 9 are required to follow the labeling requirements in § 201.66 as of the first major labeling revision after May 16, 2002. The agency intends to consider the labeling revisions in this proposal, when finalized, to be the first major labeling revision after May 16, 2002, for products that have not already converted to the ''Drug Facts'' labeling format, and to require those products to conform to § 201.66 at that time. For products that have already converted to the ''Drug Facts'' format, the agency will require the labeling revisions in this proposal to be implemented by the effective date of the final rule.

In addition, the agency is proposing to require additional labeling information which would convey to consumers that studies have raised safety concerns that increased vaginal irritation (i.e., irritation or damage to the cell lining of the vagina that may or may not produce symptoms) caused by frequent use of nonoxynol 9 may make one more susceptible to the risk of getting the AIDS virus (HIV) or other STDs from infected partners and that consumers who use these products frequently should seek further advice from a doctor or other health professional for their best birth control method. In the interest of public health, the information would also include a statement to encourage the use of a latex condom with every sexual act to help to reduce the risk of getting the AIDS virus (HIV) and other STDs. The agency is proposing that this labeling be included either on the outside container or wrapper of the retail package under the ''Other information'' section of the ''Drug Facts'' labeling in accordance with § 201.66 or in a package insert. Many of the marketed OTC vaginal contraceptive drug products already have a package insert that contains information on how to use the product and this new information could readily be incorporated in that package insert. The agency is proposing the following labeling:

- Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs.
- Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs.

The studies suggest a possible correlation between increased vaginal irritation from frequent use and the risk of transmission of the AIDS virus (HIV) and other STDs. Because of this significant safety concern, the agency is asking for comments on how to best present this information in the product labeling.

III. Questions to be Addressed

The agency is concerned with how well consumers understand the language in the proposed warnings and whether the proposed warnings convey the safety concerns for nonoxynol 9 adequately. The agency invites public comments on the following questions:

1. Do the proposed warnings under the headings ''Sexually transmitted diseases alert,'' ''Ask a doctor before use if you have,'' and ''Stop use and ask a doctor if'' adequately convey the safety concerns to consumers? What revisions, if any, would be useful?

2. Are there other data to support, expand, or refute the proposed warnings?

3. Are there additional data to further clarify or specifically quantify the term ''frequent use'' in the proposed warning that states: ''Frequent use (more than once a day) of this product can increase

vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners''?

4. Are the symptoms of vaginal irritation adequately defined? Are there other symptoms that should be included?

5. Are there additional data to correlate an increase in vaginal irritation with an increased risk of transmission of HIV and other STDs? If so, how should such information be conveyed in labeling?

6. Is a package insert the best way to provide additional information to consumers or should this information appear on the outer carton?

7. Are the proposed statements for the package insert appropriate? What revisions or additional information, if any, would be useful to make the package insert more informative and consumer friendly?

IV. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to require additional labeling for OTC vaginal contraceptive drug products containing nonoxynol 9. The labeling includes new warnings and other important information about using these products. These products are currently packaged in an outer carton that should have sufficient space to accommodate this additional labeling. The agency is aware that most of the currently marketed products already include a consumer package insert. Therefore, to allow firms greater flexibility, the agency is allowing almost half of the new information to appear in the package insert. There are a limited number of products currently marketed that will be affected by this proposed rule and the incremental one-time costs are minimal. The one-time costs include designing the new carton, designing a new package insert, and the inventory loss of any unused current labeling. The agency assumes the same weighted average cost to relabel (i.e., $3,600 per stock keeping unit (SKU) (individual products, packages, and sizes)) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281, March 17, 1999). Inventory loss was estimated using data from a study supporting the fore mentioned rule. With a 6-month implementation period, inventory loss was estimated to be between $500 and $3,000 per SKU, depending on product sales, for an estimated weighted average inventory loss of $2,050 . The inventory loss and redesign costs for the package insert are estimated to be about $1,380 per SKU.

The agency's Drug Listing System identifies 15 manufacturers and distributors of OTC vaginal contraceptive drug products containing nonoxynol 9 that together produce approximately 40 SKUs. At a relabeling cost of $3,600 per SKU and an inventory loss of $2,050 per SKU, estimated total one-time costs of relabeling could be $266,000 (40 x ($3,600 + $2,050)). Even if all required wording is revised on the outer carton, manufacturers may revise their package inserts as well to conform to the revised language. This adds another $55,200 (40 x $1,380) to the one-time cost, for an estimated total of $321,200.

As the agency is providing the language of the labeling to be used, all firms should have the necessary skills and personnel to perform the required relabeling either in-house or by contractual arrangement. The proposed rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

About 9 firms affected by this proposed rule meet the Small Business Administration's definition of a small entity (fewer than 750 employees). The actual impact on these firms will vary depending on the number and nature of the products they manufacture or distribute. All nine entities market additional types of products and have only one or two SKUs affected by this proposed rule. The average incremental cost per SKU to comply with this proposed rule is estimated to be $8,030 ($321,200/40 SKUs). Actual costs to the small entities will likely be lower because distributors of low sales volume OTC drug products usually market their products in packaging that costs less than the industry average.

While the costs to individual manufacturers to relabel their products are minimal, the potential benefits to consumers who use these products are substantial. The agency considers it essential that users be aware that these products do not protect against the AIDS virus (HIV) or other STDs. The monetary benefit of potentially preventing any cases of AIDS or STDs is significant compared to the minor cost of relabeling these products to provide the new required information.

The agency has tentatively considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. The agency considers it important that this information appear in product labeling as soon as possible, but acknowledges that implementation in a timeframe any less than 6 months would be very difficult for affected manufacturers. However, because of the importance of this new labeling information, the agency considers a period of 12 months too long to implement this new labeling. The agency rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities. Further, because of the importance of this information, the agency is not proposing a longer effective date for any products with annual sales less than $25,000.

The analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Based on this analysis, the agency does not believe manufacturers will incur a significant

economic impact. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

The agency invites public comment regarding any substantial or significant economic impact that this proposed rule would have on companies marketing OTC vaginal contraceptive drug products containing nonoxynol 9. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging. Comments regarding the impact of this proposed rule should be accompanied by appropriate documentation. The agency is providing a period of 90 days from the date of publication of this proposed rule in the **Federal Register** for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this proposed rule in the preamble to the final rule.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) 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.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VIII. Request for Comments

Interested persons may submit written or electronic comments on the proposed rule, the agency's specific questions in section III of this document, and the agency's economic impact determination to the Dockets Management Branch (see **ADDRESSES**) by April 16, 2003. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. Proposed Effective Date

Because of the importance of the proposed warnings to the safe use of OTC vaginal contraceptive drug products containing nonoxynol 9, the agency is proposing that any final rule that may publish based on this proposal become effective 6 months after its date of publication in the **Federal Register**.

X. References

The following references are on display in the Dockets Management Branch (see **ADDRESSES**), under Docket No. 80N–0280, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Transcript of Joint Meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs and Antiviral Drugs Advisory Committees, in OTC vol. 11ATFM3, November 22, 1996.
2. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 6.
3. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 7.
4. Jim Shelton's Pearls for July 2000, ''Spermicides and Protection Against STDs,'' Johns Hopkins Center for Communication Programs, in OTC vol. 11ATFM3, 2000.
5. Jim Shelton's Pearls for September 2000, ''Nonoxynol-9 and HIV Transmission,'' Johns Hopkins Center for Communication Programs, in OTC vol. 11ATFM3, 2000.
6. University of Florida, ''HIV/AIDS Information/Resources.''
7. Drugs.com (Drug Information Online), ''Spermicides Vaginal,'' in OTC vol. 11ATFM3.
8. Van Damme, L., ''Advances in Topical Microbicides,'' presented at the XIII International AIDS Conference, Durban, South Africa, July 9–14, 2000.
9. Letter from H. D. Gayle, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, in OTC vol. 11ATFM3, August 4, 2000.
10. Van Damme, L. et al, ''Effectiveness of COL–1492, a Nonoxynol-9 Vaginal Gel, on HIV–1 Transmission in Female Sex Workers: A Randomised Controlled Trial,'' *The Lancet*, 360:974–977, 2002.
11. Austin, H., W. C. Louv, and W. J. Alexander, ''A Case-Control Study of Spermicides and Gonorrhea,'' *Journal of the American Medical Association*, 251:2822–2824, 1984.
12. Rosenberg, M. J. et al., ''Effect of the Contraceptive Sponge on Chlamydial Infection, Gonorrhea, and Candidiasis,'' *Journal of the American Medical Association*, 257:2308–2313, 1987.
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15. Amaral, E. et al., ''Study of the Vaginal Tolerance to Acidform, an Acid Buffering Gel,'' *Contraception*, 60(6):361–366, 1999.
16. Stafford, M. K. et al., ''Safety Study of Nonoxynol-9 as a Vaginal Microbicide; Evidence of Adverse Effects,'' *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, 17:327–331, 1998.
17. Rosenstein, I. J. et al., ''Effect on Normal Vaginal Flora of Three Intravaginal Microbicidal Agents Potentially Active Against Human Immunodeficiency Virus Type 1,'' *The Journal of Infectious Diseases*, 177:1386–1390, 1998.
18. Poindexter III, A. N. et al., ''Comparison of Spermicides on Vulvar, Vaginal, and Cervical Mucosa,'' *Contraception*, 53:147–153, 1996.
19. Coggins, C. et al., ''Safety of Three Formulations of Nonoxynol-9 Containing Vaginal Spermicides,'' *International Journal of Gynecology and Obstetrics*, 68:267–268, 1999.
20. Watts, H. et al., '' The Effects of Three Nonoxynol-9 Preparations on Vaginal Flora and Epithelium,'' *The Journal of Infectious Diseases*, 180:426–437, 1999.
21. Niruthisard, S., R. E. Roddy, and S. Chutivongse, ''The Effects of Frequent Nonoxynol-9 Use on the Vaginal and Cervical Mucosa,'' *Journal of the American Venereal Disease Association*, 18:176–179, 1991.
22. Roddy, R. E. et al., ''A Dosing Study of Nonoxynol-9 and Genital Irritation,'' *International Journal of STD and AIDS*, 4:165–170, 1993.
23. Van Damme, L. V. et al., ''Safety Evaluation of Nonoxynol-9 Gel in Women at Low Risk of HIV Infection,'' *AIDS*, 12:433–437, 1998.
24. Kreiss, J. et al., ''Efficacy of Nonoxynol 9 Contraceptive Sponge Use in Preventing Heterosexual Acquisition of HIV in Nairobi Prostitutes,'' *Journal of the American Medical Association*, 268:477–482, 1992.
25. Martin, H. L. et al., ''Safety of a Nonoxynol-9 Vaginal Gel in Kenyan

Prostitutes,'' *Sexually Transmitted Diseases*, 24(5):279–283, 1997.

26. Roddy, R. E. et al., ''A Controlled Trial of Nonoxynol 9 Film to Reduce Male-to-Female Transmission of Sexually Transmitted Diseases,'' *New England Journal of Medicine*, 339(8):504–510, 1998.

27. Van Damme, L. V. et al., ''Safety of Multiple Daily Applications of COL–1492, A Nonoxynol-9 Vaginal Gel, Among Female Sex Workers,'' *AIDS 2000*, 14(1):85–88, 2000.

28. Rustomjee, R. et al., ''Phase 1 Trial of Nonoxynol 9 Film Among Sex Workers in South Africa,'' *AIDS*, 13:1511–1515, 1999.

29. CDC, ''Nonoxynol-9 Spermicide Contraception Use—United States, 1999,'' *Morbidity and Mortality Weekly Report*, 51(18): 389–392, 2002.

30. WHO, ''Nonoxynol-9 Ineffective in Preventing HIV Infection,'' May 28, 2002.

31. WHO, ''WHO/CONRAD Technical Consultation on Nonoxynol-9, Summary Report,'' 2001.

List of Subjects in 21 CFR Part 201

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, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. Section 201.66 is amended by adding paragraph (c)(5)(ii)(H) to read as follows:

§ 201.66 Format and content requirements for over-the-counter (OTC) drug product labeling.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(H) Sexually transmitted diseases (STDs) warning for vaginal contraceptive drug products containing nonoxynol 9 set forth in § 201.325(b)(2). This warning shall follow the subheading ''Sexually transmitted diseases (STDs) alert:''

3. Section 201.325 is added to subpart G to read as follows:

§ 201.325 Over-the-counter drugs for vaginal contraceptive use containing nonoxynol 9 as the active ingredient; required warnings.

(a) Studies indicate that use of vaginal contraceptives containing nonoxynol 9 does not protect against infection from the human immunodeficiency virus (HIV), the virus that causes acquired immunodeficiency syndrome (AIDS), or against the transmission of other sexually transmitted diseases (STDs). Studies also suggest that frequent use of vaginal contraceptives containing nonoxynol 9 can increase vaginal irritation, such as the disruption of the vaginal epithelium. These effects may increase the risk of transmission of the AIDS virus (HIV) and other STDs from an infected partner. Consumers should be warned that these products do not protect against the transmission of the AIDS virus (HIV) or other STDs. In addition, frequent use of these products can increase vaginal irritation, which may increase the risk of getting certain STDs, including the AIDS virus (HIV), from infected partners.

(b) The labeling of OTC vaginal contraceptive drug products containing nonoxynol 9 as the active ingredient, whether subject to the ongoing OTC drug review or an approved drug application, must contain the following warnings under the heading ''Warnings,'' in accordance with § 201.66.

(1) ''For vaginal use only'' [this heading in bold type]

(2) ''Sexually transmitted diseases (STDs) alert [this heading in bold type]: This product does not [this word in bold type] protect against the AIDS virus (HIV) or other STDs.''

(3) ''Ask a doctor before use if you have [heading in bold type] [optional, bullet] a new sex partner, multiple sex partners, or unprotected sex. Frequent use (more than once a day) of this product can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Ask a doctor or other health professional for your best birth control method.''

(4) ''Stop use and ask a doctor if [heading in bold type] [optional, bullet] you or your partner get burning, itching, a rash, or other irritation of the vagina or penis''.

(c) The labeling of this product must include the following statements either on the outside container or wrapper of the retail package, under the ''Other information'' section of the Drug Facts labeling in accordance with § 201.66(c)(7), or in a package insert.

(1) ''[Bullet] Studies have raised safety concerns that frequent use (more than once a day) of products containing nonoxynol 9 can increase vaginal irritation, which may increase the risk of getting the AIDS virus (HIV) or other STDs from infected partners. Vaginal irritation may include symptoms such as burning, itching, or a rash, or you may not notice any symptoms at all. If you use these products frequently and/or have a new sex partner, multiple sex partners, or unprotected sex, see a doctor or other health professional for your best birth control and methods to prevent STDs.''

(2) ''[Bullet] Correct use of a latex condom with every sexual act will help reduce the risk of getting the AIDS virus (HIV) and other STDs from infected partners.''

(d) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after [date 6 months after date of publication of the final rule in the **Federal Register**], is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), is a new drug under section 505 of the act (21 U.S.C. 355), and is subject to regulatory action.

Dated: December 19, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–902 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 966; re: Notice Nos. 960 and 961]

RIN 1512–AC76 and 1512–AC66

Red Hill (Oregon) Viticultural Area (2001R–88P); Red Hills (California) Viticultural Area (2001R–330P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notices of proposed rulemaking (NPRMs); reopening of comment periods.

SUMMARY: We are reopening the comment periods for NPRMs No. 960 and No. 961. Both NPRMs were published in the **Federal Register** on October 30, 2002. The proposed rules, if approved, would add Red Hill (Oregon) and Red Hills (California) as approved American viticultural areas and amend 27 CFR part 9. We are acting on a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before March 17, 2003.

ADDRESSES: You may send comments to any of the following addresses:

• Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221

(Attn: Notice No. 960 or Attn: Notice No. 961);

- 202–927–8525 (facsimile);
- *nprm@atfhq.atf.treas.gov* (e-mail);
- *http://www.atf.treas.gov* (online). A comment form is available with each of the online copies of these notices. At this site, select ''Regulations,'' then ''Notices of proposed rulemaking (Alcohol).'' Finally, select ''Send comments via e-mail'' under the appropriate notice number.

You may view copies of the NPRMs, the request for extension, and any comments received on the notices by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, or at *http://www.atf.treas.gov* with an online copy of Notice No. 960 and/or Notice No. 961.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco & Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210; e-mail *TPDevanney@atfhq.atf.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2002, ATF published two NPRMs (Notice No. 960, 67 FR 66079, and Notice No. 961, 67 FR 66083) to establish Red Hill (Oregon) and Red Hills (California), respectively, as American viticultural areas. The comment periods ended on December 30, 2002. Before the close of the comment periods, ATF received a request from Mr. Sean Carlton of Archery Summit, a winery in Dayton, Oregon, to extend the comment periods for an additional 60 days. Mr. Carlton requested the extension to allow more time to study the petitions and research the respective areas.

In consideration of the above, we find that a reopening of the comment periods is warranted.

Public Participation

See the Public Participation section of either Notice No. 960, or Notice No. 961 for detailed instructions on submitting and reviewing comments. Comments received on or before the new closing dates will be carefully considered.

We will not recognize any submitted material as confidential, and comments may be disclosed to the public. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

Tim DeVanney of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Both Notice No. 960 and Notice No. 961 were issued under the authority of 27 U.S.C. 205.

Signed: January 8, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–847 Filed 1–15–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[AL–072–FOR]

Alabama Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to its rules about forms and license applications. Alabama intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Alabama program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., February 18, 2003. If requested, we will hold a public hearing on the amendment on February 10, 2003. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Alabama program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390. Telephone: (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Description of the Proposed Amendment

By letter dated October 17, 2002 (Administrative Record No. AL–0654),

Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama sent the amendment at its own initiative. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

A. 880–X–1B Forms

Subchapter 880–X–1B lists the forms used in the operations and organization of the Alabama Surface Mining Commission.

1. Alabama proposes to delete the following forms:

Form ASMC–3 Request for Inspection & Bond Release.

Form ASMC–17 Permit Application for Underground Mining.

Form ASMC–98 Application for Coal Exploration Permit to Remove More Than 250 Tons of Coal or Disturb More Than One-Half Acre.

Form ASMC–137 Permit Application for Coal Processing Plants.

2. Alabama proposes to change the existing descriptions of Forms ASMC–6, ASMC–16, ASMC–176, and ASMC–232 to the descriptions shown below:

Form ASMC–6 Application for Coal Mining License/Application for Annual Update of Coal Mining License/Notification of Change in Ownership or Control.

Form ASMC–16 Permit Application for a Surface Coal Mine/Permit Application for an Underground Coal Mine/Permit Application for a Preparation Facility.

Form ASMC–176 Renewal Application for a Surface Coal Mine/Renewal Application for an Underground Coal Mine/Renewal Application for a Preparation Facility.

Form ASMC–232 Transfer Application for a Surface Coal Mine/Transfer Application for an Underground Coal Mine/Transfer Application for a Preparation Facility.

3. Alabama proposes to add the following new forms to its list at 880–X–1B:

Form ASMC 254 Notice of the Filing of a Renewal Application for Surface Coal Mining Permit (To Agencies).

Form ASMC 255 Notice of the Filing of a Revision Application for Surface Coal Mining Permit (To Agencies).

Form ASMC 256 Notice of the Filing of a Revision Application for Surface Coal Mining Operations (Landowner Notice).

Form ASMC 257 Notice of Filing of a Renewal Application for Surface Coal Mining Operations (Landowner Notice).

Form ASMC 258 Statement as to Negotiability of Certificate of Deposit and Assignment (Subsidence Impacts).

Form ASMC 259 Surety Bond (Subsidence).

B. 880–X–6A–.06 License Application Requirements

Alabama is proposing to revise 880–X–6A–.06(g)2(ii) to allow public accountants to certify and sign current statements of the net worth of applicants for licenses to conduct surface coal mining operations. Currently Alabama only allows certified public accountants to certify and sign these statements. The revised provision reads as follows:

> A current statement in letter form, certified by a certified public accountant or public accountant licensed to do business in the State of Alabama that the applicant has a net worth of not less than $100,000. The statement must not be ambiguous, qualified, or otherwise vague. It must state the Alabama certificate or registration number of, and be signed by the certified public accountant or public accountant.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Birmingham Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [AL–072–FOR]'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on January 31, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to 880–X–6A–.06.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 03–975 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[KS–023–FOR]

Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of an addition to a previously proposed amendment to the Kansas regulatory program and abandoned mine land reclamation (AMLR) plan (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The addition concerns

abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding. Kansas intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Kansas program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763. Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981. You can find background information on the Kansas regulatory program and program amendments, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas regulatory program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

The AMLR Program was established by title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kansas abandoned mine land reclamation plan (Kansas plan) on February 1, 1982. You can find background information on the Kansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Kansas plan in the February 1, 1982, **Federal Register** (47 FR 4513). You can find later actions concerning the Kansas plan and amendments to the plan at 30 CFR 916.20 and 916.25.

II. Description of the Proposed Amendment

By e-mail dated July 24, 2002 (Administrative Record No. KS–623), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. KS–618), that we sent to Kansas, in accordance with 30 CFR 732.17(c), concerning valid existing rights. At its own initiative, Kansas also proposed to revise other provisions in its regulations by adopting by reference portions of the Federal regulations at 30 CFR Part 700 to End that were revised as of July 1, 2001.

We announced receipt of the amendment in the September 23, 2002, **Federal Register** (67 FR 59484) and invited public comment on its adequacy. The public comment period closed October 23, 2002.

During our review of the amendment, we realized that we did not announce receipt of Kansas' proposed regulation at Kansas Administrative Regulations (K.A.R.) 47–16–12 in the proposed rule published on September 23, 2002. Therefore, we are reopening the comment period in this proposed rule. Kansas proposed to add the following new regulation concerning AML agency procedures for reclamation projects receiving less than 50 percent government funding.

K.A.R. 47–16–12. AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the active coal mining portion of the regulatory authority. In consultation with the active mining portion of the regulatory authority, the surface mining section must make the following determinations:

(1) They must determine the likelihood of the coal being mined under an active coal mining permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) They must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) They must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the active mining portion of the regulatory authority. If, after consulting with the active mining portion of the regulatory authority, it has been decided to proceed with the reclamation project, then the abandoned mine land and active mining portions of the regulatory authority must concur in the following determinations:

(1) They must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under K.A.R. 47–6–9.

(2) They must concur in the delineation of the boundaries of the AML project.

(c) Documentation. You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) Special requirements. For each project, the surface mining section must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, hydrologic balance, and other aml hazards associated with the project;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of K.A.R 47–16–1 *et. seq.*;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with state procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under 47–401 *et. seq.* and K.A.R. 47–1–1 *et. seq.* for such coal.

III. Public Comment Procedures

We are reopening the comment period on the Kansas program amendment to provide you an opportunity to reconsider the adequacy of the amendment. Under the provisions of 30 CFR 732.17(h) and 884.15(a), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15 and 884.14. If we approve the amendment, it will become part of the Kansas program.

Written Comments

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (*see* **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: KS–023–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. These standards are also not applicable to the actual language of State and tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or tribe are based solely on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C). Also agency decisions on proposed State and tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department

of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 03–974 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–049–FOR]

Maryland Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing the receipt of a proposed amendment to the Maryland regulatory program (the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposes revisions to and additions of rules about the definition of ''material damage,'' the definition of ''replacement of water supply,'' survey of structures and renewable resources lands, subsidence control plans, the general requirements for hydrologic balance, the general requirements for subsidence control, surface owner protection related to subsidence control, and deep mine bonding requirements. Maryland intends to revise its program to be consistent with Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992.

This document gives the times and locations that the Maryland program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. February 18, 2003. If requested, we will hold a public hearing on the amendment on February 10, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on January 31, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Oversight and Inspection Office.

Mr. George Rieger, Oversight and Inspection Office, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220, 412–937–2153, *grieger@osmre.gov*.

C. Edmon Larrimore, Program Administrator, Mining Program, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230, 410–537–3573.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: 412–937–2153. Internet: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Maryland program in the February 18, 1982 **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.12, 920.15, 920.16, 920.20, and 920.25.

II. Description of the Proposed Amendment

By letter dated October 22, 2002, Maryland sent us a proposed

amendment to its program (Administrative Record No. MD–574–05) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment in response to Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992. The proposed amendment is intended to make the Maryland program consistent with the Federal regulations. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, Maryland proposes to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.01.02, 26.20.02.15, 26.20.02.16, 26.20.13.05, 26.20.13.07, 26.20.13.09, and 26.20.14.13, as they relate to subsidence from underground coal mining. The proposed amendments to each section are outlined below.

26.20.01.02 Definitions

Maryland proposes to amend COMAR section 26.20.01.02(B) by adding the following definitions:

(51–1) ''Material damage,'' in the context of COMAR 26.20.02.15 and .16 and 26.20.13.07, .09, and .10 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(81–1) ''Replacement of water supply'' means with respect to water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence must be obtained from the water supply owner.

26.20.02.15 Survey of Structures and Renewable Resources Lands

The State proposes to amend COMAR section 26.20.02.15 by adding the following new subsection B:

B. The survey required by § A of this regulation shall contain:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger, if determined necessary by the Bureau, showing the location and type of:

(a) Structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and

(b) Water supplies that could be contaminated, diminished, or interrupted by subsidence;

(2) A narrative indicating whether subsidence, if it occurred could cause material damage to or diminish the value or reasonably foreseeable use of any structures or renewable resource lands or could contaminate, diminish, or interrupt any water supplies; and

(3) A survey of the quantity and quality of all water supplies in accordance with COMAR 26.20.13.07E.

Because a new subsection B is proposed, the State also proposes to change the current subsection B to subsection C and proposes additional amendments to the current subsection B. The current subsection B reads as follows:

B. If the survey shows that these structures or renewable resource lands do not exist, or material damage or diminution could not be caused in the event of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

If we approve the proposed changes, the amended subsection would read:

C. If the survey under section A of this regulation shows that no structures, water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, or interruption of such water supplies would occur as a result of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

Finally, the current subsection C would be changed to subsection D and amended. The current subsection C states:

C. If the survey shows these structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of the value or foreseeable use of the land, or if the Bureau determines that the damage or diminution could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

If we approve the proposed changes, the amended language would read:

D. If the survey, under sections A and B of this regulation shows that structures or renewable resource lands, or water supplies exist, and that subsidence could cause material damage or diminution of the value or reasonably foreseeable use of such structures or lands, or contamination, diminution, or interruption of water supplies, or if the Bureau determines that the damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

26.20.02.16 Subsidence Control Plan

Section 26.20.02.16 sets forth what shall be included in a subsidence control plan, if one is required. Maryland proposes to add an additional subsidence control plan requirement to this section:

E. A description of the measures to be taken in accordance with Environment Article, § 15–608(b), COMAR 26.20.13.05C, and COMAR 26.20.13.09 to replace adversely affected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

If we approve the proposed amendment, the current subsection E would become subsection F, but otherwise would remain unchanged.

26.20.13.05 Hydrologic Balance: General Requirements

This section currently has two subsections, A and B. The State proposes to amend this section by adding new subsections A and D and by changing the current subsections A and B to B and C, respectively. Should we approve the proposed amendment, the current subsections A and B would otherwise remain unchanged. The proposed subsections A and D state:

A. As used in this regulation, an owner of interest in real property shall include a renter, tenant, or a lessee of real property.

D. The permittee shall promptly replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source that is contaminated, diminished, or interrupted by underground mining activities.

26.20.13.07 Subsidence Control: General Requirements

Maryland proposes to make several changes to COMAR section 26.20.13.07. First, two changes are proposed for subsection A. Subsection A currently reads as follows:

A. Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. This may not be construed to prohibit the standard method of room and pillar mining.

The State proposes to remove the phrase ''to the surface'' from the first sentence in the above quoted regulation and also to remove the final sentence, ''[t]his may not be construed to prohibit the standard method of room and pillar mining,'' from the regulation.

Second, the State proposes to add new paragraphs B and C to COMAR 26.20.13.07. The proposed paragraphs are quoted below:

B. Underground mining activities that employ mining technology that provides for planned subsidence in a predictable and controlled manner must utilize necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to all structures, except that measures required to minimize material damage to such structures are not required if:

(1) The permittee has the written consent of the owners of the structures; or

(2) The cost of such measures exceeds the anticipated costs of repair, unless the anticipated damage would constitute a threat to health or safety.

C. Nothing in this regulation prohibits the standard method of room-and-pillar mining.

Third, Maryland proposes to change the existing subsection B to subsection D. The current subsection B states that ''[t]he person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared and approved by the Bureau.'' If we approve the proposed changes, the new subsection D would state, ''[t]he person engaged in underground mining activities shall comply with all provisions of the approved subsidence control plan prepared and approved by the Bureau in accordance with COMAR 26.20.02.16.''

Finally, a new subsection E is proposed. The language of the proposed subsection is quoted below:

E. Presubsidence Surveys of Water Supplies.

(1) Each application for a permit shall contain a survey of the condition of the quantity and quality of all water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

(2) The applicant or permittee shall pay for any survey technical assessment or engineering evaluation used to determine the quantity and quality of any water supplies. A copy of the survey and any technical assessment or engineering evaluation shall be provided to the property owner and the Bureau.

26.20.13.09 Subsidence Control: Surface Owner Protection

Maryland regulations at COMAR section 26.20.13.09 currently consist of subsections A, B, and C. No changes are proposed for subsections A, B, or C; however, the State proposes to add subsection D:

D. In determining whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the Bureau.

26.20.14.13 Deep Mine Bonding Requirements

COMAR section 26.20.14.13 currently contains subsections A, B, and C. No changes are proposed for these subsections; however, the State proposes to add a new subsection D:

D. When subsidence-related material damage to land, structures or facilities protected under COMAR 26.20.13.09 occurs, or when contamination, diminution, or interruption to a water supply protected under COMAR 26.20.13.05C occurs, the Bureau shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Bureau may extend the requirement to post bond beyond 90 days, but not to exceed one year, if the permittee demonstrates and the Bureau finds, in writing, that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that it would be unreasonable to complete the repair of the subsidence-related material damage to land or protected structures, or the replacement of protected water supply within 90 days.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Oversight and Inspection Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. MD–049–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Oversight and Inspection Office at 412–937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on January 31, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under

FOR FURTHER INFORMATION CONTACT. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)Of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2002.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–979 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–05–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–3; Order No. 1358]

Periodic Reporting Rules

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes updating periodic reporting rules affecting certain Postal Service data submissions. This update entails deleting certain outdated requirements and adding new requirements, including an electronic filing requirement. These changes should improve the ability of the Commission and others to analyze postal finances and operating results.

DATES: Initial comments are due by February 10, 2003; reply comments are due by February 25, 2003.

ADDRESSES: Submit comments electronically via the Comission's Filing Online system, which may be accessed at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTATY INFORMATION: The Commission's periodic reporting rules (39 CFR 3001.102) require the Postal Service to provide certain products of its standard data reporting systems to the Commission. Generally, the reports required are the basic reports that the Postal Service routinely compiles to provide management with the means to monitor the Postal Service's financial condition and operating results. The information provided under the periodic reporting rules helps the Commission evaluate the cost, volume, and revenue projections that form the basis for the Commission's rate and classification recommendations pursuant to 39 U.S.C. 3624. It also enables the Commission to anticipate future trends in these areas, and to maintain the forecasting models that it employs in rate cases.

Most of the periodic reporting rules date back at least to the mid-1980s. The Postal Service's standard data reports have changed in important ways since then. There is a need to update the periodic reporting rules to reflect these changes. There is also a need to make the information provided more complete, so that trends in operating results can be better analyzed and evaluated. Finally, there is a need to make the material provided easier to use, by obtaining it in an electronic format.

Proposed Deletions From List of Required Reports

The Commission proposes to eliminate certain reports from the list of those that the Postal Service must provide under the periodic reporting rules. The Commission proposes to eliminate investment income statements, which the Postal Service must provide under current rule 102(b)(3). With the advent of the Postal Service's cash management plan in FY 1995, investment income has become a minor component of total revenues. Once as high as $400 million per year, it had dwindled to $35 million by FY 2001. As a result, investment income reports are not routinely needed.

Current rule 102(c)(1) requires the Postal Service to provide the Commission with cash flow statements. Cash flow statements, however, are now provided in the Summary Financial and Operating Statements, which the Postal Service files each accounting period with the Commission. Consequently, the Commission proposes to remove cash flow statements from the list of reports that must be periodically provided.

Proposed Additions to List of Annual Reports

The Integrated Financial Plan is a document that is presented to the Governors, in public session, every year. It includes the financial operating plan (operating budget), the capital investment plan, and the capital financing plan for the coming fiscal year. The Commission proposes to add it to the list of annual reports required under proposed rule 102(a).

The Integrated Financial Plan was filed as a library reference in the most recent fully litigated rate proceeding. (LR–I–489 in Docket No. R2000–1.) As the fiscal year progresses, the Postal Service typically compares its actual operating results with the results that were projected in its Integrated Financial Plan. Making the Integrated Financial Plan available to the Commission annually will enable the Commission to better understand financial developments as they unfold during the year. It will inform the Commission of the assumptions on which the Postal Service's financial plan is based. Comparing and contrasting those assumptions with actual results would give the Commission an additional tool for evaluating the accuracy of the revenue requirement information on which rate recommendations are based.

Proposed Revisions to Annual Reports

Current rule 102(a)(1) requires the Postal Service to provide the Commission each year with the Cost and Revenue Analysis Report (CRA), the portion of the LIOCATT used to produce the CRA, and transportation workpapers 31 and 57. The objective of the rule is to provide the Commission with an annual update of the cost information upon which the most recent recommended rates were based. The current rule, however, reflects cost attribution methods in use prior to 1987. Since then, there have been major changes in the methods that the Postal Service and the Commission use to attribute costs. The CRA documentation required under the rule needs to be updated to reflect those changes.

Attributable mail processing costs, for example, are no longer distributed to subclasses using the LIOCATT. Their distribution is now based on MODS pools and a complex set of shape, item, and container-based proxy rules. The Commission needs workpapers that show how these rules have been applied to interim-year data, in order to evaluate developments in mail processing costs between rate proceedings.

To adequately track cost developments in interim years, to see where they differ from cost projections that underlie its rate recommendations, and to identify the sources of the difference, the Commission needs a comprehensive set of spreadsheet workpapers that show the calculation of attributable costs by cost component. The documentation required is the equivalent of the ''B'' workpapers that the Postal Service provides in a general rate proceeding. To evaluate developments in Segment 3 costs, for example, the Commission needs the equivalent of Library Reference J–55 that the Postal Service provided in Docket No. R2001–1. The Commission also needs the updated factors and data from the data systems on which the ''B'' workpapers are based, including the In-Office Cost System (IOCS), the Management Operating Data System (MODS), the City Carrier Cost System (CCCS), the Rural Carrier Cost System (RCCS), and the Rural Mail Count. To evaluate developments in Segment 3 costs, the Commission needs the equivalent of Library Reference J–10 that the Postal Service provided in Docket No. R2001–1. Similarly, to evaluate Segment 7 costs, the Commission needs the equivalent of

Library Reference J–12 that the Postal Service provided in Docket No. R2001–1 (specifically, the data contained in the ''Z'' file).

The Commission needs this level of documentation for both the CRA–PRC Version and the CRA–USPS Version. Since rule 102(a)(1) was last revised, significant differences have emerged in Cost Segments 3 and 7 between the attribution methods that the Postal Service advocates, and those that the Commission applies. In rate cases, in order to comply with the Commission's filing rules, the Postal Service typically provides a version of the CRA that is consistent with its preferred methods, and one that is consistent with the methods last approved by the Commission. In addition, as part of its reporting duties under rule 103, the Postal Service each March 15 provides a domestic CRA calculated according to the Commission's attribution methods. The CRA–PRC Version that the Postal Service provides contains detailed documentation for Cost Segments 3, 6, and 7 (the equivalent of the ''B'' workpapers for those segments).[1] Rule 103 requires the Postal Service to follow this up with an audited CRA–PRC Version when it becomes available. The Postal Service's current practice is to meet this obligation by providing an audited domestic CRA that is calculated according to its preferred attribution methods.

The Commission is primarily interested in obtaining a CRA–PRC Version, since it typically provides the cost basis for recommended rates. It should be audited in the sense that it is based on audited accrued costs, and should include any corrections to the various factors (such as equipment and maintenance facility factors) that are made to the audited CRA–USPS Version. The Commission's experience under rule 103, however, confirms the value of having a CRA–USPS Version to compare it with. The estimates produced by the two versions of the CRA have a predictable historical relationship that can be used to test their accuracy. Accordingly, proposed rule 102(a) requires that the Postal Service provide both versions of the CRA. The audited CRA–USPS Version should be provided within two weeks of its presentation for use by postal management. The final, corrected CRA–PRC Version should be filed within two weeks of the filing of the audited CRA–USPS Version. If the CRA is prepared and presented to postal management more frequently than annually, it should be provided under rule 102 with the same frequency.

Under current costing methods, documentation of the CRA should include, but not be limited to, the following:

(1) Spreadsheets supporting the CRA. (The ''B'' workpapers found in USPS–LR–J–57 in Docket No. R2001–1.)

(2) The CRA Model. (Filed as UPSP–LR–J–6 in Docket No. R2001–1.)

(3) Output data file and a description of the file structure for the In-Office Cost System (IOCS). (Found in USPS–LR–J–10 in Docket No. R2001–1.)

(4) The MODS-based costing spreadsheets, and SAS mail processing attribution and distribution programs needed to produce output for the ''B'' workpapers. (USPS–LR–J–55 in Docket No. R2001–1.)

(5) Spreadsheets that develop equipment and facility-related costs. (USPS–LR–J–54 in Docket No. R2001–1.)

(6) Output data file and a description of the file structure for the City Carrier Cost System (CCCS). (The ''Z'' file, found in USPS–LR–J–12 in Docket No. R2001–1.)

(7) Supporting material, including spreadsheets, programs, and documentation for load time variabilities.

(8) The underlying route-type data needed to produce the in-office worksheets in the ''B'' workpapers.

(9) Ouput data file and a description of the file structure for the Rural Carrier Cost System (RCCS), and the Rural Mail Count. (USPS–LR–J–71 in Docket No. R2001–1.)

(10) The fiscal-year reconciliation of statement of revenue and expenses to audited financial statements and reallocation of expenses by component. (USPS–LR–J–8 in Docket No. R2001–1.)

(11) Transportation workpapers 31 and 57.

The Postal Service typically prepares all of this documentation as support for its base-year costs in rate cases. It also produces most of it routinely each year, either in the preparation of the CRA–USPS Version, or in the preparation of the material required by rule 103. Therefore, the revisions that the Commission proposes to rule 102(a)(1) should not impose a significant additional burden on the Postal Service.

Format of Reports

The CRA and Cost Segments and Components report and the underlying data have been provided electronically in omnibus rate filings. *See* USPS–LR–I–6 in Docket No. R2001–1. The Postal Service, however, does not provide them in electronic form when submitting them as filings under rule 102. In order to better search, archive, and manipulate these submissions, the Commission undergoes a cumbersome and time consuming process of manually converting them from hard copy to electronic form. This burden is unnecessary, since all of these materials originate in electronic form. For this reason, the Commission's proposed revisions to rule 102 include a requirement that rule 102 reports be submitted as electronic files that can be read by publicly available PC software. Output files should be submitted in a form that can be read by a PC-based text editor, or that uses commercially available spreadsheet software. If a processing program was developed specifically to produce a workpaper that accompanies a report, that program must be provided in a form that can be executed by publicly available PC software.[2]

It appears that most, if not all, of the material required by rule 102 can be presented in this form without undue burden. Most of this material consists of output of data systems and programs that can be presented in an ASCII flat file with an accompanying description of the file format. This will satisfy the requirement. This is the format in which the Postal Service provides the cost matrix that it uses to develop its Base Year CRA and the cost matrices that it uses in its roll-forward model in omnibus rate cases. Many of these reports are prepared using the standard mainframe SAS statistical language. With minor additional effort, the Postal Service can convert them to a PC-readable format. Even though the Postal Service's accounting system uses a mainframe-based computing language, the Commission sees no current need to be able to manipulate the Postal Service's accounting information. These systems need not be affected by the proposed format requirement as long as the output of these systems is submitted in an ASCII flat file form. Under the proposed rule, it would not be necessary for the Postal Service to submit existing COBOL programs for the IOCS, the CRA Model, or for other reports that are COBOL based in a PC executable format. Nor would it be necessary to submit existing processing programs for the CCCS, the RCCS, or the RPW in that format. It would, however, be necessary

[1] The Postal Service does not annually provide a CRA–PRC Version that documents the remaining cost segments in as much detail, but its data and reporting systems are set up in a way that allows it to do so with minor additional effort.

[2] Requiring material submitted under rule 102 to be in electronic form will bring rule 102 into general conformity with the Commission's decision to make electronic filing the standard method of filing documents with the Commission. *See* Order No. 1349, issued October 21, 2002.

to submit in the required format the processing programs that calculate and distribute attributable mail processing costs.

If the Postal Service foresees substantial obstacles to complying with this proposed format requirement, it is urged to request a conference with the Commission's technical staff to explore the nature of these obstacles and ways to overcome them prior to the adoption of a final amended rule 102.

Billing Determinants

Current rule 102(a)(10) requires the Postal Service to provide the Commission with billing determinants within two weeks of providing them for use by postal management. Recently, the delay in the provision of billing determinants in response to the rule has been considerable. Since FY 1995, it has ranged from nine to 16 months after the close of the fiscal year. The current rule allows the Postal Service to delay the filing of billing determinant information for Express Mail, Priority Mail, and parcel post for up to one year from the time that it provides billing determinants for other categories of mail. Consequently, billing determinants for Express, Priority, and parcel post mail have been from 21 to 28 months out of date at the time they were provided. The Commission believes that it would be useful to reexamine the rationale for the current rule whose effect is to allow billing determinants for these three categories of mail to be well over two years out of date when submitted. As a starting point for that reexamination, the Commission proposes to revise rule 102(a)(10) to require the Postal Service to submit billing determinants for these three mail categories no later than 12 months after the close of the fiscal year.

Comments on the revisions to rule 102 proposed in this notice should be submitted on or before February 10, 2003, and any reply comments by February 25, 2003.

It is ordered:

1. Interested persons are invited to submit comments on the Commission's notice of proposed rulemaking on or before February 10, 2003. Any reply comments should be submitted by February 25, 2003.

2. The Secretary shall cause this notice of proposed rulemaking to be published in the **Federal Register**.

Issued January 8, 2003.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying Order, the Commission proposes the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

Subpart G—Rules Applicable to the Filing of Reports by the U.S. Postal Service

2. Revise § 3001.102 to read as follows:

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management, unless otherwise noted. Each report should be provided in a form that can be read by publicly available PC software. A processing program that was developed specifically to produce an accompanying workpaper must be provided in a form that can be executed by publicly available PC software. COBOL processing programs in use prior to FY 2003 are exempt from this requirement. The reports and information required to be provided by this subpart need not include matters that are exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually. If it is presented for use by postal management at more frequent intervals, it shall be filed at those intervals:

(1) All input data, all processing programs that have changed since the most recently completed general rate proceeding, and all computer programs used to attribute mail processing costs to subclasses, if they are used to produce the Cost and Revenue Analysis Report (CRA). Each change in attribution principles or methods from the previous report will be identified. The Postal Service shall submit a CRA–USPS Version, followed within two weeks by a CRA–PRC Version. Documentation of the CRA shall include, but not be limited to, the following:

(i) Spreadsheet workpapers underlying the development of segment costs by cost component. These workpapers should include all of the updated factors and data from the supporting data systems used, including the In-Office Cost System (IOCS), the Management Operating Data System (MODS), the City Carrier Cost System (CCCS), the Rural Carrier Cost System (RCCS), and the Rural Mail Count.

(ii) Cost segments and components reconciliation to financial statements and account reallocations.

(2) Cost Segments and Components Report. Documentation shall include, but not be limited to, the following:

(i) The Manual Input Requirement, the ''A'' report, and the ''B'' report;

(ii) The control string commands for the ''A'' report, the ''B'' report (including the PESSA factor calculations), and the ''C'' report;

(iii) The master list of cost segment components, including the components used as distribution keys in the development of the ''B'' report and the ''C'' report.

(3) City delivery information, including the number of routes by type, the number of possible deliveries by type, the number of collection boxes, and the number of businesses served (120 days from the close of the fiscal year).

(4) Rural carrier information, including the number of routes by type and miles, stops, boxes served, and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (two weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report, including summary workpapers (two weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission, including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2, and 6 (coinciding with their submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(10) Billing Determinants, at the level of detail employed in the most recent formal request for a change in rates or fees. The provision of billing determinants for Express Mail, Priority Mail, and parcel post may be delayed up to 12 months from the close of the fiscal year to which they apply.

(11) USPS Integrated Financial Plan.

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces, and Weight, by rate category and special service.

(2) Origin/Destination Information Report National Service Index.

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Summary Financial and Operating Report.

(2) National Consolidated Trial Balances and the Revenue and Expense Summary.

(3) National Payroll Hours Summary.

(4) On-Roll and Paid Employee Statistics (OPRES).

(5) Postal Service Active Employee Statistical Summary (HAT report).

(d) *Miscellaneous reports.* The following information will be filed by the Postal Service:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Reports.

(3) A master list of publications and handbooks including those related to internal information procedures, when changed.

(4) Data collection forms and corresponding training handbooks, when changed.

(5) Notice of changes in data reporting systems, 90 days before those changes are implemented.

[FR Doc. 03–841 Filed 1–15–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–69–1–9940b; FRL –7439–1]

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Florida State Implementation Plan (SIP) submitted on July 22, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These revisions to rules 62–296.412 and 62–296.511, which update the applicable requirements for perchloroethylene dry cleaners and halogenated solvent degreasing facilities to achieve compliance with regulations, are being made to keep the EPA approved SIP consistent with the Florida regulations.

In the Final Rules Section of this **Federal Register**, the EPA is approving Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before February 18, 2003.

ADDRESSES: All comments should be addressed to Heidi LeSane at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

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

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane at 404/562–9035 (E-mail: *lesean.heidi@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 3, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–857 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 137–3093b; FRL–7436–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Motor Vehicle Inspection and Maintenance Program—Request for Delay in the Incorporation of On-Board Diagnostics Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The purpose of this SIP is to request a six-month extension of the Federal deadline for incorporating checks of On-board Diagnostic (OBD) systems on 1996-and-newer vehicles to Maryland's motor vehicle inspection and maintenance (I/M) program. EPA's I/M requirements regulations required states to add OBD checks to their I/M programs by January 1, 2002. However, states had the option to submit a request to EPA for a delay, of up to one additional year, of the deadline to add OBD system checks to the I/M program. Maryland's SIP revision contains a request for a six-month delay, or until July 1, 2002.

In the Final Rules section of this **Federal Register**, EPA is approving Maryland's SIP request as a direct final rule without prior proposal because the Agency views this as a noncontroversial request and anticipates no adverse comments. A more detailed description of Maryland's request and a detailed rationale for EPA's granting of the requested deadline extension is set forth in the direct final rule.

If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 18, 2003.

ADDRESSES: Written comments should be addressed to Robert Kramer, Acting Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. These documents are also available from the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janet C. Kremer, (215) 814–2147, or by e-mail at *kremer.janet@epa.gov*. Please note that while questions may be posed

via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 23, 2002.

Judith M. Katz,

Acting Regional Administrator, Region III.

[FR Doc. 03–854 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH155–1b; FRL–7425–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve, through direct final procedure, oxides of nitrogen (NO_X) rules including an allowance trading program submitted by the Ohio Environmental Protection Agency (Ohio EPA). The implementation plan affects electric generating units (EGUs), non-EGUs and portland cement plants, and was submitted in a letter from the Ohio EPA Director on July 11, 2002, following required public process. The intent of Ohio's action is to satisfy a Federal requirement to develop a plan to control emissions from these categories of sources in order to meet the emissions budget established by USEPA for Ohio during the summer-time ozone control period. USEPA is approving this plan with the understanding that Ohio will make the minor revision to the date in Ohio's rule by which flow control will be triggered. Flow control affects all States in the trading program, and the date by which it is triggered, 2005, must be consistent for all 19 States.

In the final rules section of this **Federal Register**, USEPA is approving the State Implementation Plan (SIP) for NO_X as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by February 18, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Ohio EPA request for revision to the SIP is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

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

I. What Actions Are USEPA Taking Today?
II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

I. What Actions Are USEPA Taking Today?

The USEPA is proposing to approve a revision to the Ohio SIP submitted by the State which demonstrates the Ohio EPA plan will enable affected sources in the State to reduce emissions of NO_X in order for the State to meet the NO_X emissions budget. USEPA is making the approval with the understanding that Ohio will change the year that flow control will be triggered to 2005, from 2006 currently in Ohio's rule.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201–7601q.

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–961 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 270, 271, and 279

[FRL–7439–9]

RIN 2050—AE41

Waste Management System; Testing and Monitoring Activities; Reopening of Comment Period for the Proposed Methods Innovation Rule (MIR)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by an additional 60 days the comment period on its proposed rule (October 30, 2002 at 67 FR 66251) titled Methods Innovation Rule (MIR) and Notice of Data Availability that announced the availability of the new RCRA Waste Sampling Draft Technical Guidance. The original comment period announced in the proposal and notice was scheduled to end on December 30, 2002. Today's notice further extends the comment period on the proposed Methods Innovation Rule and RCRA Waste Draft Technical Guidance until February 28, 2003.

DATES: Written comments on the proposed MIR, or RCRA Waste Sampling Draft Technical Guidance must be submitted on or before February 28, 2003. Comments postmarked after the close of the comment period will be stamped ''late'' and may or may not be considered by the Agency.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number to: EPA Docket Center (EPA/DC), Office of Solid Waste (5305T), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the docket number Docket ID No. RCRA–2002–0025. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* You may view and download from the Internet the proposed rule and selected support materials at *http://www.epa.gov/epaoswer/hazwaste/test/sw846.htm.* Update IIIB of SW–846 can also be accessed on-line at *http://epa.gov/epaoswer/hazwaste/test/up3b.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select ''search,'' then key in the appropriate docket identification number. You may also view and download docket information from the Internet at: *http://www.epa.gov/SW–846.*

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.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, EPA Office of Solid Waste, 2800 Crystal Drive, 7th Floor , Cube 16, Washington, DC 22202. Public comments and supporting materials are available for viewing in the EPA Docket Center, located at 1301 Constitution Ave, NW Room B102, Washington, DC 20460. The RIC is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0270. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies over 266 pages will cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Kim Kirkland (5307W), Office of Solid Waste, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, SW., Washington, DC 20460, (703) 308–8885, *kirkland.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 30, 2002 (67 FR 210), EPA proposed to amend a variety of testing and monitoring requirements throughout the Resource Conservation and Recovery Act (RCRA) regulations. As noted in the proposal, the Agency wants to allow more flexibility when conducting RCRA-related sampling and analysis, by removing unnecessary required uses of methods found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' also known as ''SW–846,'' and only retaining the requirement to use SW–846 methods when the method is the only one capable of measuring a particular property (*i.e.,* it is used to measure a required method-defined parameter). This is an important step towards a performance-based measurement system (PBMS), as part of the Agency's efforts towards Innovating for Better Environmental Results. In addition, we proposed to: Withdraw the reactivity method guidelines from SW–846 Chapter Seven; amend the ignitability and corrosivity hazardous waste characteristic regulations by clarifying the use of certain methods; incorporate by reference Update IIIB to SW–846; add Method 25A for analyses conducted in support of certain RCRA air emission standards; and remove a confidence limit requirement for certain feedstream analyses conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP). Simultaneously, the Agency also announced the availability of a new guidance document for public comment entitled ''RCRA Waste Sampling Draft Technical Guidance.'' The Agency believes the new guidance when used should make it easier and more cost effective to comply with affected regulations, without compromising human health or environmental protection. By extending the comment period to February 28, 2003, we are accommodating a request by several parties for additional time to prepare extensive relevant comments.

Dated: January 8, 2003.

Robert Springer,

Director of the Office of Solid Waste and Emergency Response.

[FR Doc. 03–957 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7438–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the ATSF Clovis Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the ATSF Clovis Superfund Site (Site), located in Curry County, Clovis New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Mexico, through the New Mexico Environment Department (NMED), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of the ATSF Clovis Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final

deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by February 18, 2003.

ADDRESSES: Written comments should be addressed to: Beverly Negri, Community Involvement Coordinator, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Petra Sanchez, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LT), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6686 or 1–800–533–3508 (*sanchez.petra@epa.gov*).

SUPPLEMENTARY INFORMATION: For additional information, see the Direct final notice of deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Clovis-Carver Public Library, 701 N. Main Street, Clovis, New Mexico, 88101 (505) 769–7840 Monday through Thursday 8 a.m. to 9 p.m. Friday and Saturday, 8:30 a.m. to 5 p.m.; New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, Monday through Friday, 8 a.m. to 5 p.m. Contact: Mr. George Schuman (505) 827–2911.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 23, 2002.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 03–734 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 03–3]

Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking seeking public comment on a memorandum of understanding reached among members of the cable television and consumer electronics manufacturing industries on a cable compatibility standard for an integrated, unidirectional digital cable television receiver.

DATES: Comments due March 28, 2003; reply comments are due April 28, 2003. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 17, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. For further filing instructions, *see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Mort, 202–418–1043 or *smort@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's further notice of proposed rulemaking (''FNPRM''), FCC 03–3, adopted January 7, 2003; released January 10, 2003. The full text of the Commission's FNPRM, including the memorandum of understanding referenced herein, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, Qualex International, (202) 863–2893, Portals II, Room CY–B402, 445 12th St., SW, Washington, DC 20554, or may be reviewed via Internet at *http://www.fcc.gov/mb.*

Initial Paperwork Reduction Act of 1995 Analysis

This FNPRM contains proposed information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due March 17, 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.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1—C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

OMB Control Number: 3060–[XXXX].

Title: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, FNPRM, CS Docket No. 97–80 and PP Docket No. 00–67.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 554.

Estimated Time per Response: 30 seconds.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 36,667 hours.

Total Annual Costs: None.

Needs and Uses: The FNPRM seeks comment on two proposed information collections. The first is a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products. The proposed regime would prevent consumer electronics manufacturers from labeling or marketing products as ''digital cable compatible'' (or an alternative term to be established) unless they meet certain specified technical standards ensuring their compatibility with digital cable systems. Pursuant to the second information collection, consumer electronics manufacturers would be required to provide consumers with appropriate post-sale material, such as an owner's guide, describing the features and functionality of the product. We estimate that the total labeling and consumer disclosure burden for collections of information under the proposed rules is 36,667 hours.

Synopsis of the Further Notice of Proposed Rulemaking

1. The Commission initiated its Commercial Availability of Navigation Devices proceeding by notice of proposed rulemaking in CS Docket No. 97–80 (FCC 97–53), 62 FR 10011, March 5, 1997, and later issued a further notice of proposed rulemaking and declaratory ruling (FCC 00–341), 65 FR 58255, September 28, 2000. In its Compatibility Between Cable Systems and Consumer Electronics Equipment proceeding, the Commission adopted a notice of proposed rulemaking in PP Docket No. 00–67 (FCC 00–137), 65 FR 24671, April 27, 2000. In connection with the ongoing digital television (''DTV'') transition, certain commenters in these proceedings have expressed the need for adoption of a standard to ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. To this end, the consumer electronics and cable industries are engaged in ongoing inter-industry discussions seeking to establish a so-called ''cable plug and play'' standard. Such a standard would allow consumers to directly attach their DTV receivers to cable systems and receive cable television services without the need for an external navigation device.

2. On December 19, 2002, the members of this discussion group, headed by the Consumer Electronics Association (''CEA'') and the National Cable and Telecommunications Association (''NCTA''), filed with the Commission a memorandum of understanding (''MOU'') which details an agreement on a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as other unidirectional digital cable products. NCTA and CEA assert that unidirectional digital cable television receivers manufactured pursuant to the MOU would be capable of receiving analog basic, digital basic and digital premium cable television programming by direct connection to a cable system providing digital programming. The receivers would have a Digital Visual Interface (''DVI'') connector with High-Bandwidth Digital Content Protection (''HDCP'') to connect with other consumer electronics devices. The MOU also calls for such receivers to contain a point of deployment (''POD'') interface slot into which a POD module provided by the cable operator would be inserted in order to view encrypted programming. Due to the unidirectional nature of this receiver specification, an external navigation device will still be needed to receive advanced features such as cable operator-enhanced electronic programming guides (''EPGs''), impulse pay per view (''IPPV'') or video on demand (''VOD''). The MOU indicates that the discussion group continues to work on a bidirectional receiver specification which would eliminate the need for an external navigation device to receive advanced services.

3. The compromise reached in the MOU, as detailed in the FNPRM, requires, *inter alia,* the consumer electronics and cable television industries to commit to certain voluntary acts and seeks the creation or revision of Commission rules in the following general areas:

(1) Requiring digital cable systems with an activated channel capacity of 750 MHz or greater to support operation of unidirectional digital cable products and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards;

(2) Establishing a labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications that would be voluntarily used by consumer electronics manufacturers. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products;

(3) Prohibiting the use of selectable output controls by all multichannel video programming providers (''MVPDs''); and

(4) Adopting encoding rules for audiovisual content applicable to all MVPDs.

4. We hereby seek comment on the MOU and the proposed Commission rules contained therein. We also seek comment on the potential impact of the MOU and its proposed rules upon consumers, content providers, small cable operators and MVPDs other than cable operators, as well as the jurisdictional basis for Commission action in this area, including the creation of encoding rules for audiovisual content provided by MVPDs. As to issues not addressed by the MOU, such as the down-resolution of programming, we seek comment on whether Commission action is needed and authorized. We also seek comment on any other issues germane to the Commission's consideration of the MOU and these proposed rules.

5. *Authority.* This FNPRM is issued pursuant to authority contained in sections 1, 4(i), 4(j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended.

6. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See* generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Accessibility Information.* Accessible formats of this FNPRM (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.*

8. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 28, 2003, and reply comments on or before April 28, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

9. 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.

10. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this FNPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this initial regulatory flexibility analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this further notice of proposed rulemaking (''FNPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided above in paragraph 8. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

12. *Need for, and Objectives of, the Proposed Rules.* The need for FCC regulation in this area derives from the lack of a so-called cable compatibility ''plug and play'' standard for a digital cable television receiver and related digital cable television consumer electronics equipment. The absence of such a standard has been identified as a key impediment to the anticipated rate and scope of the transition to digital television (''DTV''). Such a standard would allow consumers to directly attach their DTV receivers to cable systems and receive certain cable television services without the need for an external navigation device. Since more than 60 percent of television households subscribe to cable programming services, the availability of digital cable television receivers and products would encourage more consumers to convert to DTV, thereby furthering the transition. Private industry negotiations between cable operators and consumer electronics manufacturers have resulted in a Memorandum of Understanding (''MOU'') on a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as for other unidirectional digital cable products. The MOU requires the consumer electronics and cable television industries to each commit to certain voluntary acts and seeks the creation or revision of certain relevant Commission rules. The objective of the proposed rules, as embodied in the MOU, will be to facilitate the DTV transition.

13. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 303, 403, 601, 624A and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, 521, 544a and 549.

14. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

15. *Television Broadcasting.* The proposed rules and policies could affect television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

16. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 2001. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules could affect approximately 1,686 television stations; approximately 77%, or 1,298 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate

revenues from non-television affiliated companies.

17. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating $12.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

18. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further Notice.

19. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

20. *Direct Broadcast Satellite (''DBS'') Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

21. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

22. Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS''). MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

23. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

24. The SBA definition of small entities for cable and other program distribution services, which includes such companies generating $12.5 million in annual receipts, seems reasonably applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be

categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

25. Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

26. In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

27. *Satellite Master Antenna Television (''SMATV'') Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating $12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities

28. *Open Video Systems (''OVS'').* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

29. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

30. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities. The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

31. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional reporting or recordkeeping requirements. However, compliance with the rules, if they are adopted, may require the manufacture of digital cable television receivers and other digital cable television consumer electronics equipment. Consumer electronics manufacturers may be required to

establish a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products. Compliance may also require multichannel video programming distributors to encode certain commercial audiovisual content to prevent or limit its copying and prohibit the use of selectable output controls. Cable operators with systems of 750 MHz or greater activated channel capacity may be required to support operation of unidirectional digital cable products on digital cable systems and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards. While these requirements could have an impact on consumer electronics manufacturers and multichannel video programming distributors, it remains unclear weather there would be a differential impact on small entities. We seek comment on whether the burden of these requirements would fall on large and small entities differently.

32. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

33. As indicated above, the FNPRM seeks comment on whether the Commission should adopt or revise rules relating to the creation of a cable ''plug and play'' standard for digital cable television receivers and other digital cable television consumer electronics equipment in order to facilitate the DTV transition. This regime may require may require the manufacture of digital cable television receivers and other digital cable television consumer electronics equipment. Consumer electronics manufacturers may be required to establish a labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. This regime would include testing and self-certification standards, as well as consumer information disclosures to purchasers of such receivers and products. Compliance may also require multichannel video programming distributors to encode certain commercial audiovisual content to prevent or limit its copying and prohibit the use of selectable output controls. Cable operators with systems of 750 MHz or greater activated channel capacity may be required to support operation of unidirectional digital cable products on digital cable systems and to ensure that navigation devices utilized in connection with such systems have an IEEE 1394 interface and comply with specified technical standards. However, we welcome comment on modifications of the proposals if based on evidence of potential differential impact on smaller entities. In addition, the Regulatory Flexibility Act requires agencies to seek comment on possible small entity-related alternatives, as noted above. We therefore seek comment on alternatives to the proposed rules that would assist small entities while maintaining the compromise reached in the Memorandum of Understanding.

34. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–948 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-legged Frog (*Rana muscosa*).

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Sierra Nevada distinct population segment of the mountain yellow-legged frog (*Rana muscosa*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that the petitioned action is warranted, but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, this species will be added to our candidate species list. We will develop a proposed rule to list this population pursuant to our Listing Priority System.

DATES: The finding announced in this document was made on January 10, 2003. Comments and information may be submitted until further notice.

ADDRESSES: You may send data, information, comments, or questions concerning this finding to the Field Supervisor (Attn: MYLF), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. You may inspect the petition, administrative finding, supporting information, and comments received, during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Epanchin, Susan Moore, or Chris Nagano at the above address (telephone, (916) 414–6600; fax, (916) 414–6710).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Threatened and Endangered Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

Taxonomy

Camp (1917) described the mountain yellow-legged frog as two subspecies of *Rana boylii: R. b. sierrae* in the Sierra Nevada, and *R. b. muscosa* in southern California. On the basis of the similar morphological (body structure) characteristics of the two subspecies, the small number of sites where both were found, and breeding experiments, *R. b. muscosa* and *R. b. sierrae* were split from the *R. boylii* group and combined under a single species, *R. muscosa* (Zweifel 1955). Genetic studies also have concluded that *R. muscosa* and *R. boylii* are distinct species (Case 1978; Davis 1986; Green 1986a, 1986b; Hillis and Davis 1986; Macey *et al.* 2001).

Description

The body length (snout to vent) of the mountain yellow-legged frog ranges from 40 to 80 millimeters (mm) (1.5 to 3.25 inches (in)) (Jennings and Hayes 1994). Females average slightly larger than males and males have a swollen, darkened thumb base (Wright and Wright 1949; Stebbins 1951; Zweifel 1955, 1968). Dorsal (upper) coloration in adults may be variable, exhibiting a mix of brown and yellow, but it also can be grey, red, or green-brown, and usually patterned with dark spots (Stebbins 1985; Jennings and Hayes 1994). These spots may be large (6 mm (0.25 in)) and few, smaller and more numerous, or a mixture of both (Zweifel 1955). Irregular lichen or moss-like patches (to which the name *muscosa* refers) also may be present on the dorsal surface (Zweifel 1955; Stebbins 1985). The belly and undersurfaces of the hind limbs are yellow or orange, and this pigmentation on the abdomen may extend forward to the forelimbs (Wright and Wright 1949; Stebbins 1985). This species may produce a distinctive mink or garlic-like odor when disturbed (Wright and Wright 1949; Stebbins 1985). Although the species lacks vocal sacks, it can make both terrestrial and underwater vocalizations, which have been described as a flat clicking sound (Zweifel 1955; Stebbins 1985; Ziesmer 1997). The mountain yellow-legged frog has smoother skin, generally heavier spotting and mottling dorsally, and darker toe tips than the foothill yellow-legged frog (*R. boylii*) (Zweifel 1955; Stebbins 1985).

Eggs of the mountain yellow-legged frog are laid in globular clumps, which are often somewhat flattened, roughly 2.5 to 5 cm (1 to 2 in) across (Stebbins 1985). When eggs are close to hatching, egg mass volume may average 198 cubic cm (78 cubic in) (Pope 1999a). Eggs have three firm jelly-like transparent envelopes surrounding a grey-tan or black vitelline (egg yolk) capsule (Wright and Wright 1949).

The larvae (tadpoles) of this species generally are mottled brown in dorsal coloration with a golden tint and a faintly-yellow venter (underside) (Zweifel 1955; Stebbins 1985). Total tadpole length reaches 72 mm (2.8 in), its body is flattened, and the tail musculature is wide, about 2.5 centimeters (cm) (1 in) or more, before tapering into a rounded tip (Wright and Wright 1949). The mouth has a maximum of 7 labial (lip) tooth rows (2–3 upper and 4 lower) (Stebbins 1985). Larvae often take 2 to 4 years or more to reach metamorphosis (transformation from larvae to frogs) (Wright and Wright 1949; Cory 1962b; Bradford 1983; Bradford *et al.* 1993; Knapp and Matthews 2000).

Range

The mountain yellow-legged frog is restricted to two disjunct areas in California and a portion of Nevada. One area is in the Sierra Nevada and the other area is in the San Gabriel, San Bernardino, and San Jacinto mountain ranges of southern California (Los Angeles, San Bernardino, Riverside, and San Diego counties) (Zweifel 1955; Jennings and Hayes 1994). The southern California population is isolated from the Sierra Nevada population by the Tehachapi mountain range, with a distance of about 225 kilometers (km) (140 miles (mi)) between the two populations.

In the Sierra Nevada, the historic distribution of the mountain yellow-legged frog was more or less continuous from the vicinity of La Porte in southern Plumas County southward to Taylor and French Joe Meadows in southern Tulare County (Jennings and Hayes 1994). Records for this species in the Sierra Nevada document its occurrence on the east and west sides of the crest in all major drainages from Plumas to Tulare counties, with a single record from Kern County (Zweifel 1955; Jennings and Hayes 1994; Knapp 1996). Except for historic populations in extreme western Nevada in Washoe and Douglas counties, on Mt. Rose near Lake Tahoe, possibly Edgewood Creek, and elsewhere around Lake Tahoe, the species is confined to California (Zweifel 1955). The elevational range for the mountain yellow-legged frog in the Sierra Nevada ranges from approximately 1,370 meters (m) (4,500 feet (ft)) at San Antonio Creek, near Dorrington in Calaveras County, to over 3,650 m (12,000 ft) at Desolation Lake in Fresno County, though populations typically are encountered in the upper half of that elevation range (Zweifel 1955; Mullally and Cunningham 1956; Stebbins 1985).

Habitat Requirements

Mountain yellow-legged frogs rarely are found more than 1 m (3.3 ft) from water (Stebbins 1951; Mullally and Cunningham 1956; Bradford *et al.* 1993). At the lower elevations in the Sierra Nevada, the species usually is associated with rocky stream beds and wet meadows surrounded by coniferous forest (Zweifel 1955; Zeiner *et al.* 1988). At higher elevations, the species occupies lakes, ponds, tarns, and streams (Zweifel 1955; Mullally and Cunningham 1956; Stebbins 1985). The borders of alpine (above treeline) lakes and montane (mountain) meadow streams used by mountain yellow-legged frogs are frequently grassy or muddy; this differs from the sandy or rocky shores that are inhabited by the amphibian in lower elevation streams (Zweifel 1955). Adults typically are found sitting on rocks along the shoreline, usually where there is little or no vegetation (Mullally and Cunningham 1956). Although the species may use a variety of shoreline habitats, both larvae and adults are less common at shorelines which drop abruptly to a depth of 60 cm (2 ft) than at open shorelines that gently slope up to shallow waters of only 5–8 cm (2–3 in) deep (Mullally and Cunningham 1956; Jennings and Hayes 1994). Mountain yellow-legged frogs also use stream habitats, especially in the northern part of their range. Streams utilized by adults vary from those having high gradients with numerous pools, rapids, and small waterfalls, to those with low gradients with slow flows, marshy edges, and sod banks (Zweifel 1955). Aquatic substrates vary from bedrock to fine sand, rubble (rock fragments), and boulders (Zweifel 1955). Mountain yellow-legged frogs seem to be absent from the smallest creeks, probably because these have insufficient depth for adequate refuge and overwintering habitat (Jennings and Hayes 1994).

Both adults and larvae overwinter for up to 9 months in the bottoms of lakes that are at least 1.7 m (5.6 ft) deep; however, overwinter survival may be greater in lakes that are at least 2.5 m (8.2 ft) deep, under ledges of stream or lake banks, or in rocky streams (Bradford 1983; V. Vredenburg *et al.* (in press)). In some instances, frogs have been found to overwinter in underwater bedrock crevices between 0.2 m (0.7 ft) and 1 m (3.3 ft) below the water surface (Matthews and Pope 1999) and the use

of such crevices appears to allow them to survive in shallower water bodies that freeze to the bottom in winter (Pope 1999a). In lakes and ponds that do not freeze to the bottom in winter, mountain yellow-legged frogs may overwinter in the shelter of bedrock crevices as a behavioral response to the presence of introduced fishes (V. Vredenburg *et al.* (in press)).

Adult mountain yellow-legged frogs breed in the shallows of ponds or in inlet streams and are often seen on wet substrates within 1 m (3 ft) of the water's edge (Zweifel 1955). Adults emerge from overwintering sites immediately following snowmelt and will move over ice to get to breeding sites (Pope 1999a; V. Vredenburg in litt. 2002). Mountain yellow-legged frogs in the Sierra Nevada deposit their eggs underwater in clusters, which they attach to rocks, gravel, vegetation, or under banks (Wright and Wright 1949; Stebbins 1951; Zweifel 1955; Pope 1999a). Clutch size varies from 15 to 350 eggs per egg mass (Livezey and Wright 1945; V. Vredenburg *et al.* (in press)). In laboratory breeding experiments, egg hatching times ranged from 18 to 21 days at temperatures ranging from 5 to 13.5 Celsius (°C) (41 to 56 Fahrenheit (°F)) (Zweifel 1955). Field observations are similar (Pope 1999a).

The time required to develop from fertilization to metamorphosis is believed to vary between 1 and 4 years (Storer 1925; Wright and Wright 1949; Zweifel 1955; Cory 1962b; V. Vredenburg *et al.* (in press)). Since larvae must overwinter at least two or three times before metamorphosis, successful breeding sites are located in, or connected to, lakes and ponds that do not dry in the summer, and that are sufficiently deep so as to not completely freeze through in winter (Bradford 1983). Larval survival to metamorphosis is possible in lakes that do not dry out during the summer. Knapp and Matthews (2000) found the number of larvae was larger in fishless water bodies deeper than 2 m (6.5 ft). Bradford (1983) found that mountain yellow-legged frog die-offs sometimes result from oxygen depletion during winter in lakes less than 4 m (13 ft) deep. However, larvae may survive for months in nearly anoxic (oxygen-deficient) conditions when shallow lakes are frozen to the bottom. Recent studies have reported populations of mountain yellow-legged frogs overwintering in lakes less than 1.5 m (5 ft) deep that were assumed to have frozen to the bottom, and yet healthy frogs were documented to emerge the following July (Matthews and Pope 1999; Pope 1999a). Radio telemetry indicated that the mountain yellow-legged frogs were utilizing rock crevices near shore, crevices, holes, and ledges where water depths ranged from 0.2 m (0.7 ft) to 1.5 m (5 ft) (Matthews and Pope 1999). The granite surrounding these overwintering habitats may insulate the mountain yellow-legged frogs from the extreme winter temperatures, providing that there is an adequate supply of oxygen either in the water or air (Matthews and Pope 1999).

Larvae maintain a relatively high body temperature by selecting warmer microhabitats (Bradford 1984). During winter, larvae remain in warmer water below the thermocline (thermally stratified water); after spring overturn (thaw and thermal mixing of the water), they continue to behaviorally modulate their body temperature by daily movements: during the day, larvae move to warm, shallow, nearshore water, and during the late afternoon and evening, they retreat to the warmer waters off shore (Bradford 1984).

The time required to reach reproductive maturity is thought to vary between 3 and 4 years after metamorphosis (Zweifel 1955). Longevity of adults is unknown, but adult survivorship from year to year is very high, so they are undoubtedly long-lived amphibians (Matthews and Pope 1999; Pope 1999a). Although data currently are limited, evidence exists that mountain yellow-legged frogs display strong site fidelity and return to the same overwintering and summer habitats from year to year (Pope 1999a).

In aquatic habitats, mountain yellow-legged frog adults typically move only a few hundred meters (few hundred yards) (Matthews and Pope 1999; Pope 1999a), but distances of up to 1 km (0.62 mi) have been recorded (V. Vredenburg *et al.* (in press)). Adults tend to move between selected breeding, feeding, and overwintering habitats during the course of the year. Though adults are typically found within 1 m (3.3 ft) of water, overland movements of over 65 m (215 ft) have been recorded (Pope 1999a); the furthest reported distance of a mountain yellow-legged frog from water is 400 m (1,300 ft) (V. Vredenburg *et al.* (in press). Almost no data exist on the dispersal of juvenile mountain yellow-legged frogs away from breeding sites (Bradford 1991). However, juveniles that may be dispersing to permanent water have been observed in small intermittent streams (Bradford 1991). Mountain yellow-legged frog population dynamics are thought to have a metapopulation structure (Bradford *et al.* 1993; Drost and Fellers 1996; Knapp and Matthews 2000). In describing the metapopulation concept, Hanski and Simberloff (1997) stated: ''* * *the two key premises in this approach to population biology are that populations are spatially structured in assemblages of local breeding populations and that migration among the local populations has some effect on local dynamics, including the possibility of population reestablishment following extinction.''

Adult mountain yellow-legged frogs are thought to feed preferentially upon terrestrial insects and adult stages of aquatic insects while on the shore and in shallow water (Bradford 1983). Feeding studies on Sierra Nevada mountain yellow-legged frogs are limited. Remains found inside the stomachs of mountain yellow-legged frogs in southern California include a wide variety of invertebrates, including beetles, ants, bees, wasps, flies, true-bugs, and dragonflies (Long 1970). Larger frogs take more aquatic true bugs (insects in the taxonomic order Hemiptera) probably because of their more aquatic behavior (Jennings and Hayes 1994). Adult mountain yellow-legged frogs have been observed eating Yosemite toad (*Bufo canorus*) and Pacific treefrog (*Pseudacris regilla*) larvae (Mullally 1953; Zeiner *et al.* 1988; Pope 1999b; Feldman and Wilkinson 2000) and can be cannibalistic (Heller 1960). Mountain yellow-legged frog larvae graze on benthic detritus, algae, and diatoms along rocky bottoms in streams, lakes, and ponds (Bradford 1983; Zeiner *et al.* 1988). Larvae have also been observed cannibalizing conspecific (of the same species) eggs (Vredenburg 2000). In addition, larvae have been seen feeding on the carcasses of dead metamorphosed frogs (V. Vredenburg *et al.* (in press)).

Status

The distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and non-wilderness on the forests, and national parks. Approximately 210 known mountain yellow-legged frog populations (or populations within metapopulations) exist on the national forests within the Sierra Nevada, though not all of these populations may be reproducing successfully. In the national parks of the Sierra Nevada, there are 758 known sites with mountain yellow legged-frogs, most of which occur within 59 different basins that have multiple breeding populations that are connected hydrologially, so that populations in each basin function as

metapopulations). Within these 758 sites, 330 populations exist for which we have evidence of successful reproduction. Overall, we estimate that 22 percent of the remaining mountain yellow-legged frog sites within the Sierra Nevada are found within the national forests (including those with and those without evidence of successful reproduction), while 78 percent are found within the national parks (including those with and those without evidence of successful reproduction). These percentages represent the number of sites within the national forests and the national parks of the Sierra Nevada; they do not represent the number of individuals present at each site. The methods for measuring the numbers of populations and metapopulations in the national forests and the national parks have not been standardized and, therefore we must use caution when we compare national forests numbers to national park numbers. However, the remaining populations of mountain yellow-legged frogs are more numerous and larger in size in the national parks than in the national forests.

National forests with extant populations of mountain yellow-legged frogs include the Plumas National Forest, Tahoe National Forest, Humboldt-Toiyabe National Forest, Lake Tahoe Basin Management Unit (managed by the U.S. Forest Service (USFS)), Eldorado National Forest, Stanislaus National Forest, Sierra National Forest, Sequoia National Forest, and Inyo National Forest. National parks with extant populations of mountain yellow-legged frogs include Yosemite National Park, Kings Canyon National Park, and Sequoia National Park.

Grinnell and Storer (1924) first observed declines of mountain yellow-legged frog populations. Since then, a number of researchers have reported that the mountain yellow-legged frog has disappeared from a significant portion of its historic range in the Sierra Nevada (Hayes and Jennings 1986; Bradford 1989; Jennings and Hayes 1994; Bradford *et al.* 1994a; Jennings 1995, 1996; Stebbins and Cohen 1995; Drost and Fellers 1996; Knapp and Matthews 2000). The observed declines of mountain yellow-legged frog populations in the 1970s were small relative to the declines observed during the 1980s and 1990s. Rangewide, it is estimated that mountain yellow-legged frog populations have undergone a 50 to 80 percent reduction in size (Bradford *et al.* 1994a; Jennings 1995; Stebbins and Cohen 1995; Drost and Fellers 1996; Jennings 1996; Knapp and Matthews 2000). The most pronounced declines have occurred north of Lake Tahoe in the northernmost 125 km (78 mi) portion of the range, and south of Sequoia and Kings Canyon National Parks in Tulare County in the southernmost 50 km (31 mi) portion, where only a few populations remain (Fellers 1994; Jennings and Hayes 1994). Based on available USFS survey and observation data, there appear to be very few or no known large populations north of the Plumas National Forest.

Mountain yellow-legged frogs historically occurred in Nevada on the slopes of Mount Rose in Washoe County and probably in the vicinity of Lake Tahoe in Douglas County (Linsdale 1940; Zweifel 1955; Jennings 1984). In 1994 and 1995, mountain yellow-legged frog surveys were conducted by Panik (1995) at 54 sites in the Carson Range of Nevada and California, including eight historic locations; no mountain yellow-legged frogs were observed. A few scattered and unconfirmed sightings were reported in Nevada in the late 1990s, but any populations remaining in this State are likely to be extremely small and the species is thought to be extirpated from Nevada (R. Panik, Western Nevada Community College, *in litt.,* 2002).

The number of extant populations of the mountain yellow-legged frogs in the Sierra Nevada is greatly reduced. Remaining populations are patchily scattered throughout nearly all their historic range (Jennings and Hayes 1994; Jennings 1995, 1996). At the northernmost portions of the range in Butte and Plumas counties, few populations have been seen or discovered since 1970 (Jennings and Hayes 1994). Declines have also been noted in the central and southern Sierra (Drost and Fellers 1996). In the southern Sierra Nevada (Sierra, Sequoia, and Inyo National Forests; and Sequoia, Kings Canyon, and Yosemite National Parks), there are relatively large populations (*e.g.*, breeding populations of over 20 adults) of mountain yellow-legged frogs; however, in recent years, some of the largest of these populations have been extirpated (Bradford 1991; Bradford *et al.* 1994a; R. Knapp, Sierra Nevada Aquatic Research Laboratory, *in litt.* 2002). Mountain yellow-legged frog populations are more numerous and larger in size in the national parks of the Sierra Nevada than in the surrounding USFS lands (Bradford *et al.* 1994a; Knapp and Matthews 2000).

Between 1988 and 1991, Bradford *et al.* (1994a) resurveyed sites known historically (between 1955 and 1979) to have contained mountain yellow-legged frogs. They resurveyed 27 historic sites on the Kaweah River, a western watershed within Sequoia National Park, and did not detect mountain yellow-legged frogs at any of these locations. They resurveyed 21 historic sites within the Kern, Kings, and San Joaquin River watersheds in Sequoia and Kings Canyon National Parks, and detected mountain yellow-legged frogs at 11 of these sites. Frogs were detected at three locations out of 24 historic sites outside of Sequoia and Kings Canyon National Parks. Rangewide, their resurvey effort detected mountain yellow-legged frogs at 14 of 72 historic sites, representing an 80 percent population decline. On the basis of these results, Bradford *et al.* (1994a) estimated a 50 percent population decline in Sequoia and Kings Canyon National Parks, with more pronounced declines elsewhere in the mountain yellow-legged frog's range.

Drost and Fellers (1996) surveyed for mountain yellow-legged frogs at sites documented by Grinnell and Storer (1924) in the early part of the 20th Century. The frog was reported to be the most common amphibian where they surveyed in the Yosemite area (Grinnell and Storer 1924). Drost and Fellers (1996) repeated Grinnell and Storer's 1924 survey and reported mountain yellow-legged frog presence at only 2 of the 14 sites where this animal had been previously detected. These two positive sightings consisted of a single larva at one site and a single adult female at another site. Drost and Fellers (1996) identified and surveyed 17 additional sites with suitable mountain yellow-legged frog habitat, and these surveys resulted in the detection of three additional populations.

For the 86 historically occupied mountain yellow-legged frog sites documented between 1915 and 1959 and resurveyed by Bradford *et al.* (1994a) and Drost and Fellers (1996), an 80 percent decline occurred in the number of historical frog populations. Of the 86 historic sites, only 16 remained occupied at the time of resurvey.

Knapp and Matthews (2000) surveyed more than 1,700 high elevation (averaging 3,400 m (11,150 ft)) lakes and ponds in the Sierra National Forest's John Muir Wilderness Area and in Kings Canyon National Park, encompassing a total of approximately 100,000 hectares (ha) (247,000 acres (ac)). They found a strong negative correlation between introduced trout and the distribution of mountain yellow-legged frogs. In the summer of 2002, Knapp (*in litt.* 2002) resurveyed 302 water bodies determined by 1995 to 1997 surveys to be occupied by mountain yellow-legged frogs, and

resurveyed 744 of over 1,400 sites where frogs were not previously detected. Knapp found no change in status at 59 percent of these sites, but found that 41 percent of the sites had gone extinct, while 8 percent of previously unoccupied sites were colonized. These data indicate an extinction rate that is 5 to 6 times higher than the colonization rate within this study area. This high rate of extinction over a 5- to-7-year time frame suggests the species may become extinct within a few decades (assuming that the rate of extinction and recolonization observed over this time period accurately reflects the long-term rates). The documented extinctions appeared to occur nonrandomly across the landscape, are spatially clumped typically, and involve the disappearance of all or nearly all mountain yellow-legged frog populations in a watershed (R. Knapp *in litt.* 2002). The colonization sites also appeared to be nonrandomly distributed, occurring primarily in watersheds with large mountain yellow-legged frog populations (R. Knapp *in litt.* 2002).

A recent review of the current status of 255 previously documented mountain yellow-legged frog locations (based on Jennings and Hayes (1994)) throughout its historic range concluded that 83 percent of these sites are no longer occupied by this species (Davidson *et al.* 2002). Each national forest and national park is discussed individually below.

Lassen National Forest: Historically, mountain yellow-legged frogs occurred on the Lassen National Forest within multiple watersheds, including Butte Creek, the West Branch Feather River, and the Middle Fork Feather River (M. McFarland, *in litt.* 2002). The last confirmed mountain yellow-legged frog sighting on the Lassen National Forest was made in 1966 in the area of Snag Lake in the West Branch Feather River watershed. Since 1993, the Lassen National Forest has conducted or funded informal and formal systematic amphibian surveys to assess the relative distribution and abundance of amphibian species, including the mountain yellow-legged frog. On the Lassen National Forest, mountain yellow-legged frogs have not been detected or confirmed during any of these surveys (M. McFarland *in litt.* 2002).

Plumas National Forest: Based on resurvey efforts, Jennings and Hayes (1994) noted that the mountain yellow-legged frog was extirpated at a number of locations in the Plumas National Forest. As survey efforts continue by the Plumas National Forest, more mountain yellow-legged frog populations are being documented. However, most of the estimated 55 populations are small, consisting of only a few individuals (T. Hopkins, USFS, pers. comm., 2002). The species appears to have disappeared from a significant number of historic locations, and the abundance of the species at known sites appears to be quite low.

Tahoe National Forest: Mountain yellow-legged frogs were present historically throughout the Tahoe National Forest and the surrounding areas of Sierra, Nevada, and Placer counties. Jennings and Hayes (1994) conclude that, based on their re-surveys of historic locations, 1992, the species had been extirpated in a number of locations by 1992.

The Tahoe National Forest has been conducting some amphibian surveys. Approximately four or five extant populations exist in which mountain yellow-legged frog breeding has been documented (A. Carlson, USFS, pers. comm. 2002). Extant mountain yellow-legged frog populations on the Tahoe National Forest have been observed in both stream and pond habitats. One extant breeding population inhabits an old mining tailing pond that has been restored naturally to a forested wetland condition with an abundance of bankside and emergent vegetation (A. Carlson, pers. comm. 2002). The largest Tahoe National Forest population observed in recent surveys consists of fewer than 10 individuals. The species appears to have disappeared from a significant number of historic locations within the Tahoe National Forest and is in low abundance where it still persists (A. Carlson, pers. comm. 2002).

Lake Tahoe Basin Management Unit: Historic sightings of the mountain yellow-legged frog in the Lake Tahoe Basin Management Unit are numerous, indicating that the species was abundant in the Lake Tahoe area (J. Reiner, USFS, pers. comm. 2002). Today, only one known population of mountain yellow-legged frogs remains on this national forest, although in 1997, the USFS saw evidence of limited breeding in the Desolation Wilderness (J. Reiner, pers. comm. 2002; J. Reiner and M. Schlesinger, USFS, *in litt.* 2000). The known population is small, as some adults were seen in 1999 but were not detected during 2002 surveys, though larvae were detected. The habitat at this site is a meadow and stream complex that is large (approximately 24 ha (60 ac)) and in good condition (J. Reiner, pers. comm. 2002).

Humboldt-Toiyabe National Forest: Only the westernmost portion of the Humboldt-Toiyabe National Forest is within the historic range of the mountain yellow-legged frog (Stebbins 1985). A distributional map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) indicates historic collections of this species within the Humboldt-Toiyabe National Forest in California. Resurveys of locations where mountain yellow-legged frogs occurred indicate that the species had become extirpated by 1992 at a number of locations in Humboldt-Toiyabe National Forest (Jennings and Hayes 1994). Surveys in California are ongoing. Approximately four populations (all in California) exist on this national forest (C. Milliron, California Department of Fish and Game (CDFG), *in litt.* 2002; L. Murphy, USFS, pers. comm. 2002). Chytrid fungus (see Factor C, Disease, below) has been documented at one of these populations (C. Milliron, *in litt.* 2002).

Eldorado National Forest: The mountain yellow-legged frog is distributed across the Eldorado National Forest with populations or metapopulations (multiple breeding populations within the same basin that have hydrologic connectivity between them) within the headwaters and headwater tributaries of several watersheds, including the Rubicon River, the South Fork American River, the North Fork Cosumnes River, and the North Fork Mokelumne River (J. Williams, USFS, *in litt.* 2002).

Numerous surveys for mountain yellow-legged frogs have been conducted on this national forest by the USFS, the CDFG, and several contractors between 1990 and 2002. Reproducing populations have been found at a variety of locations in high elevation areas of this national forest. Surveys for amphibians within the Eldorado National Forest in 1992 resulted in no detections of mountain yellow-legged frogs, though this may be a function of the limited area and habitat type that was surveyed (Martin 1992). Jennings and Hayes (1994) indicate both extirpated populations and extant populations on the Eldorado National Forest. Intensive surveys by CDFG and USFS in 2001 and 2002 resulted in an estimated 18 extant populations or metapopulations of mountain yellow-legged frogs on the Eldorado National Forest, although both the mean number of populations and population size are generally low relative to historic reports (J. Williams, *in litt.* 2002). Currently, approximately four populations exist with between 25 and 50 mountain yellow-legged frogs; these are the largest populations on the Eldorado National Forest (J. Williams, *in litt.* 2002).

Stanislaus National Forest: A 1992 survey (Martin 1992) in the Stanislaus National Forest located mountain yellow-legged frogs at only 2 of 16 locations surveyed, and at these locations, the numbers of adults detected were small (under five). Jennings and Hayes (1994) indicate that the species has been extirpated from a number of historic locations. There are approximately 80 extant populations of mountain yellow-legged frogs on the Stanislaus National Forest; of these, only about 8 appear to have more than 10 adults, and only 2 populations are known to have 25 to 30 adults (L. Conway, USFS, pers. comm. 2002).

Yosemite National Park: From 1914 to 1920, Grinnell and Storer conducted a biological survey along a transect across the Sierra Nevada. They documented mountain yellow-legged frogs at 14 sites throughout Yosemite National Park and noted the species was abundant in this area. Numerous frogs were found in lakes and streams at high elevations (Grinell and Storer 1924). ''Hundreds of frogs'' were found at Young Lake and frogs were ''very numerous'' at Westfall Meadow (Camp1915, as cited in Drost and Fellers 1994). Large numbers of specimens were collected; for example, 25 were taken at Vogelsang Lake (Grinnell 1915, as cited in Drost and Fellers 1994).

The mountain yellow-legged frog was documented at several additional locations in Yosemite National Park from 1957 to 1960 (Heller 1960). At Johnson Lake, Mullally and Cunningham (1956) reported a mountain yellow-legged frog population decline between 1950 and 1955, though they did not quantify the decline. They attributed this decline to the unusually long and cold winter of 1951–1952. Some of Yosemite's ''densest aggregations of frogs ever noted'' by Mullally and Cunningham (1956) were in lakes near Ostrander Lake south of Glacier Point; they attributed the absence of frogs in Ostrander Lake to the presence of non-native trout.

Between 1988 and 1991, Bradford *et al.* (1994a) randomly selected and surveyed four mountain yellow-legged frog populations documented in Yosemite between 1955 to 1979. Although they did not resurvey all of the mountain yellow-legged frog populations previously reported from within the park, they reported that the four resurveyed populations were extirpated (Bradford *et al.*1994a). In 1992 and 1993, Drost and Fellers (1996) revisited 38 of the original 40 sites surveyed by Grinnell and Storer from 1914 to1920, and surveyed other sites with potential mountain yellow-legged frog habitat. The mountain yellow-legged frog had declined by approximately 80 percent from the locations documented by the 1924 study (Drost and Fellers 1996). A distribution map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) also documents extinctions and indicates a population decline of this species from Yosemite National Park. Colwell and Beatty (2002) surveyed 35 lakes with appropriate mountain yellow-legged frog habitat within the Tuolumne and Merced River drainages of Yosemite National Park in 1992 and 1993; only 3 lakes were found to have mountain yellow-legged frogs.

Currently in Yosemite National Park, 251 mountain yellow-legged frog sites exist, most of which occur within 23 different basins that have multiple breeding populations with habitat that is connected hydrologically, so that the populations in each basin function as a metapopulation (R. Knapp *in litt.* 2002). Six sites have populations with over 100 adult mountain yellow-legged frogs each, 1 site has a population with between 51 and 100 adults, and 41 sites have populations between 10 and 50 adults each. In addition, 203 sites have fewer than 10 adults each. Of the 251 mountain-yellow legged frog sites in the park, evidence of breeding has been found in 71 populations.

Inyo National Forest: Jennings and Hayes (1994) document the extirpation of some mountain yellow-legged frog populations from the Inyo National Forest. In 1994, 15 known locations had mountain yellow-legged frog populations (Parker 1994). Currently, 7 basins within the Inyo National Forest have known extant mountain yellow-legged frog populations or populations that function as metapopulations (C. Milliron, *in litt.* 2002). Some of these populations are stable, consisting of several hundred individuals representing all age classes (L. Sims, USFS, *in litt.* 2002). Chytrid fungus (see Factor C, Disease, below) has been documented at an additional population location that is now extinct (C. Milliron, *in litt.* 2002).

Sierra National Forest: In 1955, Mullally and Cunningham (1956) reported encountering mountain yellow-legged frogs along Paiute Creek ''very sparingly'' at approximately 2,300 m (7,700 ft), with frogs becoming more abundant at higher elevations. The ''densest populations'' were found above 3,050 m (10,000 ft) in the Humphrey's Basin area, and a ''great many, including tadpoles'' were noted at and near Pine Creek Pass, with frogs also seen at Golden Trout and Desolation Lakes.

Jennings and Hayes (1994) indicated that the mountain yellow-legged frog has become extirpated at a number of historical locations in the Sierra National Forest. Knapp and Matthews (2000) report on mountain yellow-legged frog population declines associated with fish stocking within the John Muir Wilderness Area of the Sierra National Forest (see Factor C, Disease, below). In 1995 and 1996, Knapp and Matthews (2000) surveyed 669 lakes, ponds, and other water bodies in the John Muir Wilderness Area. Mountain yellow-legged frog adults were found in 4 percent of these water bodies, and frog larvae in 3 percent (Knapp and Mathews 2000). In 2002, Knapp conducted resurveys at the 28 water bodies that had been occupied by mountain yellow-legged frogs in 1997, and also at 118 of the 641 sites where frogs were not detected in 1997. Knapp found no change in mountain yellow-legged frog status at 39 percent of these 28 previously occupied water bodies, but found that the frogs at 61 percent of the 28 previously occupied sites had gone extinct, while colonization had occurred at 10 percent of 118 previously unoccupied sites (R. Knapp *in litt.* 2002).

Although not all potential mountain yellow-legged frog habitats have been surveyed within the Sierra National Forest, approximately six subwatersheds have extant metapopulations (H. Eddinger, USFS, *in litt.* 2002). These subwatersheds are in the upper headwaters of the South Fork Merced River, South Fork San Joaquin River, and North Fork Kings River. They include the Mono Creek Basin, the Bear Creek Basin, the Paiute Creek Basin, the Humphreys Creek Basin, the Big Creek Basin, and the Dinkey Creek Basin.

Sequoia and Kings Canyon National Parks: Relatively few records exist for mountain yellow-legged frog prior to 1955 in the Sequoia and Kings Canyon National Parks. From 1955 to 1979, the species is known to have occurred in at least 21 sites scattered throughout Sequoia and Kings Canyon National Parks, although historic abundance is not known (Bradford *et al.* 1994a). In 1978–1979, the headwaters of seven creek systems were surveyed for mountain yellow-legged frogs in the national parks. Frogs were found at 27 sites greater than 200 m (660 ft) apart (Bradford *et al.* 1994a). A distributional map of mountain yellow-legged frogs produced by Jennings and Hayes (1994) indicates numerous historic sightings and collections of the species within both national parks, as well as numerous extinctions. The species was already noted to have disappeared from

approximately half of previously occupied locations in Sequoia and Kings Canyon Parks by the late 1980s (Bradford *et al.* 1994a). On the basis of surveys, Bradford *et al.* (1994a) estimate that mountain yellow-legged frogs have been extirpated from half of their historic locations in Sequoia and Kings Canyon National Parks. For example, Fellers (1994) surveyed in Sequoia and Kings Canyon National Parks and did not detect the mountain yellow-legged frog in the Kaweah watershed where the species was located historically.

In 1997, Knapp and Matthews (2000) surveyed 1,059 lakes, ponds, and other water bodies in Kings Canyon National Park. Mountain yellow-legged frog adults were found in 31 percent of these water bodies, and frog larvae in 20 percent (Knapp and Mathews 2000). Some significant frog populations remain in Sequoia and Kings Canyon National Parks, but extensive declines have been described. In 2002, Knapp (*in litt.* 2002) resurveyed 274 water bodies occupied by mountain yellow-legged frogs in 1997, and he also resurveyed 626 of the 785 sites where frogs were not detected in 1997. Knapp found no change in status at 60 percent of the 274 previously occupied sites, but found that 39 percent of the 274 previously occupied sites had gone extinct, while colonization had occurred at 7 percent of 626 previously unoccupied sites.

Currently in Sequoia and Kings Canyon National Parks, 507 mountain yellow-legged frog sites are known, most of which occur within 36 different basins that have multiple breeding populations that are hydrologically connected, so that the populations within each basin function as a metapopulation. Fifty-four sites have populations of more than 100 adult mountain yellow-legged frogs, 25 sites have populations between 51 and 100 adults, 132 sites have populations between 10 and 50 adults, and 296 sites have fewer than 10 adults. Of the 507 mountain yellow-legged frog sites in Sequoia and Kings Canyon National Parks, breeding evidence has been found at 259 populations (R. Knapp *in litt.* 2002).

Sequoia National Forest: Jennings and Hayes (1994) indicate that the mountain yellow-legged frog has been extirpated from a number of historical locations in the Sequoia National Forest. Mountain yellow-legged frogs were collected on several historic locations of the Kern Plateau in Sequoia National Forest (Jennings and Hayes 1994). Today, two known extant populations exist on the Sequoia National Forest (S. Anderson, USFS, *in litt.* 2002).

All of the recent mountain yellow-legged frog sightings from the Sequoia National Forest have been of single frogs or very small populations. In 1992, mountain yellow-legged frogs were not detected during amphibian surveys conducted at 17 sites in Sequoia National Forest (Martin 1992). The species appears to be severely reduced in numbers and range in the Sequoia National Forest.

Distinct Vertebrate Population Segment

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act, we, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration–Fisheries), developed a joint policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require the Act's protective measures.

Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) the population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

Discreteness. Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation, status, or regulatory mechanisms exist. The proposed DPS, the Sierra Nevada mountain yellow-legged frog, is based on the first condition, the marked separation from other populations.

The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which geographically isolates the populations in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). The geographic separation of the Sierra Nevada and southern California mountain yellow-legged frogs was recognized in the earliest description of the species by Camp (1917), who treated specimens from the two areas as separate subspecies of *R. boylii*. Camp (1917) described the two subspecies based on differences in their biogeography and morphology.

Ziesmer (1997) analyzed vocalizations of mountain yellow-legged frogs from 86 locations in Alpine and Mariposa counties in the Sierra Nevada, and vocalizations of mountain yellow-legged frogs from 23 locations in the San Jacinto Mountains of Riverside County in southern California. The vocalizations of Sierra Nevada frogs differed from those of southern California frogs in pulse rate, harmonic structure, and dominant frequency. Ziesmer (1997) concluded that the differences in vocalization supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California may represent separate species.

Genetic analyses support the discreteness of the mountain yellow-legged frog populations in southern California from those in the Sierra Nevada. In an allozyme (genetic) study that compared mountain yellow-legged frogs from the central Sierra Nevada with those from southern California, a fairly significant genetic difference was found between the two populations (D. Green, McGill University, *in litt.* 1993). However, because there were no frog samples from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinctions between the Sierra Nevada and southern California populations. Thus, because the data set was incomplete, Green (*in litt.*, 1993) interpreted the results cautiously.

A phylogenetic analysis of mitochondrial deoxyribonucleic acid (DNA) sequences of the mountain yellow-legged frog was performed throughout its distribution (Macey *et al.* 2001). This study concluded that there are two major genetic lineages of the mountain yellow-legged frog (inclusive of the Sierra Nevada populations and

the southern California populations), with populations in the Sierra Nevada falling into three distinct groups and the fourth being the southern California population (Macey *et al.* 2001). Though three genetic lineages of mountain yellow-legged frogs have been identified in the Sierra Nevada, more genetic sampling is needed to delineate specific boundaries of the three genetic lineages before they are treated or managed as separate units (Macey *et al.* 2001). Therefore, this finding treats the three genetic lineages of the mountain yellow-legged frog in the Sierra Nevada as one DPS, discrete from the mountain yellow-legged frog DPS in southern California.

The biogeographic fragmentation within the Sierra Nevada population of mountain yellow-legged frogs occurs between Kings Canyon National Park and a region slightly north of Yosemite National Park, allowing for the central and northern Sierra Nevada populations to share more genetic similarities than the southern Sierra Nevada and southern California populations (Macey *et al.* 2001). In fact, this study indicates that the southern Sierran group (largely in Fresno County) may be more closely related to the southern California mountain yellow-legged frogs than with those in the central and northern Sierra Nevada (Macey *et al.* 2001). This research suggests that the initial divergence between the northern and southern populations of mountain yellow-legged frogs occurred 2.2 million years before present. Within each of these groups, Macey *et al.* (2001) have detected a similar pattern of divergence that suggests the northern Sierra Nevada and central Sierra Nevada mountain yellow-legged frog populations diverged 1.5 million years before present, and the southern Sierra Nevada and the southern California mountain yellow-legged frog populations diverged from each other approximately 1.4 million years before present. Today, these 4 groups are isolated by arid valleys; this isolation is most pronounced between southern California and the southern Sierra Nevada. The biogeographic pattern of genetic divergence as detected in the mountain yellow-legged frogs of the Sierra Nevada has also been observed in four other reptiles and amphibians, suggesting a common event that fragmented their ranges (Macey *et al.* 2001).

Sierran frogs and southern California mountain yellow-legged frogs also differ ecologically in the types of aquatic habitat they occupy. Mountain yellow-legged frogs in southern California are typically found in steep gradient streams, even though they may range into small meadow streams at higher elevations (Zweifel 1955; Mullally 1959). In contrast, Sierran frogs are most abundant in high-elevation lakes and slow-moving portions of streams (Zweifel 1955; Mullally and Cunningham 1956), habitat that is distinct from the canyons of southern California's arid mountain ranges, which are inhabited by the southern California DPS of the mountain yellow-legged frog.

Significance. Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We have found substantial evidence that all but one (there are no introduced populations of mountain yellow-legged frogs outside of its historic range) of these significant factors are met by the population of mountain yellow-legged frogs in the Sierra Nevada. Furthermore, it is significant because a major reduction in abundance of the species as a whole would occur if the Sierra Nevada population were extirpated. The extinction of the Sierra Nevada population of the mountain yellow-legged frog would result in the loss of a genetic entity, a reduction in the geographic range of the species, a loss of the species persistence in a setting ecologically unique relative to the ecological setting of the southern California population, and a reduction in the number of breeding populations. As discussed above, the Sierra Nevada population appears to be genetically distinct from the southern California population of mountain yellow-legged frogs. The mountain yellow-legged frogs of the Sierra Nevada comprise the main distribution of the species at the northern and central limits of the species' range. Loss of the Sierra Nevada population would be significant as it would eliminate the species from the majority of its range and would reduce the species to fewer than 10 small isolated sites in southern California (50 FR 44382). The geographic isolation of the Sierra Nevada population from the mountain yellow-legged frogs in southern California prevents genetic interchange between these populations.

Conclusion. We evaluated the Sierra Nevada population of the mountain yellow-legged frog to determine whether it meets the definition of a DPS, addressing discreteness and significance as required by our policy. We conclude that the Sierra Nevada population of the mountain yellow-legged frog is discrete from the southern California population, on the basis of their geographic separation, differences in vocalization, differences between their habitats, and apparent genetic differences. We conclude that the Sierra Nevada population of the mountain yellow-legged frog is significant because the loss of the species from the Sierra Nevada would result in a significant reduction in the species' range and its population numbers, and would constitute the loss of a genetically discrete population that differs markedly from the southern California population of mountain yellow-legged frogs. Because the population segment meets both the discreteness and significance criteria of our DPS policy, the Sierra Nevada portion of the mountain yellow-legged frog's range qualifies for consideration for listing. An evaluation of the level of threat to the DPS based on the five listing factors established by the Act follows.

Previous Federal Action

On February 10, 2000, we received a petition, dated February 8, 2000, from the Center for Biological Diversity and Pacific Rivers Council to list the Sierra Nevada population of the mountain yellow-legged frog as endangered. The petitioners stated that the Sierra Nevada population of the mountain yellow-legged frog qualifies for listing under our DPS Policy. On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60603) concluding that the petition presented substantial scientific or commercial information to indicate that the listing of the Sierra Nevada population of the mountain yellow-legged frog may be warranted; we also requested information and data regarding the species.

This 12-month finding is made in accordance with a court order which requires us to complete a finding by January 10, 2003 (*Center for Biological Diversity and Pacific Rivers Council* v. *Norton and Jones*) (No. C 01–2106 SC). This notice constitutes the 12-month finding for the February 10, 2000, petition.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal lists. We may determine a species (which is defined in section 3 of the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature) to be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the Sierra Nevada DPS of the mountain yellow-legged frog (mountain yellow-legged frog), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* A number of hypotheses, including habitat loss, have been proposed for recent global amphibian declines (Bradford *et al.* 1993; Corn 1994; Alford and Richards 1999). Habitat destruction, however, does not appear to be the primary factor leading to the decline of the mountain yellow-legged frog. The mountain yellow-legged frog occurs at high elevations in the Sierra Nevada, which have not had the types or extent of large-scale habitat conversion and disturbances which have occurred at lower elevations (Bradford *et al.* 1993; Knapp 1996; Knapp and Matthews 2000). Large scale habitat conversion has not been identified within the range of this species; thus, direct habitat destruction or modification associated with intensive human activities, as measured by urban or agricultural land use within the mountain yellow-legged frogs' range, has not been implicated in the decline of this species (Davidson *et al.* 2002). However, other human activities have played a role in the modification of mountain yellow-legged frog habitat. These include livestock grazing, non-native fish introductions (*see* Predation, Factor C, below), timber management, road construction and maintenance, recreation, water diversions, fire management activities, and introduction of environmental contaminants (*see* Other, Factor E, below). These activities have modified habitat in ways that have fragmented and isolated mountain yellow-legged frog populations, and thereby, may have caused or contributed to the decline of this DPS (Bradford *et al.* 1993).

Grazing

Grazing of livestock in Sierra Nevada meadows and riparian areas (aquatic ecosystems and adjacent upland areas that directly affect them) began in the mid-1700s with the European settlement of California (Menke *et al.* 1996). Following the gold rush of the mid-1800s, grazing rose to a level that exceeded the carrying capacity of the available range and caused significant impacts to meadow and riparian ecosystems (Meehan and Platts 1978; Menke *et al.* 1996). From 1870 to 1908, within the range of the mountain yellow-legged frog in the high Sierra Nevada, meadows were converted to summer rangelands for grazing cattle, sheep, horses, goats, and in some areas pigs; however, the alpine areas were mainly grazed by sheep (Beesley 1996; Menke *et al.* 1996). This practice resulted in the degradation of these extremely sensitive areas (Menke *et al.* 1996).

In general, livestock grazing within the range of the mountain yellow-legged frog was at a high but undocumented level until the establishment of national parks (beginning in 1890) and national forests (beginning in 1905). Within established national parks, grazing by cattle and sheep was replaced by that of packstock, such as horses and burros. Within established national forests, the amount of livestock grazing was gradually reduced and better documented, and the types of animals shifted, with reductions in sheep and increases in cattle and packstock. In general, livestock grazing within the national forests has continued with gradual reductions since the 1920s, except for an increase during World War II. Continuing decreases, motivated by concern towards resource protection, conflicts with other uses, and deteriorating range conditions, continued from the 1950s through the early 1970s but still exceeded sustainable grazing capacity in many areas (Menke *et al.* 1996; University of California (UC) 1996a). Grazing management that is more sensitive to riparian areas has been implemented and continues to increase since the 1970s (UC 1996a).

Packstock grazing is the only grazing currently permitted in the Sierra Nevada national parks. Packstock grazing also is permitted in national forests within the Sierra Nevada. However, there has been very little monitoring of the impacts of packstock use in this region (Menke *et al.* 1996). Use of packstock in the Sierra Nevada increased since World War II as a result of increased road access and increases in leisure time and disposable income (Menke *et al.* 1996). Demand for packstock use and recreational riding in the Sierra Nevada are projected to increase as California's human population increases (USFS 2001).

Observational data indicate livestock negatively impact mountain yellow-legged frog populations by altering frog habitat and trampling individuals (R. Knapp, *in litt.* 1993a, 1993b, 1994, 2002; Jennings 1996; A. Carlson, pers. comm. 2002; USFS 2002; V. Vrendenburg, *in litt.* 2002).

Livestock grazing causes changes in wetland systems, including meadows, streams, and ponds; modifies mountain yellow-legged frog habitat by removing overhanging banks that provide shelter; and contributes to the siltation of breeding ponds. Pond siltation may decrease the survivorship of overwintering larvae, subadults, and adult mountain yellow-legged frogs as the overwintering habitats need to be deep enough so that the entire water column does not freeze and underwater caves and crevices are available (Bradford 1983; Pope 1999a).

Grazing of livestock in riparian areas impacts vegetation in multiple ways, including: soil compaction, which increases runoff and decreases water availability to plants; herbage removal, which promotes increased soil temperatures and evaporation rates at the soil surface; and direct physical damage to the vegetation (Kauffman and Krueger 1984; Cole and Landres 1996; Knapp and Matthews 1996). Streamside vegetation protects and stabilizes streambanks by binding soils to resist erosion and to trap sediment (Chaney *et al.* 1990). A study by Kauffman *et al.* (1983) indicated that livestock grazing may have weakened the streambank structure through trampling and removal of vegetation, thereby promoting conditions for erosion. Removal of vegetative cover within mountain yellow-legged frog habitat decreases available habitat, exposes frogs to predation (R. Knapp, *in litt.* 1993b), and increases the threat of dessication (Jennings 1996). Grazing may result in changes to vegetation composition, resulting in an increased density of forested stands and the expansion of trees into areas that were formerly treeless (Cole and Landres 1996).

Livestock grazing can cause a nutrient loading problem due to urination and defecation in or near the water, and can elevate bacteria levels in areas where cattle are concentrated near water (Meehan and Platts 1978; Stephenson and Street 1978; Kauffman and Krueger 1984). The nutrient status of streams can markedly influence the growth of microflora and microfauna and directly and indirectly affect many other characteristics of the stream biota

(Lemly 1998). Growth of filamentous bacteria on the bodies and gills of aquatic insects has been documented in association with nutrient loading in livestock use pastures, along with significantly lower densities of insects at downstream sites. In laboratory and field studies, aquatic insects with this bacterial growth experienced extensive mortality. This indicates that elevated bacteria levels associated with livestock use can negatively influence stream insect populations (Lemley 1998). Adverse effects to aquatic insects within the range of the mountain yellow-legged frog could result in a lowered prey availability, possibly increasing intraspecific competition for limited resources.

Throughout the range of the mountain yellow-legged frog in the Sierra Nevada approximately 79 currently active grazing allotments exist on USFS-administered lands. Of these grazing allotments, at least 29 have extant mountain yellow-legged frog populations within them. An estimated 13 percent of the approximately 210 known mountain yellow-legged frog populations, or populations that function as metapopulations, on Sierra Nevada national forests occur within active grazing allotments. Many of the mountain yellow-legged frog populations in the Sierra Nevada that occur within active grazing allotments are small. These populations may be more vulnerable to extirpation as a result of grazing-induced habitat modification, and if extirpated they might not be recolonized in situations where they are isolated from other populations and lack habitat connectivity to potential source populations.

In the 60-Lakes Basin of Kings Canyon National Park, packstock use is regulated in wet meadows to protect mountain yellow-legged frog breeding habitat in bogs and lakeshores from trampling and associated degradation (V. Vredenburg, *in litt.* 2002; H. Werner, NPS, *in litt.* 2002).

Recreation

Recreation is the fastest growing use of national forests. As such, its impacts on the mountain yellow-legged frog are likely to continue and to increase (USDA 2001). Recreational activities take place throughout the Sierra Nevada and have significant negative impacts on several plant and animal species and their habitats (USDA 2001a). To further recreational opportunities and angling success, non-native trout stocking programs in the Sierra Nevada started in the late 19th Century (Bahls 1992; Pister 2001). Trout stocking throughout the range of the mountain yellow-legged frog has contributed to the decline of this species (see Predation, Factor C, below). The recreational impact of anglers at high mountain lakes has been severe in the Sierra Nevada, with most regions reporting a level of use greater than that which the fragile lakeshore environments can withstand (Bahls 1992).

Recreation may threaten all life stages of the mountain yellow-legged frog through direct disturbance resulting from trampling by humans, packstock, or vehicles, including off-highway vehicles; harassment by pets; and associated habitat degradation (Cole and Landres 1996; USFS 2001). Studies have not been conducted to determine whether recreational activities are contributing to the decline of the mountain yellow-legged frog, and recreation has not been implicated as a cause of major decline of the mountain yellow-legged frog.

Dams and Water Diversions

Dams and water diversions have altered aquatic habitats in the Sierra Nevada (Kondolf *et al.* 1996). Numerous reservoirs have been constructed within the range of the mountain yellow-legged frog. These include Huntington Lake, Florence Lake, Lake Thomas A. Edison, Saddlebag Lake, Convict Lake, Cherry Lake, and other reservoirs associated with Hetch Hetchy, Upper and Lower Blue Lakes, Lake Aloha, Silver Lake, Hell Hole Reservoir, French Meadow Reservoir, Lake Spaulding, and others. The extent of the impacts that these projects have had on the mountain yellow-legged frog is not known. The construction of dams probably has affected mountain yellow-legged frogs in the Sierra Nevada by altering their habitat and movements, and also by altering the distribution of predators (reservoirs are often stocked with non-native fish species that incidentally prey on mountain yellow-legged frogs (See Predation, Factor C, below)). Mountain yellow-legged frogs cannot live in or move through the exposed shorelines created by reservoirs, nor can they successfully reproduce in these environments with predatory fishes unless there are shallow side channels or disjunct pools that are free of predatory fishes (Jennings 1996).

Dams may alter the temperature and sediment load of the rivers they impound (Cole and Landres 1996). Dams, water diversions, and their associated structures can alter the natural flow regime with unseasonal and fluctuating releases of water, create habitat conditions unsuitable for native amphibians both upstream and downstream of dams, and act as barriers to movements by dispersing juvenile and migrating adult amphibians (Jennings 1996). Where dams act as barriers to mountain yellow-legged frog movement, they would effectively prevent genetic exchange between populations and the recolonization of sites. Water diversions that remove water from mountain yellow-legged frog habitat may adversely impact breeding success and adult survivorship if the diversion results in a lowering of the water level to the extent that the entire water column freezes in the winter, or to the extent that the habitat is rendered dry. These factors are likely to have contributed to the decline of mountain yellow-legged frogs and probably continue to pose a risk to the species.

Roads and Timber Harvest

Any activity that severely alters the terrestrial environment, including road construction and timber harvest, is likely to result in the reduction and extirpation of amphibian populations in the Sierra Nevada (Jennings 1996). Most of the mountain yellow-legged frog populations are in areas such as national parks or designated wilderness areas where timber is not harvested (Bradford *et al.* 1994a; Drost and Fellers 1996; Knapp and Matthews 2000). Some of these populations, and others outside of these areas, are located at too high an altitude for timber to be harvested, so this activity is not expected to affect the majority of extant mountain yellow-legged frog populations. There are some mountain yellow-legged frog populations in areas where timber harvests have occurred in the past and others where it may occur in the future. There are also roads within the range of the mountain yellow-legged frog; however, neither of these factors has been implicated as an important contributor to the decline of this species (Jennings 1996).

Fire Management Activities

Mountain yellow-legged frogs are generally found at high elevations in wilderness areas and national parks where vegetation is sparse and fire suppression activities are implemented infrequently. Potential impacts to the species resulting from fire management activities include: Water drafting (taking of water) from occupied ponds and lakes, resulting in direct mortality or rendering the habitat unsuitable for reproduction and survivorship; construction of fuel breaks either by hand or heavy equipment, potentially resulting in erosion and siltation of habitat; fire suppression with water applications or fire retardants; and

increased human activity in the area, potentially disrupting mountain yellow-legged frog behavior.

Fire retardant chemicals contain nitrogen compounds and/or surfactants (a subset of chemical additives usually used to facilitate application). Laboratory tests of these chemicals have shown that they can cause mortality in fishes and aquatic invertebrates by releasing surfactants and ammonia when they are added to water (Hamilton *et al.* 1996), and similar effects are likely on amphibians. Therefore, if fire retardant chemicals were dropped in or near mountain yellow-legged frog habitat, they could have negative effects on individuals.

In some areas within the range of the mountain yellow-legged frog, long-term fire suppression has changed forest structure and conditions where fire severity and intensity are higher (McKelvey *et al.* 1996). Prescribed fire has been used by land managers to achieve various silvicultural objectives, including the reduction of fuel loads. In some systems, fire is thought to be important in maintaining open aquatic and riparian habitats for amphibians (Russel *et al.* 1999). But severe and intense wild fires may reduce the ability of amphibians to survive such a fire. However, amphibians display adaptive behavior that may minimize mortality from fire, by taking cover in wet habitats or taking shelter in subterranean burrows, though the moist and permeable skin of amphibians increases their susceptibility to heat and dessication (Russel *et al.* 1999). Neither the direct nor indirect effects of prescribed fire or wildfire on the mountain yellow-legged frog have been studied, but because the species generally occupies high elevation habitat, fire is not a likely risk to this species in much of its range.

In summary, historic grazing activities likely modified the habitat of the mountain yellow-legged frog throughout its range. Although grazing pressure has been significantly reduced from historic levels, grazing may continue to contribute to localized degradation and loss of suitable habitat, negatively affecting mountain yellow-legged frog populations. The effects of recreation, dams, water diversions, roads, timber harvests, and fire management activities on the mountain yellow-legged frog are not well studied, and though they may have negatively affected mountain yellow-legged frogs and their habitat, they have not been implicated as primary factors in the decline of this species (Bradford *et al.* 1993; Bradford *et al.* 1994a; Jennings 1996; Knapp and Matthews 2000). However, recreation, dams, water diversions, roads, timber harvests, and fire management activities may be factors of secondary importance in the decline of the mountain yellow-legged frog and the modification of its habitat (Jennings 1996).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial market for mountain yellow-legged frogs, nor are there documented recreational or educational use for mountain yellow-legged frogs, although it is likely that they have been handled by curious members of the public, used as bait by anglers, and collected as pets. The mountain yellow-legged frog does not appear to be particularly popular among amphibian and reptile collectors; however, Federal listing could raise the value of the animals within wildlife trade markets and increase the threat of unauthorized collection above current levels (K. McCloud, Service, pers. comm. 2002). Even limited interest in the species could pose a serious threat to this animal.

Scientific research may cause stress to mountain yellow-legged frogs through disturbance, including disruption of the species' behavior, handling individuals, and injuries associated with marking and tracking individuals. Scientific research has also resulted in the death of numerous individuals through the collection of museum specimens (Zweifel 1955; Jennings and Hays 1994). However, this is a relatively minor threat. Of greater concern are researchers contributing to the spread of pathogens via clothing and sampling equipment as they move between water bodies and populations (Bradford 1991; Bradford *et al.* 1994a; Fellers *et al.* 2001). Given the uncertainty surrounding the potential for researchers to contribute to the spread of pathogens, researchers have begun to implement equipment sterilization procedures between survey sites (H. Eddinger, *in litt.* 2002; R. Knapp, in litt. 2002; V. Vredenburg, in litt. 2002). For further discussion concerning the threat of disease, see Factor C below.

C. *Disease or predation.*

Predation

Native predators of mountain yellow-legged frogs include the mountain garter snake (*Thamnophis elegans elegans*), valley garter snake (*T. sirtalis fitchi*), Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcrackers (*Nucifraga columbiana*), coyotes (*Canis latrans*), and black bear (*Ursus americanus*) (Camp 1917; Grinnell and Storer 1924; Mullally and Cunningham 1956; Bradford 1991; Jennings *et al.* 1992; Feldman and Wilkinson 2000; V. Vredenburg *et al.* (in press)).

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that non-native fishes and mountain yellow-legged frogs rarely co-exist (Grinnell and Storer 1924; Needham and Vestal 1938; Mullally and Cunningham 1956; Cory 1962a, 1963; Bradford 1989; Bradford and Gordon 1992; Bradford *et al.* 1993, 1994a, 1998; Drost and Fellers 1996; Jennings 1996; Knapp 1996; Knapp and Matthews 2000; Knapp *et al.* 2001; V. Vredenburg *et al.*, (in press); USFS undated). The body of scientific research on the distributions of introduced trout and mountain yellow-legged frogs over time has conclusively demonstrated that introduced trout have negatively impacted mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989; Bradford *et al.* 1993, 1994a, 1998; Knapp 1994, 1996; Drost and Fellers 1996; Knapp and Matthews 2000; Knapp *et al.* 2001). Mountain yellow-legged frogs and trout (native and non-native) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations that would have negative population growth rates in the absence of immigration (Bradford *et al.* 1998; Knapp and Matthews 2000). Non-native fish stocking programs have been recognized to have negative ecological implications because non-native fish eat native aquatic flora and fauna, including amphibians and invertebrates (Bahls 1992; Erman 1996; Matthews *et al.* 2001; Pilliod and Peterson 2001; Schindler *et al.* 2001; Moyle 2002).

Prior to extensive trout planting programs in the late 19th Century through the present, most streams and lakes in the Sierra Nevada at elevations above 1,800 m (6,000 ft) were without fishes. The distributions of several native fish species occur in lower-elevation aquatic habitats around the Sierra Nevada (Knapp 1996; Moyle *et al.* 1996; Moyle 2002). The only major exception to the 1,800 m (6,000 ft) elevational limit for fishes within the range of the mountain yellow-legged frog in the Sierra Nevada was the upper reaches of the Kern River where native fish such as the Little Kern golden trout (*Oncorhynchus mykiss whitei*) evolved (Moyle 2002). Natural barriers prevented fish from colonizing the higher elevation headwaters of the Sierra Nevada watershed (Moyle *et al.* 1996).

With the Gold Rush and its associated increase in human habitation, habitat alteration, fish distribution and species

composition began to change dramatically in high elevation lakes and streams (Moyle *et al.* 1996). Some of the first practitioners of trout stocking in the Sierra Nevada were the Sierra Club, local sportsmen's clubs, private citizens, and the U.S. military (Knapp 1996; Pister 2001). As more hatcheries were built and distribution of non-native fish became better organized under State agency leadership, trout continued to be planted for the purpose of increased angler opportunities and success (Pister 2001). After World War II, the method of transporting trout to be stocked in high elevation areas changed from packstock to aircraft, which allowed stocking in more remote lakes and in greater numbers. It was at this point that CDFG began managing the bulk of the program, as it does today (Knapp 1996; Pister 2001).

Brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), rainbow trout (Oncorhynchus mykiss), and other trout species assemblages have been planted in most streams and lakes of the Sierra Nevada (Knapp 1996; Moyle 2002). National forests in the Sierra Nevada have a higher proportion of lakes with non-native fish occupancy than do national parks (Knapp 1996). This is primarily because the NPS adopted a policy that greatly reduced fish stocking within their jurisdictional boundaries in the late 1970s. Fish stocking was terminated altogether in Sierra Nevada national parks in 1991 (Bahls 1992; Knapp 1996).

Knapp's (1996) review of previous trout distribution estimates and other available data on trout distribution in the Sierra Nevada indicated that approximately 63 percent of lakes larger than 1 ha (2.5 ac) contain one or more non-native trout species, and as many as 85 percent of lakes larger than 1 ha (2.5 ac) within national forests currently contain fish. Lakes larger than 1 ha (2.5 ac) within Sierra Nevada national parks were estimated to have from 35 to 50 percent non-native fish occupancy, a 29 to 44 percent decrease since fish stocking was terminated (Knapp 1996). Though data on fish occupancy in streams is lacking throughout the Sierra Nevada, Knapp (1996) estimated 60 percent of the streams in Yosemite National Park were occupied by trout, despite the curtailment of stocking practices over 25 years ago. Grinnell and Storer (1924) observed that fish stocking in Yosemite National Park ''nearly or quite eliminates the (mountain yellow-legged) frogs.''

The most spatially comprehensive study of introduced fish and mountain yellow-legged frog distributions included an analysis of large landscapes affected by different fish stocking regimes, watersheds with differing trout distributions, and individual water bodies with varying fauna assemblages (Knapp and Matthews 2000). The Knapp and Matthews (2000) study on the effects of introduced fishes on the mountain yellow-legged frog in the Sierra and Inyo National Forests' John Muir Wilderness indicated 65 percent of water bodies 1 ha (2.5 ac) or larger were stocked with fishes on a regular basis up through the time of the study. Over 90 percent of the total water body surface area in the John Muir Wilderness in the Sierra and Inyo National Forests is occupied by non-native trout (Knapp and Matthews 2000). All fish stocking was terminated in 1977 in the adjacent Kings Canyon National Park. Knapp and Matthews (2000) surveyed all lakes and ponds, more than 1,700 water bodies, for fishes and mountain yellow-legged frogs. They concluded that a strong negative correlation exists between introduced trout and mountain yellow-legged frogs across the landscape, the watersheds, the individual water bodies of the study area, and possibly throughout the Sierra Nevada (Knapp and Matthews 2000). Consistent with this finding are the results of an analysis of the distribution of mountain yellow-legged frog larvae that indicates that the presence and abundance of larvae are reduced dramatically in lakes that have fish as compared with lakes that were never stocked with fish (Knapp *et al.* 2001).

Several aspects of the mountain yellow-legged frog's life history may exacerbate its vulnerability to predation and extirpation by non-native trout (Bradford 1989; Bradford *et al.* 1993; Knapp 1996; Knapp and Matthews 2000). Mountain yellow-legged frogs are aquatic and are found mainly in lakes. This increases the probability that they will encounter non-native fishes whose distribution has been greatly expanded throughout the Sierra Nevada as a result of fish stocking. The multiple-year larval stage of the mountain yellow-legged frog necessitaties their use of permanent water bodies that are deep enough so as not to freeze, and so that overwintering adults can avoid oxygen depletion when the water is covered by ice (Mullally and Cunningham 1956; Bradford 1983; Knapp and Matthews 2000). This further restricts larvae to water bodies suitable for and frequently inhabited by fishes (Knapp 1996) and isolates mountain yellow-legged frogs to fishless marginal habitats (Bradford *et al.* 1993; Knapp and Matthews 2000).

Mountain yellow-legged frog populations have also been extirpated at some fishless bodies of water (Bradford 1991; Drost and Fellers 1996). An explanation suggested for recent mountain yellow-legged frog population declines from fishless waters in the Sierra Nevada is the isolation and fragmentation of remaining populations by introduced fishes in the streams, which once provided the mountain yellow-legged frog with dispersal and recolonization routes (Bradford 1991; Bradford *et al.* 1993). Based on a survey of 95 basins within Sequoia and Kings Canyon National Parks, Bradford *et al.* (1993) calculated that the introduction of fishes into the study area resulted in approximately a ten-fold decrease in hydrologic connectivity between populations of mountain yellow-legged frogs. Knapp and Matthews (2000) believe that this has generally restricted mountain yellow-legged frogs to extremely isolated and marginal habitat. Trout influenced the isolation and fragmentation of mountain yellow-legged frog populations and metapopulations, making them more vulnerable to extirpation from random events (such as disease) than large, unfragmented metapopulations (Wilcox 1980; Hanski and Simberloff 1997; Bradford *et al.* 1993; Knapp and Matthews 2000). Given the metapopulation structure of the mountain yellow-legged frog, these isolated population locations may have higher extinction rates than colonization rates because trout prevent successful recolonization and dispersal to and from these sites (Bradford *et al.* 1993; Blaustein *et al.* 1994a; Knapp and Matthews 2000). In addition, amphibians may not recolonize unoccupied sites following local extinctions because of physiological constraints; the tendency for amphibians, including the mountain yellow-legged frog, to move only short distances; and high site fidelity (Blaustein *et al.* 1994a).

Knapp and Matthews (2000) suggest that the predation of mountain yellow-legged frogs by fishes as observed by Grinnell and Storer (1924), and the documented declines of the 1970s (Bradford 1991; Bradford *et al.* 1994a; Stebbins and Cohen 1995), are not the start of the mountain yellow-legged frog's decline, but rather the end of a long decline that started soon after fish introductions to the Sierra Nevada began in the mid-1800s. Knapp and Matthews (2000) note that metapopulation theory (Hanski 1997) predicts this type of time lag from habitat modification to population extinction.

Fish-induced declines of the mountain yellow-legged frog may be reversed in some locations with an

intensive and focused effort to restore fishless conditions (Knapp and Matthews 1998, 2000; Knapp *et al.* 2001). Removing fish from lakes with an adjacent source population of mountain yellow-legged frogs can result in the rapid recolonization of the lake by the species and, over time, may result in recovery to conditions similar to lakes that had never been stocked (Knapp *et al.* 2001; Briggs *et al.* 2002; R. Knapp, *in litt.* 2002). Trout removal from several lakes has been successfully accomplished in the Sierra National Forest's John Muir Wilderness. This has resulted in the natural recolonization and initial recovery of mountain yellow-legged frogs in one of the lakes where trout were removed (R. Knapp, *in litt.* 2002). In the other two lakes within this basin where trout were removed, mountain yellow-legged frogs were successfully reintroduced, and there is evidence of reproduction in these translocated populations (R. Knapp, *in litt.* 2002). Sequoia and Kings Canyon National Parks have initiated a mountain yellow-legged frog restoration project which employs gill nets and electrofishing to remove fish from select lakes and adjacent stream segments at sites with little to no human visitation (NPS 2001). However, because of the cumulative effect of past mountain yellow-legged frog population declines (upwards of 80 percent in the 20th century), and ongoing population declines caused by disease or other factors, the recolonization of lakes restored to fishless conditions will grow less likely as the number of viable source populations of mountain yellow-legged frogs dwindles (Knapp *et al.* 2001).

The best-documented cause of the decline of the mountain yellow-legged frog is the introduction of non-native fish (Bradford 1989; Bradford *et al.* 1993; Knapp and Matthews 2000). In summarizing the effects of non-native fish on the mountain yellow-legged frog, it is important to recognize that: (1) The vast majority of the range of the mountain yellow-legged frog did not evolve with any species of fish as this frog predominantly occurs in water bodies above natural fish barriers; (2) water bodies throughout the range of the mountain yellow-legged frog have been intensively stocked with non-native fish, and where stocking has terminated, self-sustaining fish populations continue to persist; (3) the multiple year larval stage of the mountain yellow-legged frog prevents successful recruitment to populations that co-occur with non-native fish because when water bodies ice over in winter, larvae are forced from shallow margins of lakes and ponds into deeper unfrozen water where they are vulnerable to predation by non-native fish; (4) adult mountain yellow-legged frogs that co-occur with non-native fish are vulnerable to predation when they are exposed to these fish, such as when adult mountain-yellow legged frogs overwinter at the bottom of deep water bodies; and (5) the introduction of non-native fish has fragmented mountain yellow-legged frog habitat, isolated populations from each other, and generally restricted remaining mountain yellow-legged frog populations to marginal habitats, thereby increasing the likelihood of localized extinctions without the possibility of recolonization.

Disease

There have been recent reports from around the globe of disease- and pathogen-related population declines and mass die offs of amphibians (Bradford 1991; Blaustein *et al.* 1994b; Alford and Richards 1999). Mountain yellow-legged frogs are susceptible to diseases such as red-leg disease, caused by the bacterial pathogen *Aeromonas hydrophila.* This pathogen can cause localized population crashes (Bradford 1991). Bradford (1991) suggested that one such outbreak was a result of overcrowding within the mountain yellow-legged frog population. Though it is opportunistic and successfully attacks the immunosuppressed individuals, this pathogen appears to be highly contagious, affecting the epidermis and digestive tract of otherwise healthy amphibians (Shotts 1984; Carey 1993; Carey and Bryant 1995). Grinnell and Storer (1924) reported red-legged disease had infected some mountain yellow-legged frog populations in Yosemite National Park.

In California, chytridiomycosis (*Batrachochytrium dendrobatidis*), more commonly known as chytrid fungus, has been detected in nine amphibian species, including the mountain yellow-legged frog (Fellers and Green, pers. comm., as cited in Briggs *et al.* 2002; R. Knapp, Sierra Nevada Aquatic Research Laboratory, University of California at Santa Barbara, pers. comm. 2002). Fellers *et al.* (2001) report the presence of several bacteria and chytrid fungus in larval and recently metamorphosed mountain yellow-legged frogs from sites within the Sierra Nevada. Chytrid fungus affects the keratinized (horny epidermal tissue) mouth parts and epidermal tissue of larvae and metamorphosed mountain yellow-legged frogs (Fellers *et al.* 2001). Though little is known about its life history in the Sierra Nevada, chytrid fungus has a simple asexual life cycle, and chytrids can generally withstand adverse conditions such as freezing or drought (Briggs *et al.* 2002). A research effort is underway to study the dynamics of this pathogen and the mountain yellow-legged frog within the Sierra Nevada (Briggs *et al.* 2002). Whether adult frogs acquire this fungus from tadpoles or whether the fungus is retained through metamorphosis is unknown. However, the mountain yellow-legged frog may be especially vulnerable to infections of chytrid fungus as all life stages of the mountain yellow-legged frog share the same habitat nearly year round, facilitating the transmission of this fungus to individuals at different life stages within a population (Fellers *et al.* 2001). Survey results from 2000 in Yosemite and Sequoia-Kings Canyon National Parks indicate 24 percent of the mountain yellow-legged frog populations show signs of chytrid infection (Briggs *et al.* 2002). In mountain yellow-legged frogs, chytrid fungus has been observed to result in overwinter mortality and mortality during metamorphosis (Briggs *et al.* 2002). Effects of chytrid fungus on host populations of the mountain yellow-legged frog are variable, ranging from extinction, persistence with a high level of infection, to persistence with low levels of infection (Briggs *et al.* 2002). Studies of the microscopic structure of tissue and other evidence suggests chytrid fungus caused many of the recent extinctions in the Sierra National Forest's John Muir Wilderness Area and in Kings Canyon National Park, where 41 percent of the populations went extinct between 1995 and 2002 (R. Knapp, *in litt.* 2002).

Chytrid fungus affecting wild frog populations was not documented until the late 1990s. Since then, it has been reported in amphibian populations worldwide (Fellers *et al.* 2001). We do not know how long the mountain yellow-legged frog populations have been exposed to chytrid fungus. Red-leg disease is typically a secondary infection following a chytrid infection. If this was also the case in the early 1900s, then it would suggest that what Grinnell and Storer (1924) actually were seeing was chytrid infections (R. Knapp, *in litt.* 2002). During a visual examination of mountain yellow-legged frog tadpoles preserved between 1993 and 1999, abnormalities attributed to the chytrid fungus were detected on 14 of 36 specimens and no abnormalities were detected on any of the 43 tadpole specimens collected between 1955 and 1976 (Fellers *et al.* 2001). This indicates

that chytrid fungus infections may be a recent pathogen to affect the mountain yellow-legged frog, although visual detections of chytrid-like abnormalities may be neither longlasting nor attributable to this fungus (Fellers *et al.* 2001; V. Vredenburg, *in litt.* 2002). Since at least 1976, chytrid fungus has affected adult Yosemite toads (Green and Kagarise Sherman 2001). The Yosemite toad is sympatric with the mountain yellow-legged frog (their ranges overlap). Therefore, it is possible that this pathogen has affected both of these amphibian species since at least the mid-1970s. Chytrid fungus is only a recently detected pathogen in amphibian populations; this may be an emerging infectious disease. How it has been transmitted to the mountain yellow-legged frog is unclear (Briggs *et al.* 2002).

Saprolegnia is a globally distributed fungus that commonly attacks all life stages of fishes (especially hatchery reared fishes), and has recently been documented to attack and kill egg masses of western toads (*Bufo boreas*) (Blaustein *et al.* 1994b). This pathogen may be introduced through fish stocking or it may already be established in the aquatic ecosystem. Fishes and/or migrating or dispersing amphibians may be a vector for this fungus (Blaustein *et al.* 1994b; Kiesecker *et al.* 2001). *Saprolegnia* has not been reported in the mountain yellow-legged frog; however, if hatchery fishes are vectors of this disease, it may have been introduced via fish stocking into historically occupied mountain yellow-legged frog habitat.

No viruses were detected in the specimens of mountain yellow-legged frogs that Fellers *et al.* (2001) analyzed for chytrid fungus. In Kings Canyon National Park, Knapp (pers. comm. 2002) found mountain yellow-legged frogs showing symptoms preliminarily attributed to a ranavirus. Mechanisms for disease transmission, including viruses, to the mountain yellow-legged frog remain unknown. However, Mao *et al.* (1999) isolated identical iridoviruses from wild co-occurring populations of the threespine stickleback (*Gasterostelus aculeatus*) and the red-legged frog (*Rana aurora*), indicating that infection by a given virus is not limited to a single species, and that iridoviruses can infect animals belonging to different taxonomic classes. This suggests that if virus-hosting trout are introduced into mountain yellow-legged frog habitat, they may be a vector of amphibian viruses.

Whether amphibian pathogens in the high Sierra Nevada have always coexisted with amphibian populations or if their presence is a recent phenomenon is uncertain (Fellers *et al.* 2001). The susceptibility of amphibians to pathogens may have recently increased in response to anthropogenic (human-caused) environmental disruption (Carey 1993; Blaustein *et al.* 1994b; Carey *et al.* 1999). This hypothesis suggests that environmental changes may be indirectly responsible for certain amphibian dieoffs by immune system suppression of larval or postmetamorphic amphibians to the extent that they are not resistant to diseases (Carey 1993; Blaustein *et al.* 1994b; Carey *et al.* 1999). Pathogens such as red-leg disease, which are present in fresh water and in healthy organisms, may erupt, potentially causing localized amphibian population dieoffs when the immune system of individuals within the host population are suppressed (Carey 1993; Carey and Bryant 1995). Wind-borne pesticides from upwind agriculture potentially contribute to contaminant concentrations that may be high enough to compromise amphibian immune systems (Carey 1993; Carey *et al.* 1999; Daszak *et al.* 1999). Recreationists may contribute to the spread of pathogens between water bodies and populations via clothing and fishing equipment. Given the uncertainty surrounding the potential for researchers to contribute to the spread of pathogens, they have begun to implement equipment sterilization procedures between survey sites (H. Eddinger, *in litt.* 2002; R. Knapp, *in litt.* 2002; V. Vredenburg, *in litt.* 2002).

A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur, because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. This isolates the remaining populations of mountain yellow-legged frogs from each other (Bradford 1991; Bradford *et al.* 1993).

In summary, mountain yellow-legged frogs are vulnerable to multiple pathogens, whose effects range from population persistence, with low levels of infection within populations, to extinction of entire populations. Little is understood about these pathogens, making disease difficult to manage without a better understanding of their life histories and modes of transmission. Red-leg disease and chytrid fungus have been identified as having potentially catastrophic effects (localized extinction) on mountain yellow-legged frog populations. Though chytrid fungus was only recently discovered to affect amphibians (including the mountain yellow-legged frog), chytrid currently appears to have the highest rate of infection relative to other pathogens in mountain yellow-legged frog populations. The negative consequences of chytrid infection to mountain yellow-legged frog populations may be exacerbated by the fragmentation and isolation of remaining mountain yellow-legged frog metapopulations and populations due to non-native fish introductions. This is because there may not be an adjacent mountain yellow-legged frog population with habitat connectivity that is able to recolonize an area following a pathogen-caused extinction event.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog in the Sierra Nevada include: (1) Federal laws and regulations; (2) State laws and regulations; and (3) local land use processes and ordinances. However, these regulatory mechanisms have not prevented non-native fish introductions, pathogen outbreaks, and habitat modifications, all of which result in population declines of mountain yellow-legged frogs in the Sierra Nevada.

Federal

In response to the overgrazing by livestock of the available rangelands from the 1800s to the 1930s and the subsequent years of the Dust Bowl, Congress passed the Taylor Grazing Act in 1934. This was an effort to stop the damage to the remaining public lands from overgrazing and soil depletion, to provide for an order to grazing on public lands, and to attempt to stabilize the livestock industry using these lands (Meehan and Platts 1978; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)). Although passage of the Taylor Grazing Act resulted in reduced grazing in some areas, it did not reduce grazing severity, as use remained high, and it did not allow regeneration of many meadow areas (Beesley 1996; Menke *et al.* 1996; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)). The Taylor Grazing Act of 1934, as amended, did initiate some grazing reform, possibly lessening impacts of livestock grazing on many species and populations of wild plants and animals, including the mountain yellow-legged frog and its habitat. However, it does not have any provisions specific to the protection of either the mountain yellow-legged frog or its habitat.

The Multiple-Use Sustained-Yield Act of 1960 (MUSY), as amended, provided

direction that the national forests be managed using principles of multiple use and to produce a sustained yield of products and services. Specifically, MUSY gives policy that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, wildlife, and fish purposes. Land management for multiple uses has inherent conflicts. However, MUSY directs resource management not to impair the productivity of the land while giving consideration to the relative values of the various resources, though not necessarily in terms of the greatest financial return or unit output. This act provides direction to the USFS that wildlife (which includes the mountain yellow-legged frog), is a value that must be managed for, though discretion is given to each national forest when considering the value of the mountain yellow-legged frog relative to the other uses for which they must manage. MUSY does not have any provisions specific to the protection of either the mountain yellow-legged frog or its habitat.

The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, gives management direction to the Bureau of Land Management; however, its application is to all Federal lands, including those managed by the USFS. FLPMA includes a provision requiring that 50 percent or $10,000,000 per year, whichever is greater, of all moneys received through grazing fees collected on Federal lands (including the USFS-administered lands within the range of the mountain yellow-legged frog) be spent for the purpose of on-the-ground range rehabilitation, protection, and improvement. This includes all forms of rangeland betterment such as fence construction, water development, and fish and wildlife enhancement. Half of the appropriated amount must be spent within the national forest where such moneys were derived. FLPMA provides for some rangeland improvements intended for the long-term betterment of forage conditions and resulting benefits to wildlife, watershed protection, and livestock production. Land improvements initiated pursuant to FLPMA may have benefitted the mountain yellow-legged frog and its habitat; however, some mountain yellow-legged frog habitat has continued to be destabilized and deteriorate due to livestock grazing on lands subject to FLPMA (R. Knapp, *in litt.* 1993a, 1993b, 1994, 2002; Jennings 1995, 1996). We are unaware of any USFS-initiated projects developed under FLPMA for the specific benefit of the mountain yellow-legged frog, and, if the USFS has conducted such projects, what effects they have had.

The Wilderness Act of 1964 established a National Wilderness Preservation System made up of federally owned areas designated by Congress as ''wilderness'' for the purpose of preserving and protecting designated areas in their natural condition. Commercial enterprise, road construction, use of motorized vehicles or other equipment, and structural developments are generally prohibited within designated wilderness. Livestock grazing is permitted within designated wilderness, subject to other applicable laws, if it was established prior to the passage of this act. The Wilderness Act does not specifically mention fish stocking although it does state that it shall not affect the jurisdiction or responsibilities of States with wildlife and fish responsibilities in the national forests. Whether fish stocking is permitted under the Wilderness Act is an issue that has been debated (Bahls 1992; Landres *et al.* 2001). However, it generally has not limited fish stocking in the Sierra Nevada (Knapp 1996). Passage of the Wilderness Act has not positively affected mountain yellow-legged frog populations in wilderness areas of the Sierra Nevada as it does not prevent fish stocking (Knapp and Matthews 2000). Potentially, the Wilderness Act has helped to protect mountain yellow-legged frog habitat from development or other types of habitat conversions and disturbances; however, mountain yellow-legged frog populations have continued to decline despite its passage.

The National Environmental Policy Act of 1969 (NEPA), as amended, requires all Federal agencies to formally document and publicly disclose the environmental impacts of all actions and management decisions. NEPA documentation is provided in either an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative appeal or litigation. The Pacific Southwest Region (Region 5) of the USFS considers the mountain yellow-legged frog a Forest Service sensitive species. Therefore, as part of USFS policy, the analysis related to planning under the National Forest Management Act of 1976 (NFMA) and conducted by the USFS to evaluate potential management decisions under NEPA includes a biological evaluation which discloses potential impacts to sensitive species at both the forest planning level and on a project-by-project basis. Under USFS policy (FSM 2620 and 2670), projects must not result in contributing to a trend towards Federal listing of species. Despite the analyses pursuant to NEPA on all Federal actions potentially affecting the mountain yellow-legged frog in the Sierra Nevada, and analyses pursuant to both NFMA and NEPA on national forests, the species' populations have continued to decline (Bradford *et al.* 1993, 1994a; Drost and Fellers 1996; Jennings 1996; Knapp 1996).

The revised NMFA planning regulations recently proposed by the USFS (67 FR 72770) may affect the status of this policy requirement (FSM 2620 and 2670), as the underlying regulatory framework pertaining to providing for the diversity of plant and animal communities is proposed to be substantially altered from the existing regulatory requirement. The outcome of both the regulations and the related policies that tier to them is uncertain.

In the few cases where the Sierra Nevada mountain yellow-legged frog occurs in habitat occupied by species listed pursuant to the Act, the mountain yellow-legged frog may be afforded protection under this legislation. The native Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) and native Paiute cutthroat trout (*Oncorhynchus clarki seleneris*) are federally listed species, occurring predominantly in drainages on the east side of the Sierra Nevada. They co-occur with several small populations of mountain yellow-legged frogs at lower elevations on the edge of the species' range. The native Little Kern golden trout is a federally threatened species, co-occurring with the mountain yellow-legged frog in a few isolated locations in the southern Sierra Nevada (Knapp 1996; Moyle 2002). Recovery actions for these trout species, such as physical habitat protection, may benefit the mountain yellow-legged frog. For example, on the Tahoe National Forest, grazing, recreation, and other restrictions for the benefit of the Lahontan cutthroat trout and its habitat have been established. One of these measures that benefits the mountain yellow-legged frog is the establishment of a bank protection measure that allows for 10 percent bank disturbance (measured as bare ground accompanied by soil displacement and/or cutting of plant root crowns). Elsewhere the standard for bank disturbance is 20 percent (A. Carlson, *in litt.* 2002). However, the use of chemicals or electrofishing to remove non-native fish from threatened trout habitat may adversely affect mountain yellow-legged frogs present at the time of treatment. Additionally, listed native trout species

may prey on the mountain yellow-legged frog at sites where they co-occur.

The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, specifies that all national forests must have a land and resource management plan (LRMP). The purpose of the LRMP is to guide and set standards for all natural resource management activities for the life of the plan (10 to 15 years) on each national forest. NFMA requires the USFS to incorporate standards and guidelines into LRMPs. This has historically been done through a NEPA process, including provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The 1982 planning regulations for implementing NFMA, under which all existing forest plans were prepared and which still guide management, also required that fish and wildlife habitat on national forest system lands ''* * * shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population is one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable population will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.''

In 2001, a record of decision (ROD) was signed by the USFS for the Sierra Nevada Forest Plan Amendment (SNFPA), based on the final environmental impact statement (FEIS) for the SNFPA effort and prepared under the 1982 NFMA planning regulations. The ROD amends the USFS Pacific Southwest Regional Guide, the Intermountain Regional Guide, and the LRMPs for national forests in the Sierra Nevada and Modoc Plateau. This document affects land management on all national forests throughout the range of the mountain yellow-legged frog. The SNFPA addresses and gives management direction on issues pertaining to old forest ecosystems; aquatic, riparian, and meadow ecosystems; fire and fuels; noxious weeds; and lower westside hardwood ecosystems of the Sierra Nevada.

Relevant to the mountain yellow-legged frog, the ROD for the SNFPA aims to protect and restore aquatic, riparian, and meadow ecosystems, and to provide for the viability of its associated native species via an aquatic management strategy. The aquatic management strategy is a general framework with broad policy direction. Implementation of this strategy is intended to take place at the landscape and project levels. There are nine goals associated with the aquatic management strategy. They include: (1) The maintenance and restoration of water quality to comply with the Clean Water Act (CWA) and the Safe Drinking Water Act; (2) the maintenance and restoration of habitat to support viable populations of native and desired non-native riparian-dependent species and to reduce negative impacts of non-native species on native populations; (3) the maintenance and restoration of species diversity in riparian areas, wetlands, and meadows to provide desired habitats and ecological functions; (4) the maintenance and restoration of the distribution and function of biotic communities and biological diversity in special aquatic habitats (such as springs, seeps, vernal pools, fens, bogs, and marshes); (5) the maintenance and restoration of spatial and temporal connectivity for aquatic and riparian species within and between watersheds to provide physically, chemically, and biologically unobstructed movement for their survival, migration, and reproduction; (6) the maintenance and restoration of hydrologic connectivity between floodplains, channels, and water tables to distribute flood flows and to sustain diverse habitats; (7) the maintenance and restoration of watershed conditions as measured by favorable infiltration characteristics of soils and diverse vegetation cover to absorb and filter precipitation, and to sustain favorable conditions of stream flows; (8) the maintenance and restoration of instream flows sufficient to sustain desired conditions of riparian, aquatic, wetland, and meadow habitats and to keep sediment regimes within the natural range of variability; and (9) the maintenance and restoration of the physical structure and condition of stream banks and shorelines to minimize erosion and sustain desired habitat diversity. If these goals are pursued and met, the mountain yellow-legged frog and its habitat could benefit. These goals, though broadly stated, include measures to reduce impacts of non-native trout predation on mountain yellow-legged frogs as well as the resulting isolation of populations. These goals, if met, would also restore mountain yellow-legged frog aquatic habitats, including meadows, fens, stream banks, and shorelines that have been degraded by a history of livestock use.

To help meet these goals, the aquatic management strategy proposes a broad initial action to address the mountain yellow-legged frog in a conservation plan developed by the *USFS* with other State and Federal agencies; an effort by the USFS to do this is underway. Where known locations of mountain yellow-legged frogs occur on the national forests, critical aquatic refuges will be designated. A primary management goal for the critical aquatic refuges is to contribute to the viability and recovery of sensitive species (including the mountain yellow-legged frog) through habitat preservation, enhancement, restoration, or connectivity. Within the aquatic management strategy, critical aquatic refuges are given highest priority for evaluating how existing and proposed activities are consistent with the goals of the strategy. The aquatic management strategy directs existing and proposed activities within critical aquatic refuges to be consistent with the goals of the critical aquatic refuges. This evaluation will be made using the riparian conservation objectives and associated standards and guidelines, as defined in the ROD for the SNFPA. One such standard and guideline specific to the mountain yellow-legged frog includes the avoidance of pesticide applications from within 152 m (500 ft) of sites known to be occupied by the species.

Management standards and guidelines in the SNFPA ROD for the Yosemite toad will also benefit the mountain yellow-legged frog in areas where these two species overlap. These standards and guidelines exclude livestock from standing water and saturated soils in wet meadows and associated streams and springs occupied by Yosemite toads, or identified as essential habitat for this species in the USFS's conservation assessment for this species.

The SNFPA includes requirements for monitoring to determine how well the aquatic management strategy goals and the riparian conservation objectives have been met, and how closely management standards and guidelines have been applied.

Our review of the SNFPA FEIS and ROD indicate that full implementation of the SNFPA would benefit the mountain yellow-legged frog and its habitat. National forests affected by the SNFPA are responsible for implementing it; however, implementation is subject to funding. Also, current direction from within the USFS is to internally review the entire record (including the FEIS, the existing

ROD, public and agency comments, and the appeals and responsive statements), to evaluate primarily the effects of its implementation on grazing, recreation, and impacts to local communities (J. Blackwell, USFS, *in litt.* 2001). This review and assessment may result in proposed changes to the SNFPA and its associated documents. Therefore, the extent to which it will continue to be implemented, and the extent to which it may benefit the mountain yellow-legged frog and its habitat, remain undetermined. There is additional uncertainty because the proposed changes to the NFMA planning regulations recently issued by Forest Service (67 FR 72770) contain two options for meeting the NFMA direction to provide for the diversity of plant and animal communities, and both options would change the current regulation pertaining to forest planning to provide habitat to support viable populations.

The statute establishing the National Park Service, commonly referred to as the National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1,2,3 and 4) states that the NPS will administer areas under their jurisdiction ''. . .by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The 2001 edition of NPS Management Policies (NPS D1416) further elaborates on how impacts on park resources, including native organisms, will not be allowed to the level that they would constitute impairment: ''To comply with this mandate, park managers must determine in writing whether proposed activities in parks would impair natural resources. Park managers must also take action to ensure that ongoing NPS activities do not cause impairment. In cases of doubt as to the impact of activities on park natural resource, the Service will decide in favor of protecting the natural resources.'' Sequoia, Kings Canyon, and Yosemite National Parks began phasing out fish stocking in 1969 and terminated this practice entirely in 1991 (Bahls 1992; Knapp 1996).

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. Projects that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts. However, few projects that include fill of wetlands are likely to occur within the range of the mountain yellow-legged frog.

State

The State of California considers the mountain yellow-legged frog a species of special concern, but it is not State listed as a threatened or endangered species and thus is not protected under the California Endangered Species Act.

California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time with a sport fishing license. Possession or take of the mountain yellow-legged frog is authorized under special permit from the CDFG. This gives the frog some legal protection from collecting, but does not protect it from other causes of mortality or alterations to its habitat.

The California Forest Practice rules set guidelines for the design of timber harvests on private land to reduce impacts on non-listed species. These rules have little application to the protection of the mountain yellow-legged frog because the vast majority of the species' range is on Federal land, and much of its range is too high in elevation to overlap with lands used for commercial timber harvest.

The California Department of Pesticide Regulation (CDPR) has authority to restrict the use of pesticides. The CDPR Toxic Air Contaminant (TAC) Program includes assessment of the risks posed by airborne pesticides; this assessment involves collection of air samples near sites of pesticide application and in communities near those sites. If air samples indicate that reductions in exposure are needed, mitigation measures are developed to bring about those reductions (CDPR 2001). However, the TAC program is intended primarily to protect human health, and air samples are not taken at far distant locations from application sites, like those inhabited by the mountain yellow-legged frog in the Sierra Nevada.

The California Environmental Quality Act (CEQA) pertains to projects on non-Federal lands and requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the mountain yellow-legged frog in the Sierra Nevada is reviewed, CDFG personnel could determine that, although not state-listed, the frog is *de facto* an endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of state-listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent on the discretion of the agency involved. In addition, fish stocking is not subject to disclosure of its potential environmental impacts because it is exempt from CEQA under Article 19 section 15301(j). Therefore, the effects of fish stocking on the mountain yellow-legged frog are not analyzed pursuant to CEQA. Also, the vast majority of the species' range is on Federal land and is affected by Federal actions (other than the State-sponsored fish stocking) that are not subject to CEQA analysis.

Section 1603(a) of the California Fish and Game Code requires a permit from the CDFG for any activity that may alter the bed, channel, or bank of any river, stream, or lake. The permit may incorporate measures to minimize adverse impacts to fish and wildlife. Therefore, this regulation may offer some protection of mountain yellow-legged frog habitat. The extent to which this regulation has provided the mountain yellow-legged frog with protection is unknown because much of the range of this species is on federal lands where few habitat modifications subject to this permit are proposed.

The CDFG is practicing an informal policy on fish stocking in the range of the mountain yellow-legged frog in the Sierra Nevada. This policy directs that: (1) Fish will not be stocked in lakes with known populations of mountain yellow-legged frogs, nor in lakes which have not yet been surveyed for mountain yellow-legged frog presence; (2) waters will be stocked only with a fisheries management justification; and (3) the number of stocked lakes will be reduced over time. In 2001, the number of lakes stocked with fish within the range of the mountain yellow-legged

frog in the Sierra Nevada was reduced by 75 percent (C. Milliron, *in litt.* 2002; E. Pert, CDFG, pers. comm. 2002; E. Pert *et al.*, pers. comm. 2002). Water bodies within the same basin and 2 km (1.25 mi) from a known mountain yellow-legged frog population will not be stocked with fish unless stocking is justified through a management plan that considers all the aquatic resources in the basin, or unless there is heavy angler use and no opportunity to improve the mountain yellow-legged frog habitat (C. Milliron, *in litt.* 2002). This policy has not been finalized in writing (E. Pert *et al.*, pers. comm. 2002).

The CDFG is in the process of developing management plans for basins within the range of the mountain yellow-legged frog in the Sierra Nevada (CDFG 2001; C. Milliron, *in litt.* 2002; E. Pert, pers. comm. 2002; E. Pert *et al.*, pers. comm. 2002). For example, a plan has been developed, signed, and initiated for the Big Pine Creek wilderness basin in the Inyo National Forest's John Muir Wilderness (CDFG 2001), and a similar plan is proposed for the Gable Lakes basin, also in the John Muir Wilderness area of the Inyo National Forest (B. Miller, CDFG, *in litt.* 2001). The objectives of the Big Pine Creek wilderness basin plan specific to the mountain yellow-legged frog include management in a manner that maintains or restores native biodiversity and habitat quality, supports viable populations of native species, and provides for recreational opportunities that consider historic use patterns (CDFG 2001). Under this plan, some lakes are managed primarily for the mountain yellow-legged frog, with few or no angling opportunities, while lakes with high demand for recreational angling are managed primarily for that purpose (CDFG 2001). Preliminary results indicate that where the plans are being implemented, the management objective to restore mountain yellow-legged frog habitat is being achieved, and in some areas, mountain yellow-legged frog populations have responded positively (C. Milliron, pers. comm. 2002). We anticipate that the development and implementation of these basin management plans will be effective in reversing some of the negative impacts of introduced trout on mountain yellow-legged frog populations within a limited geographic area of the affected basins, providing that connectivity is restored between and within metapopulations.

Local

We are not aware of any specific county or city ordinances that provide protection for the Sierra Nevada population of mountain yellow-legged frogs.

E. *Other natural or manmade factors affecting its continued existence.* Several other natural or anthropogenically influenced factors, including contaminants, acid precipitation, climate change and drought, and ambient ultraviolet radiation, have been implicated as a cause of amphibian declines (Corn 1994; Alford and Richards 1999). These factors have been studied to varying degrees specific to the mountain yellow-legged frog. These factors are discussed below.

The following factors make the mountain yellow-legged frog, along with other amphibians, sensitive to environmental change or degradation: its aquatic and terrestrial phases; its highly permeable skin which is exposed to substances in the water, air, and terrestrial substrate; and the position at which it feeds on the food web, depending on its life stage (Blaustein and Wake 1990, 1995; Bradford and Gordon 1992; Stebbins and Cohen 1995). Environmental contaminants have been suggested, and in some cases documented, to negatively affect amphibians by causing the following: direct mortality (Hall and Henry 1992; Berrill *et al.* 1994, 1995; Carey and Bryant 1995; Relyea and Mills 2001); immune system suppression, which makes amphibians more vulnerable to disease (Carey 1993; Carey and Bryant 1995; Carey *et al.* 1999; Daszak *et al.* 1999; Taylor *et al.* 1999); disruption of breeding behavior and physiology (Berrill *et al.* 1994; Carey and Bryant 1995, Hayes *et al.* 2002); disruption of growth or development (Hall and Henry 1992; Berrill *et al.* 1993, 1994, 1995, 1998; Carey and Bryant 1995; Sparling *et al.* 2001); and disruption of the ability to avoid predation (Hall and Henry 1992; Berrill *et al.* 1993, 1994, 1995, 1998; Carey and Bryant 1995; Relyea and Mills 2001; Sparling *et al.* 2001).

Wind-borne pesticides and the compounds that carry pesticides from upwind agriculture that are deposited in the Sierra Nevada have been suggested as a cause of measured sublethal effects to amphibians (Cory *et al.* 1971; Davidson *et al.* 2001; Sparling *et al.* 2001). In 1998, more than 97 million kilograms (215 million pounds) of pesticides reported to be used in California (CDPR 1998). Originating from the agriculture in California's Central Valley, and mainly from the San Joaquin Valley where agricultural activity is greatest, pesticides are passively transported eastward to the high Sierra Nevada where they have been detected in precipitation (rain and snow), air, dry deposition, surface water, plants, fish, and amphibians, including Pacific tree frogs and mountain yellow-legged frogs (Cory *et al.* 1970; Zabik and Seiber 1993; Aston and Seiber 1997; Datta *et al.* 1998; McConnell *et al.* 1998; LeNoir *et al.*1999; Sparling *et al.* 2001; Angermann *et al.* 2002). Angermann *et al.* (2002) detected elevated contaminant (polychlorinated biphenyls and toxaphene) levels in Pacific tree frog larvae within the range of the mountain yellow-legged frog, and suggested that these contaminants originate in California's Central Valley and metropolitan areas. Spatial analysis of populations of the California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog, Cascades frog (*R. cascadae*), and the mountain yellow-legged frog in the Sierra Nevada showed a strong, statistically significant pattern of population decline associated with greater amounts of upwind agriculture (Davidson *et al.* 2002).

Cholinesterase is an enzyme that functions in the nervous system and is disrupted by organophosphorus pesticides, including malathion, chlorpyrifos, and diazinon (Sparling *et al.* 2001). Reduced cholinesterase activity and pesticide residues have been found in Pacific treefrog larvae collected in the Sierra Nevada downwind of the Central Valley (Sparling *et al.* 2001). Cholinesterase activity was significantly lower in samples from the Sierra Nevada than in samples taken from coastal California, upwind of the Central Valley. No samples were taken above approximately 1,500 m (4,900 ft) elevation (Sparling *et al.* 2001), so in this study there is limited overlap with the 1,370 to 3,650 m (4,500 to 12,000 ft) elevational range (Stebbins 1985) of mountain yellow-legged frogs. Although pesticide detections decrease with altitudinal gain, they have been detected at elevations in excess of 3,200 m (10,500 ft) (Zabik and Seiber 1993; Aston and Seiber 1997; McConnell *et al.* 1998; LeNoir *et al.* 1999; Angermann *et al.* 2002). In addition to interfering with nerve function, contaminants such as industrial and agricultural chemicals may act as estrogen mimics (Jobling *et al.* 1996), causing abnormalities in amphibian reproduction and disrupting endocrine functions (Carey and Bryant 1995; Stebbins and Cohen 1995; Jobling *et al.* 1996; Hayes *et al.* 2002), thereby having a negative effect on amphibian populations, including the mountain yellow-legged frog.

In the late 1960s, dichlorodiphenyltrichloroethane (DDT)

and its residues were detected in significant quantities in mountain yellow-legged frogs and foothill yellow-legged frogs throughout the Sierra Nevada up to an elevation of 3,660 m (12,000 ft) (Cory *et al.* 1970). The origin of this DDT is primarily attributed to agriculture in the Central Valley (Cory *et al.* 1970). DDT residues likely from agriculture in the Central Valley still appeared in Pacific treefrog larvae collected in the Sierra Nevada in the late 1990s (Sparling *et al.* 2001), more than 25 years after the use of DDT was banned in the United States. Levels of this toxicant in the mountain yellow-legged frog and foothill yellow-legged frog were significantly higher in the central Sierra Nevada, from the Tuolumne Meadows area of Yosemite National Park, north to Sonora Pass in the Stanislaus National Forest. The origin of DDT at these locations is attributed to two massive applications administered directly to this national forest and national park for pest control (Cory *et al.* 1970, 1971).

Snow core samples from the Sierra Nevada contain a variety of contaminants from industrial and automotive sources, including hydrogen ions that are indicative of acidic precipitation, nitrogen and sulfur compounds (NH_4, NO_3, SO_2, and SO_4), and heavy metals (lead, iron, manganese, copper, and cadmium) (Laird *et al.* 1986). The pattern of recent frog extinctions in the southern Sierra Nevada corresponds with the pattern of highest concentration of air pollutants from automotive exhaust, possibly due to increases in nitrification (or other changes), caused by those pollutants (Jennings 1996). The effects of contaminants on amphibians need further research (Hall and Henry 1992; Briggs *et al.* 2002). However, the correlative evidence between areas of pesticide contamination in the Sierra Nevada and areas of amphibian decline, along with evidence of an adverse physiological effect from pesticides on amphibians in the Sierra Nevada, indicates that contaminants may present a risk to the mountain yellow-legged frog and may have contributed to the species' decline (Jennings 1996; Sparling *et al.* 2001; (Davidson *et al.*, 2002).

It has been suggested that contamination from wind-borne pesticides originating from upwind agriculture, and other contaminants originating from metropolitan areas, may compromise amphibian immune systems (Carey 1993; Carey *et al.* 1999; Daszak *et al.* 1999; Angermann *et al.* 2002). An effort to test the hypothesis that contaminants originating in the San Joaquin Valley are suppressing the mountain yellow-legged frog's immune system, thereby making it more vulnerable to disease, is underway (Briggs *et al.* 2002).

Laboratory studies have documented sublethal effects on mountain yellow-legged frog embryos at pH 5.25 (pH represents acidity on a negative scale, with 7 being neutral and lower numbers indicating increased acidity). Survivorship of mountain yellow-legged frog embryos and tadpoles was negatively affected as acidity increased (at approximately pH 4.5 or lower), with embryos being more sensitive to increased acidity than tadpoles (Bradford and Gordon 1992; Bradford *et al.* 1992). Acidic deposition has been suggested as contributing to amphibian declines in the western United States (Blaustein and Wake 1990; Carey 1993; Alford and Richards 1999). Other studies, however, do not support this hypothesis as a contributing factor to amphibian population declines in this area (Bradford and Gordon 1992; Bradford *et al.* 1992; Corn and Vertucci 1992; Bradford *et al.* 1994a, 1994b).

Acid precipitation has been postulated as a cause of amphibian declines at high elevations in the Sierra Nevada because waters there are low in acid neutralizing capacity, and, therefore, are susceptible to changes in water chemistry caused by acidic deposition (Byron *et al.* 1991; Bradford *et al.* 1994b). Near Lake Tahoe, at an elevation of approximately 2,100 m (6,900 ft), precipitation acidity has been documented to have increased significantly (Byron *et al.* 1991). In surface waters of the Sierra Nevada, acidity increases and acid neutralizing capacities decrease during snow melt and summer storms, though rarely does pH dip below 5.6 (Nikolaidis *et al.* 1991; Bradford and Gordon 1992; Bradford *et al.* 1998). The mountain yellow-legged frog breeds shortly after snow melt, thereby exposing its early life stages, which are most sensitive to acidification, to these conditions (Bradford and Gordon 1992). However, the hypothesis of acidic deposition as a cause of mountain yellow-legged frog declines has been rejected by field experiments that failed to show differences in water chemistry parameters between occupied and unoccupied mountain yellow-legged frog sites (Bradford *et al.* 1994b).

Extreme pH in surface waters of the Sierra Nevada is estimated at 5.0, with most high elevation lakes having a pH of greater than 6 (Bradford *et al.* 1992, 1998). Caused by oxidation of pyrite found in metamorphic and granitic rocks, a small number of lakes in the Sierra Nevada (approximately 10) are naturally acidic (Bradford *et al.* 1998). Bradford *et al.* (1998) found mountain yellow-legged frog tadpoles to be sensitive to naturally acidic conditions, and that their distribution was significantly related to lake acidity; they were not found in lakes with a pH less than 6. By contrast, the distribution of adult mountain yellow-legged frogs was not significantly related to natural lake acidity or other chemical or physical parameters. Though acidity may have an influence on mountain yellow-legged frog abundance or distribution, it is unlikely to have contributed to this species' decline, given the rarity of lakes acidified either by natural or anthropogenic sources (Bradford *et al.* 1998).

The last century has included some of the most variable climate reversals documented, at both the annual (extremes and high frequency of El Ni–o (associated with severe winters) and La Ni–a (associated with milder winters) events) and near-decadal scales (periods of 5 to 8 year drought and wet periods) (USDA 2001b). These events may have negative effects on Sierra Nevada mountain yellow-legged frogs. Severe winters (El Ni–o) would force longer hibernation times and could stress mountain yellow-legged frogs by reducing the time available for them to feed and breed. Alternately, during mild winters (La Ni–a), precipitation is reduced. This reduction in precipitation could reduce available breeding habitat and lead to stranding and death of frog eggs and tadpoles. It could also lead to increased exposure to predatory fish by forcing frogs into fish-containing waters if fishless waters dry out.

In California, prolonged droughts are a regular occurrence to which native amphibians have adapted; even severe droughts are not expected to result in widespread population declines (Drost and Fellers 1996). However, an increase in the frequency, magnitude, and duration of droughts caused by global warming may have compounding effects with respect to populations of mountain yellow-legged frogs already in decline. In situations where other factors have resulted in the isolation of mountain yellow-legged frogs to marginal habitats, localized mountain yellow-legged frog population crashes or extirpations due to droughts may exacerbate their isolation and preclude their recolonization or immigration from other populations (Bradford *et al.* 1993; Drost and Fellers 1996).

Changes in climate that occur faster than the ability of endangered species to adapt could cause local extinctions (U.S. Environmental Protection Agency

(EPA) 1989). Analysis of the Antarctic Vostok ice core has shown that over the past 160,000 years, temperatures have varied with fluctuations in the concentrations of greenhouse gasses such as carbon dioxide and methane. Since the pre-industrial era, atmospheric concentrations of carbon dioxide have increased nearly 30 percent, methane concentrations have more than doubled, and nitrous oxide (another greenhouse gas) levels have risen approximately 15 percent. The burning of fossil fuels is the primary source of these increases. Global mean surface temperatures have increased 0.3–0.7 °C (0.6–1.2 °F)) since the late 19th century (EPA 1997). Climate modeling indicates that the overall effects of global warming on California will include higher average temperatures in all seasons, higher total annual precipitation, and decreased spring and summer runoff due to decreases in snowpacks (EPA 1989, 1997). Decreases in spring and summer runoff could lead to the loss of breeding habitat for mountain yellow-legged frogs and increases in instances of stranding mortality of eggs and tadpoles.

Changes in temperature may also affect virulence of pathogens to a different degree than the amphibian immune systems are able to respond (Carey *et al.* 1999) and may make mountain yellow-legged frogs more susceptible to disease. Global warming could also affect the distribution of pathogens and their vectors, exposing mountain yellow-legged frogs (potentially with weakened immune systems as a result of other environmental stressors) to new pathogens (Blaustein *et al.* 2001). An experimental increase in stream water temperature was shown to decrease density and biomass in invertebrates (Hogg and Williams 1996); thus, global warming might have a negative impact on the mountain yellow-legged frog prey base.

Ambient ultraviolet-b (UV–B) radiation (280–320 nanometers (11.0–12.6 microinches)) has increased at north temperate latitudes in the past two decades (Adams *et al.* 2001). If UV–B radiation is contributing to amphibian population declines, the declines would likely be greater at higher elevations and at more southerly latitudes where UV–B exposure is greatest, where the thinner atmosphere allows greater penetration of UV–B (Davidson *et al.* 2001; Davidson *et al.*, 2002). In California, where there is a north-to-south gradient of increasing UV–B exposure, amphibian declines would also likely be more prevalent at southerly latitudes (Davidson *et al.* 2001; Davidson *et al.*, 2002). Melanic pigment on the upper surfaces of amphibian eggs and larvae protects these sensitive life stages against UV–B damage, an important protection for normal development of amphibians exposed to sunlight, especially at high elevations in clear and shallow waters (Stebbins and Cohen 1995). Blaustein *et al.* (1994c) observed decreased hatching success in several species of amphibian embryos (the mountain yellow-legged frog was not tested) exposed to increased UV–B radiation, indicating that this may be a cause of amphibian declines. Juveniles and adults may be exposed to increased UV–B levels as they heat themselves by basking in the sun (Stebbins and Cohen 1995). In a spatial test of the hypothesis that UV–B has contributed to decline of the mountain yellow-legged frog in the Sierra Nevada, Davidson *et al.* (2002) concluded that patterns of this species decline are inconsistent with the predictions of where UV–B related population declines would occur. Greater numbers of extant populations of this species were present at higher elevations than at lower elevations, and population decline was greater in the northern portion of the range of this species than it was in the southern portion. Though it does not appear that UV–B is a factor in the decline of the mountain yellow-legged frog, the absence of the predicted pattern for UV–B-caused decline should not be taken as proof that UV–B is not affecting the mountain yellow-legged frogs, given the potential for one or more factors that cause population declines to mask other factors (Davidson *et al.*, 2002).

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding, and consulted with recognized mountain yellow-legged frog experts and other Federal and State resource agencies. On the basis of the best scientific and commercial information available, we find that listing the Sierra Nevada DPS of the mountain yellow-legged frog is warranted, but is precluded by higher priority listing actions.

In making this finding, we recognize that there have been declines in the distribution and abundance of the Sierra Nevada DPS of the mountain yellow-legged frog, primarily attributed to the introduction and subsequent predation of non-native fishes, as documented in the body of scientific research on the distributions of introduced trout in relation to mountain yellow-legged frogs (Bradford 1989; Bradford *et al.* 1993, 1994a, 1998; Knapp 1994, 1996; Drost and Fellers 1996; Knapp and Matthews 2000; Knapp *et al.* 2001). Direct predation of non-native fishes on mountain yellow-legged frogs has resulted in range-wide population declines and local extirpations. Furthermore, the result of these extirpations is that the remaining populations are fragmented and isolated, making them vulnerable to further declines and local extirpations from other factors. Populations that go extinct following habitat fragmentation and populations isolation are unlikely to be recolonized due to both the isolation from, and lack of, habitat connectivity to potential source populations.

For example, in reviewing documented mountain yellow-legged frog declines over the last 5 years in Sequoia and Kings National Parks, we found a 39 percent extinction rate of the frog where fish have not been stocked since the late 1970s. In comparison, over the last 7 years in the Sierra National Forest's John Muir Wilderness Area, there has been a 61 percent extinction rate where fish stocking has continued. This high rate of extinction over a 5 to 7 year time frame suggests the species' extinction within a few decades (assuming that the rate of extinction and recolonization observed over this time period accurately reflects the long-term rates) (R. Knapp, *in litt.* 2002.).

The isolation of remaining mountain yellow-legged frog populations and habitat fragmentation as a result of non-native fish introductions has made remaining populations vulnerable to extinction from random events such as disease. Disease has only recently been recognized as an important factor in the decline of this species. It appears, however, that disease will continue to play an important role in the decline of this species. It is likely that disease, specifically chytrid fungus, has contributed to the recently observed declines in Sequoia and Kings Canyon National Parks and in the Sierra National Forests's John Muir Wilderness Area (R. Knapp, *in litt.* 2002). Although the life history and modes of transmission of chytrid fungus are not well understood, it appears that this pathogen is widespread throughout the range of the mountain yellow-legged frog within the Sierra Nevada, it is persistent in ecosystems, and it is

resilient to environmental conditions such as drought and freezing. Therefore, we conclude that all remaining yellow-legged frog populations within the Sierra Nevada are at risk to declines and extirpation as a result of infection by this pathogen.

Other factors include airborne contaminants, habitat degradation (mainly as a result of livestock grazing) and the inadequacy of existing regulatory mechanisms. Each of these factors may contribute to mountain yellow-legged frog population declines or extirpations. In addition, these factors are exacerbated by the effects that have been caused by non-native fishes, specifically the isolation of remaining mountain yellow-legged frog populations and habitat fragmentation. As noted previously, populations that go extinct following habitat fragmentation and population isolation are unlikely to be recolonzied due to both the isolation from, and lack of, connectivity to potential source populations.

We conclude that the overall magnitude of threats to the Sierra Nevada DPS of the mountain yellow-legged frog is high, and that the overall immediacy of these threats is imminent. Pursuant to our Listing Priority System (64 FR 7114), a DPS of a species for which threats are high and imminent is assigned a Listing Priority Number of 3. While we conclude that listing the Sierra Nevada DPS of the mountain yellow-legged frog is warranted, an immediate proposal to list is precluded by other higher priority listing actions. During Fiscal Year 2003 we must spend nearly all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. To the extent that we have discretionary funds, we will give priority to using them to address emergency listings and listing actions for other species with a higher priority. Due to litigation pertaining to various listing actions, our planned work with listing funds in Fiscal Year 2003 consists primarily of addressing court-ordered actions, court-approved settlement agreements, and listing actions that are in litigation. (Also, some litigation-related listing actions already are scheduled for Fiscal Year 2004.) We expect that our discretionary listing activity in Fiscal Year 2003 will focus on addressing our highest priority listing actions of finalizing expiring emergency listings.

The Sierra Nevada DPS of the mountain yellow-legged frog will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of this species and other candidate species. Should an emergency situation develop with one or more of the species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for the Sierra Nevada DPS of the mountain yellow-legged frog will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

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

Author

The primary author of this document is Peter Epanchin of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 10, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–973 Filed 1–15–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030108004-3004-01; ID 010303B]

RIN 0648–AQ28

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 15

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework 15 to the Atlantic Sea Scallop Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This rule proposes to implement management measures for the 2003 fishing year, including a days-at-sea (DAS) adjustment, and continuation of a Sea Scallop Area Access Program (Area Access Program) for 2003. The intent of this action is to achieve the goals and objectives of the FMP under the Magnuson-Stevens Fishery Conservation and Management Act and to achieve optimum yield in the scallop fishery. In addition, this proposed rule includes regulatory text that would codify an additional gear stowage provision for scallop dredge gear that was established by the Administrator, Northeast Region, NMFS (Regional Administrator) in 2001.

DATES: Comments must be received on or before 5 p.m., local time, on January 31, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Framework 15 to the Scallop FMP.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Framework Adjustment 15, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135; e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: On September 12, 2002, the Council adopted Framework 15 to the FMP, which proposes annual management measures for the 2003 fishing year (March 1, 2003, through February 29, 2004). Framework 15 would increase the annual DAS allocation, and extend the Area Access Program in the Hudson Canyon and Virginia Beach areas for 2003. The only modification to the measures that have been in effect for the 2002 fishing year would be an increase in the possession limit allowed to vessels participating in the Area Access Program. This increase is intended to be consistent with increasing catch rates in the area so that there is sufficient incentive for vessels to fish in these areas.

Regulations implementing Amendment 7 to the FMP (64 FR 14835,

March 29, 1999) redefined overfishing and revised the annual fishing mortality rate (F) reduction schedule through fishing year 2008. The FMP currently specifies that the DAS allocated for the 2003 fishing year will be 45, 18, and 4 DAS for full-time, part-time, and occasional scallop vessels, respectively. Amendment 7 included the annual DAS allocations projected to be necessary to rebuild the stock within 10 years. DAS for the 2003 fishery were intended to achieve an F target of F=0.22. The reductions in F and associated sea scallop DAS schedule were intended to rebuild the sea scallop stock within 10 years. Amendment 7 also established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives as conditions in the resource change. Finally, Amendment 7 established two closed areas, the Hudson Canyon and Virginia Beach Closed Areas, in the Mid-Atlantic to protect large concentrations of small scallops. In May of 2001, the Hudson Canyon and Virginia Beach Closed Areas were re-opened to controlled scallop fishing under Framework 14 to the FMP (66 FR 21639, May 1, 2001; 66 FR 24052, May 11, 2001 (republication); and 66 FR 457784, August 30, 2001 (correction)) because the scallops in the areas had increased in size and the resource abundance had improved. Framework 14 established measures to control fishing in the areas through February, 2003.

Since the implementation of Amendment 7 in 1998, scallop biomass has increased by nearly five times, and the stock as a whole is at or near the biomass target. The most recent stock assessment was completed in April 2001 through the 32nd Northeast Regional Stock Assessment Workshop (SAW 32). SAW 32 found that neither stock area (Georges Bank and Mid-Atlantic) was overfished, with biomass in both areas above or near the biomass targets. SAW 32 found F on Georges Bank to be 0.14 in 1999, well below the overfishing threshold of F=0.24, so overfishing was not occurring. In the Mid-Atlantic, SAW 32 found that F was 0.43 in 1999, so overfishing was still occurring in that stock area. Although no formal updates of the status of the scallop resource have been completed, projections completed for Framework 15 indicate that the resource will continue to exceed biomass targets.

Under the existing regulations, the Area Access Program will expire on February 28, 2003. These areas were initially closed in 1998 to protect concentrations of juvenile scallops, which have since grown to harvestable size. For the past 2 fishing years, fishing has been allowed within those areas under the Area Access Program established by Framework 14. If the Area Access Program expires, there would be uncontrolled fishing within those areas. This rule proposes to maintain controls on effort and catch that would prevent scallops in the areas from being overfished while at the same time creating a sufficient incentive to fish in these areas in order to alleviate effort on other scallop areas.

Because of the increases in stock biomass, Framework 15 estimates that the number of DAS currently specified for fishing year 2003 (i.e., 45, 18, and 4 DAS for full-time, part-time, and occasional vessels, respectively) would result in an F of 0.091, which is significantly lower than the FMP's target F. Fishing at this level would not achieve optimum yield and would result in negative economic impacts on the industry. The proposed DAS allocation under Framework 15 is more consistent with the F target, and would prevent economic losses for some vessels that would result from lower DAS allocations. The F is projected to be approximately 0.155 for the resource overall under the proposed action. While projections indicate that the proposed DAS allocations would allow overexploitation of scallops in the open portions of the Mid-Atlantic and Georges Bank to continue (F=0.35 to 0.39), they also show that the fishery overall would not exceed its F target of F=0.22, due in part to continued large concentrations of scallops in the Georges Bank groundfish closed areas.

Proposed Measures

This action would implement an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively, for the 2003 fishing year. This would represent an increase over the DAS allocations that would otherwise become effective March 1, 2003 (i.e., 45 full-time, 18 part-time, and 4 occasional). The 120, 48, and 10 DAS allocations have been in place each year since 1999, due to better conditions in the scallop resource than were anticipated in Amendment 7.

Framework 15 would continue the Area Access Program that was implemented under Framework 14 while leaving in place extensive closures under the Northeast Multispecies FMP in other highly abundant scallop grounds. The continued Area Access Program would allow controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. Vessels would be prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of the Area Access Program is to derive biological, social, and economic benefits from fishing in the areas.

Finally, this proposed rule includes regulatory text that would codify a scallop dredge gear stowage provision that was established by the Regional Administrator in 2001. The new provision would eliminate the need for vessel operators to disconnect towing wires and reel them fully onto the winch in order for the gear to be considered stowed properly. Reconnecting the wires at sea was determined to be dangerous, particularly in rough seas. The Regional Administrator has the authority to establish new gear stowage provisions through notification through a permit holder letter. Subsequent codification of the provision would ensure proper implementation of the requirement.

Interactions with Endangered and Threatened Species

NMFS is currently considering and evaluating the effects of the scallop fishery on threatened and endangered species, including sea turtles. The scallop fishery as a whole and the management measures proposed in Framework 15 are being considered in a formal consultation that is currently being conducted under Section 7 of the Endangered Species Act. Although the biological opinion (BO) has not been completed as of the publication of this proposed rule, the final rule or subsequent actions will address the findings of the BO, if appropriate.

Sea Scallop Area Access Program Measures

The 2003 Area Access Program would begin on March 1, 2003, unless the fishery is closed prior to February 28, 2003, in which case it would begin on April 1, 2003. The 2003 Area Access Program would end when the total allowable catch (TAC) allocated to the Area Access Program is caught, or when vessels have used up their allocated number of trips.

The Area Access Program would include a TAC of 17.06 million lb (7,740 mt) and 0.23 million lb (105 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs would achieve an F of 0.32 in each of the two areas. Although this F exceeds the target F of 0.22 for the scallop fishery, it is not expected to jeopardize the rebuilding potential for

the Mid-Atlantic stock. Rather, it is anticipated that the higher F for the Access Areas would allow greater levels of effort and catch within the Access Areas, thereby reducing effort and catch in other areas of the Mid-Atlantic. This anticipated effort distribution is expected to continue to provide for rebuilding of the Mid-Atlantic scallop stock and the scallop resource as a whole.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, would be eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels would be restricted to a total of three annual trips into the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip into either of the Areas would count as one of the allowed trips. Vessels participating in the Area Access Program would be allowed to take only one of the three allocated trips before May 1, and only two of the three allocated trips before June 1. At least one trip would be required to be started before September 1 for that vessel to be eligible to fish any additional trips on or after October 1 that may be authorized by the Regional Administrator. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category would be allowed to conduct only one trip into the Area of their choice.

Participating scallop vessels would be allowed to possess and land from the Areas up to 21,000 lb (9,525.4 kg) of scallop meats per trip. Limits on both the amount of scallops possessed and landed, and the number of trips, are intended to help to control fishing mortality of scallops in the Areas while still creating an incentive to fish in the areas. The increase in the possession limit is a result of the higher F in the Areas. This higher F allows for more trips and a higher limit thereby creating more opportunity for vessels to fish in the Areas. The increased opportunity to fish in the areas should create an incentive for vessels to utilize the Area Access Program where the scallop resource can be harvested at higher rates, thereby removing fishing pressure from other areas that may be more sensitive to fishing pressure. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the Areas without creating a derby fishery, and increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these Areas.

After taking into account data on the number of eligible vessels participating, and on the total number of trips taken, the Regional Administrator could consider adjusting the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season; and, on or after October 1, 2003, could consider allocating one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips that would be allocated on or after October 1, 2003, that vessel must have started at least one Area Access Program trip prior to September 1, 2003. Vessels with occasional permits would not be allocated any additional trips.

Any trip of 10 DAS or less by a vessel fishing in the Area Access Program would count as 10 DAS. Any trip of over 10 DAS would count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the number of days that are available to be fished in other areas, thereby reducing fishing mortality on the scallop resource overall by potentially reducing the number of scallops caught under DAS.

Vessels would be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear would be required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10–inch (25.40–cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program would be required to have installed on board an operational vessel monitoring system (VMS) unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit and would, therefore, be required to install an approved VMS unit in order to participate in the Area Access Program. Scallop vessels planning to fish in the Area Access Program would be required to so declare by notifying the Regional Administrator through the VMS as described below.

Each vessel operator would be required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25). This notification requirement would facilitate placement of observers and would provide for an estimate of the number of potential Area Access Program participating vessels in order to make preliminary projections of potential TAC harvest rates.

Vessel operators would be required to report the following information to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the anticipated number of trips to be taken in the area in question.

In addition, for the purpose of selecting vessels for observer deployment, a vessel's operator would be required to provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

On the day the vessel leaves port to fish under the Area Access Program, the vessel owner or operator must declare into the Program through the VMS. Declaration into the fishery would allow for more accurate and timely monitoring of the catch in the fishery.

The operator of each vessel participating in the Area Access Program would be required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel would be required to report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips would be required to provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program would be

prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock (i.e., unshucked scallops) when outside the Sea Scallop Access Areas. This limit for shell stock would be considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock would help satisfy a market for large, whole scallops, without compromising the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS would be allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels would be prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they would be allowed to possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program would be allowed to transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit would be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels would be required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip. The new stowage requirement included in this proposed rule would improve safety on board vessels transiting to and from the Access Areas.

Vessels would be required to carry observers when requested. The Council has recommended 10–percent observer coverage for the Hudson Canyon Sea Scallop Access Area and 20–percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers would obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner would be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels could be allocated an additional amount of sea scallops, not to exceed a cumulative total of 155 mt or 2 mt for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers could not exceed a value equal to two percent of the overall scallop TAC. One percent of the scallop TAC for both the Hudson Canyon and Virginia Beach Access Areas would be set aside to pay for observers. Similarly, a value equal to one percent of the overall TAC would be added on to the amount of observer TAC, also to help vessels pay for the cost of observers. The allocation of one percent set-aside and one percent additional observer TAC would be consistent with the Area Access Program in 2001 and 2002, as well as the Georges Bank Closed Area Exemption Program. A TAC set-aside of 1 percent to fund research would also be included as part of the Area Access Program. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs shall be limited, by area, up to 77 mt or 1 mt for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively. This research program for the Sea Scallop Access Areas would be modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice will be published in the **Federal Register** that will provide information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements.

Abbreviated Rulemaking

NMFS proposes these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart D. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. This action is being published as a proposed rule because the Council had sufficient time to prepare for proposed rulemaking and allow for additional public comment on the action.

Documents summarizing the Council's proposed action, the EA, and economic impacts analysis of the preferred and alternative actions, were available for public review 1 week prior to the final Council meeting on September 12, 2002, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting. Comments pertaining specifically to the EA, and framework measures are included and responded to in the EA.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows:

The proposed action and its alternatives could affect any commercial vessel holding an active Federal permit for sea scallops. Data from the 2001 Northeast permit database show that 310 commercial vessels were permitted with limited access scallop permits, and 2,293 commercial vessels were permitted with general category (open access) scallop permits. Information from the 2002 fishing year is incomplete. The majority, if not all, of the federally permitted vessels readily fall within the Small Business Administration's (SBA) definition of small business and the Regulatory Flexibility Act's definition of ''small entity.'' Therefore, all alternatives and analyses associated with this proposed rule necessarily are alternatives and analyses applicable to impacts on small entities. A description of the significant alternatives to the proposed action are addressed in detail in the EA and are not repeated here.

The analyses in the Council's IRFA and the economic impacts section of the EA show that the increase in the DAS allocations of the preferred and non-preferred alternative and the access to the Hudson Canyon and Virginia Beach Access Areas will have positive

economic impacts on all vessels as compared to the no action alternative. The revenues per full-time vessel are expected to increase by 56 percent under the proposed action, and by 38 percent to 58 percent for the 100 and 140 full-time DAS alternatives, respectively, compared to the no action alternative. The profits are expected to more than double under all DAS alternatives, including the proposed alternative and access to the Area Access Program in the Mid-Atlantic, relative to the no action alternative. Although the analysis in the document is conducted for an average full-time vessel in the scallop fishery, relative to the no action alternative, the results are expected to be positive for all full-time, part-time, and occasional vessels, as well, since their DAS allocations will also be adjusted upward and they will be able to access the Hudson Canyon and Virginia Beach Access Areas.

No additional reporting requirements are included in this proposed rule. Likewise, no other Federal rules will duplicate, overlap or conflict with this proposed rule.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 13, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.23, paragraph (b)(2) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(2) *Scallop dredges.* (i) The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unuseable for fishing; or

(ii) The towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

* * * * *

3. In § 648.53, the table in paragraph (b) is revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008
Full-time	120	120	120	120	120	34	35	38	36	60
Part-time	48	48	48	48	48	14	14	15	17	24
Occasional	10	10	10	10	10	3	3	3	4	5

* * * * *

4. In § 648.57, the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area.* Through February 29, 2004, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

5. In § 648.58, paragraphs (c)(1), (c)(4), (c)(6), (e)(2), (e)(3)(ii), (e)(4)(ii), and (f) are revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

* * * * *

(c) * * *

(1) *Season.* From March 1, 2003, through February 29, 2004, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2002 fishing year season be closed early (i.e., prior to February 28, 2003), as described in this paragraph (c)(1), the Sea Scallop Area Access Program season for fishing year 2003 will begin on April 1, 2003.

* * * * *

(4) *Number of trips*--(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either Area counts as one trip. Full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2003, and no more than two of their three allowed Area Access Program trips before June 1, 2003.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 at any time during the season, as specified in paragraph (c)(1) of this section.

* * * * *

(6) Possession and landing limits--Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2003, a vessel owner or operator may fish for, possess, and land up to 21,000 lb (9,525.4 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

* * * * *

(e) * * *

(2) Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas. On or after October 1, 2003, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing year 2003 in paragraph (f) of this section, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1, 2003. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Vessels with occasional permits would not be allocated an additional trip.

(3) * * *

* * * * *

(ii) *Observer set-aside limits by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 155 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 2 mt.

* * * * *

(4) * * *

* * * * *

(ii) *Research set-aside limits and number of trips by area.* The cumulative amount of scallop authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area - 2003 area access program - 77 mt;

(B) Virginia Beach Sea Scallop Access Area - 2003 area access program - 1 mt.

* * * * *

(f) *Termination of the Sea Scallop Area Access Program*--(1) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 7,585 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2003 shall be terminated as of the date the Regional Administrator projects that 103 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

* * * * *

[FR Doc. 03–1025 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 11
Thursday, January 16, 2003

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

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held February 18, 2003, 6:30 p.m. to 9:30 p.m.

ADDRESSES: 29688 Auberry Road, Prather, California. The meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, California 93651. Send written comments to Rick Larson, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *relarson@fx.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rick Larson, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3319.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by February 18, 2003 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the January 21, 2003 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Vote on submitted projects for 2002 funds; (4) Confirm the date, location and agenda of the next meeting; (5) Public comment.

Dated: January 9, 2003.

Ray Porter,

District Ranger.

[FR Doc. 03–944 Filed 1–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meetings.

AGENCY: Forest Service, USDA.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, February 10 and Monday March 10, 2003, in Alturas, California for each business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting February 10 begins at 4 p.m. at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of November 13 and January 8 minutes, reports from subcommittees, hear a status report on 2002 and 2003 projects, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. A roll call vote will be taken on three projects. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting March 10 begins at 4 p.m. at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of February 10 minutes, reports from subcommittees, and discuss progress of community outreach for fiscal year 2004 projects. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Nancy Gardner,

Acting Forest Supervisor.

[FR Doc. 03–1018 Filed 1–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Office of the Secretary

RIN 0596–AB99

National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions; Extension of Comment Period

AGENCY: Forest Service, USDA; Office of the Secretary, Interior.

SUMMARY: This notice extends the comment period for the proposed categorical exclusions described under **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be received on or before January 31, 2003.

ADDRESSES: Mail written comments to: Healthy Forests Initiative, USDA FS Content Analysis Team, P.O. Box 221150, Salt Lake City, Utah 84116.

Comments also may be submitted via facsimile to (801) 517–1015 or by e-mail to *healthyforests@fs.fed.us.* If comments are sent via facsimile or e-mail, the public is requested not to send duplicate written comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection. Persons wishing to inspect the comments need to call (801) 517–1020 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: Dave Sire, USDA Forest Service, Ecosystem Management Coordination, (202) 205–2935, or Willie Taylor, Department of the Interior, Office of

Environmental Policy and Compliance, (202) 208–3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On Monday, December 16, 2002, the Department of Agriculture, Forest Service and the Department of the Interior published two proposed categorical exclusion under the National Environmental Policy Act, 67 FR 77038, concerning fire management activities. The deadline for receipt of comments was January 15, 2003. The comment period is extended for sixteen days to allow additional time for comment on the proposed categorical exclusions. Comments must be received on or before January 31, 2003.

For the Forest Service, U.S. Department of Agriculture.

Dated: January 13, 2003.

Sally D. Collins,

Associate Chief.

Dated: January 13, 2003.

Christopher B. Kearney,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 03–1060 Filed 1–14–03; 9:26 am]

BILLING CODE 3410–11 and 4310–70–M

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Local Government Finances (School Systems)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 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 or copies of the information collection instrument(s) and instructions should be directed to Sharon J. Meade, U.S. Census Bureau, Governments Division, Washington, DC 20233–6800 (301–763–7316).

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finance of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the reauthorization of the Elementary Secondary Education Act (ESEA) by the No Child Left Behind Act (NCLB), there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

The four forms used in the school finance portion of the survey are:

Form F–33. This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. Most states supply their data by electronic means.

Form F–33–1. This form is used at the beginning of each survey period to solicit the assistance of the state education agencies. It establishes the conditions by which the state education agencies provide their school finance data to the Census Bureau.

Form F–33–L1. This is a supplemental letter sent to the school systems in states where the state education agencies cannot provide information on the assets of individual school systems.

Form F–33–L2. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on the indebtedness of individual school systems.

Form F–33–L3. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on either indebtedness or assets. This letter combines the items requested on the forms F–33–L1 and F–33–L2.

The data collection is identical to the previous collections except that the section on revenue from federal sources through the state government is updated to accommodate the collection of data related to the reauthorization of the Elementary-Secondary Education Act (ESEA) by the No Child Left Behind Act.

II. Method of Collection

Through central collection arrangements with the state education agencies, the Census Bureau collects almost all of the finance data for local school systems from state education agency data bases. The states transfer most of this information in electronic format via e-mail and over the Internet via file transfer protocol (FTP). The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

III. Data

OMB Number: 0607–0700.

Form Number: F–33, F–33–1, F–33–L1, F–33–L2, F–33–L3.

Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 4180.

Estimated Time Per Response: .97 hours.

Estimated Total Annual Burden Hours: 4038.

Estimated Total Annual Cost: $73,492.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., sections 161 and 181.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 10, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–926 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2004 National Long-Term Care Survey (NLTCS) and Informal Caregivers Survey (ICS)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 17, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Dopkowski, Census Bureau, FB 3, Room 3356, Mail Stop 8400, Washington, DC 20233–8400, (301) 763–3801.

SUPPLEMENTARY INFORMATION

I. Abstract

The primary purpose of the NLTCS and the ICS is to obtain information on the health and functional status of the elderly population in the United States and the people who take care of them in a home environment. A secondary purpose of the 2004 NLTCS is to identify impaired people and their relatives so the survey sponsor, Duke University, can obtain supplemental information from them via follow-up contacts not made by the Census Bureau. The Census Bureau conducted NLTC surveys in 1982, 1984, 1989, 1994, and 1999 and the IC surveys in 1989 and 1999. Beginning with the 1989 NLTCS and ICS, Duke University sponsored the surveys using grant funding received from the National Institute on Aging (NIA). Duke University and the NIA propose the continuation of these two surveys in the spring of 2004. The information obtained from the 2004 surveys will be added to the information from all previous surveys and then used to inform policy decisions relating to the elderly, their care, and the medicare program.

Sample Overview

The 2004 NLTCS sample has a longitudinal component and an aged-in component. The longitudinal portion consists of 13,267 people who responded to one or more of the previous five surveys. The aged-in component consists of 6,600 people: 5,600 who turned 65 years old since the 1999 survey and an additional 1,000 people who are 95 years of age or older. The total sample size is 19,867 and all are selected from the Centers for Medicare and Medicaid Services' (CMS) medicare beneficiary file. Approximately 1,800 people are in a part of the sample designated as the healthy segment.

The sample for the ICS is selected during the NLTCS interview and consists of approximately 3,275 people who are either not paid or members of the NLTCS sample person's family and help or assist the NLTCS sample person. We select one caregiver per NLTCS respondent.

Survey Process

The NLTCS survey consists of a screener interview to determine if a person is impaired or currently living in a nursing care facility. If the person is impaired and living at home, he/she is administered a community interview. If the person is in a nursing care facility, he/she is administered an institutional interview. If the person is part of the healthy segment, he/she is administered a portion of the community interview.

During the community interview, we collect information on people who provide help or assistance to the NLTCS respondents. For the ICS sample, we select the caregiver, if any, who has provided the most help to the NLTCS respondent during the week prior to the interview.

The Census Bureau stores the survey data on a microdata file and delivers a copy of the file to Duke University. The Duke University links the NLTCS and the ICS data with previous NLTCS and ICS data and appends to this data set the administrative medicare information and the data collected from the follow-up contacts with the NLTCS sample people. The Duke University analyzes the data and makes its findings known to the NIA. The Duke University makes two data sets available for research, none of which contain individual identifiers. One data set contains the linked NLTCS/ICS/medicare/follow-up survey data. This data set is sent to the CMS who controls its subsequent use. The second data set contains the linked NLTCS/ICS/follow-up survey data. This data set is kept by Duke University who controls its subsequent use.

Summary of Revisions

The 2004 NLTCS and ICS repeat the 1999 surveys with the following exceptions.

Proxy Respondent Requirements: The selection of eligible proxies will follow a hierarchical structure. This structure was not established in previous NLTC surveys.

Respondent Identification: For each section of the questionnaires, we will identify whether the sample person or a proxy respondent answered the questions. This is important in data assessment. For example, the level of help needed that is reported by an individual is usually less than the amount of help reported by a caregiver. This identification was not done in previous surveys.

Screener Questionnaire: The activities of daily living (ADL) and the instrumental activities of daily living (IADL) will be administered to all noninstitutional sample people. Previous NLTC surveys did not ask people in the longitudinal sample about disabilities during the screener. This created some problems with establishing disability at the time of the screener for weighting purposes.

The screener was expanded to include the new race and ancestry questions developed by the Census Bureau for its demographic surveys and several other demographic questions like educational attainment and marital status. This change consolidates many of the demographic variables in the screener and provides demographic statistics more consistently across the entire sample.

Control Card: The format of the control card will change to accommodate interviewing in an institutional setting. In addition, the control card will collect information on the number of hours worked by the sample persons' children and their spouses. These questions were asked in

the 1994 survey but were excluded from the 1999 survey. The caregiver research community uses this information to determine the potential caregiver universe.

Community Questionnaire: The length of the community interview will be shortened by replacing the lengthy cognitive assessment section used in 1999 with the shorter section used in the 1994 survey. In addition to this change, questions in other sections were modified or eliminated in order to reduce the overall length of the survey.

Institutional Questionnaire: The institutional interview will be changed to allow the sample person to have greater participation than in previous years. If the sample person is not capable of participating due to physical or mental impairment, the sample person's family will be asked to play a larger participatory role. In 1999, most of the information was obtained from the nursing home staff resulting in incomplete data for many of the cases. Also, the list of medical conditions asked in the community interview will be asked in the institutional interview.

ICS: The caregiver selection criteria will be modified. In previous caregiver surveys, caregivers were incorrectly excluded from selection based on conditions defined in the selection process.

Pretest

In preparation for the 2004 NLTCS and the ICS, Duke University requested the Census Bureau to conduct a complete test in the fall of 2003 to evaluate the changes made to the 1999 NLTCS and ICS.

II. Method of Collection

The Census Bureau's field representatives (FRs) conduct the screening interviews by telephone or by personal visit if the respondent cannot be reached by phone. The FRs conduct all the community and institutional interviews primarily through personal-visit interviewing. Telephone interviewing is allowed if requested by the respondent. The ICS can be conducted either by phone or personal visit following the community interview.

All data are collected using computer-assisted (laptop) interviewing. Advance letters are sent to respondents notifying them of the upcoming survey.

III. Data

OMB Number: 0607–0778.

Form Number: There are no forms. We conduct all interviewing on laptop computers.

Type of Review: Regular.

Affected Public: Individuals.

Estimated Number of Respondents:

Pretest
NLTCS: 465.
ICS: 35.
Survey
NLTCS: 18,850.
ICS: 2,970.
Total: 22,320.

Estimated Time Per Response (in minutes):

Pretest
NLTCS: 15.
ICS: 30.
Survey
NLTCS: 15.
ICS: 30.

Estimated Total Annual Burden Hours:

Pretest
NLTCS: 116.
ICS: 18.
Survey
NLTCS: 4,713.
ICS: 1,485.
Total: 6,332.

Estimated Total Annual Cost: We do not expect respondents to incur any cost other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42, United States Code, Section 285e–1 and Title 15, United States Code, Section 1525 authorize this survey.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: January 10, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief information Officer.

[FR Doc. 03–927 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1265]

Grant of Authority for Subzone Statu;, Taiyo America, Inc. (Electronic Chemicals), Carson City, Nevada

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 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, the Economic Development Authority of Western Nevada, grantee of Foreign-Trade Zone 126, has made application to the Board for authority to establish a special-purpose subzone at the electronic chemicals manufacturing and warehousing facilities of Taiyo America, Inc., located in Carson City, Nevada (FTZ Docket 14–2001, filed 3/2/01);

Whereas, notice inviting public comment was given in the **Federal Register** 66 FR 14126, 3–09–01); 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 authority for subzone status at the electronic chemicals manufacturing and warehousing facilities of Taiyo America, Inc., located in Carson City, Nevada (Subzone 126B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 8th day of January 2003.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–983 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1264]

Grant of Authority for Subzone Status, Deepsea Flexibles, Inc. (Flexible Pipeline); Galveston, Texas

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 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, the Board of Trustees of the Galveston Wharves, grantee of Foreign-Trade Zone 36, has made application to the Board for authority to establish a special-purpose subzone at the flexible pipeline manufacturing and warehousing facilities of Deepsea Flexibles, Inc., located in Galveston, Texas (FTZ Docket 10–2002, filed 2/6/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 7133, February 15, 2002); 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 would be in the public interest if approval was subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the flexible pipeline manufacturing and warehousing facilities of Deepsea Flexibles, Inc., located in Galveston, Texas (Subzone 36A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that all aramid fiber be admitted to the subzone in privileged foreign status.

Signed at Washington, DC, this 8th day of January, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–982 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 11, 2002, the Department of Commerce (the Department) published the preliminary results of its new shipper review and administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe (OCTG) from Korea. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review*, 67 FR 57570 (September 11, 2002) (*Preliminary Results*). The new shipper review covers Shinho Steel Co., Ltd. (Shinho Steel) for the period August 1, 2000 through February 28, 2001. The administrative review covers SeAH Steel Corporation (SeAH) for the period August 1, 2000 through July 31, 2001. We gave interested parties an opportunity to comment on our Preliminary Results. The final results are listed below in the sections entitled ''Final Results of Administrative Review'' and ''Final Results of New Shipper Review.''

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn at (202) 482–4236, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). The antidumping duty order on OCTG from Korea has an August anniversary date and a February semi-annual anniversary date. On February 28, 2001, Shinho Steel requested a new shipper review for the period August 1, 2000 through February 28, 2001. (At Shinho Steel's request, we extended the standard six month period seven months to cover the customs entry.) On August 31, 2001, Shinho Steel also requested an administrative review to cover the period March 1, 2001 through July 31, 2001. Shinho Steel withdrew its request for an administrative review for the period March 1, 2001 through July 31, 2001 on October 2, 2001. On January 22, 2002, Shinho Steel waived the time limits applicable to its new shipper review so that the Department might conduct its new shipper review concurrently with the 2000/2001 administrative review of OCTG from Korea.

On September 11, 2002, the Department published its preliminary results for the new shipper review of Shinho Steel and administrative review of SeAH and rescinded its administrative review of Shinho Steel for the period March 1, 2001 through July 31, 2001. The rescission was based on the fact that Shinho Steel had no sales other than those analyzed in the new shipper review. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Preliminary Results of New Shipper Review and Antidumping Duty Administrative Review, and Rescission, in Part, of the Antidumping Duty Administrative Review*, 67 FR 57570 (September 11, 2002) (*Preliminary Results*).

In the *Preliminary Results*, the Department also stated that a changed circumstances review addressing Shinho Steel's decision to legally change its name to Husteel was being conducted under another antidumping duty order (*Certain Circular Welded Non-Alloy Steel Pipe from Korea* (A–580–809)). The Department has since completed that changed circumstances review and found that Husteel is the ''successor-in-interest'' to Shinho Steel for antidumping duty cash deposit purposes and that Husteel would be assigned the same cash deposit rate with

respect to the subject merchandise as the predecessor company, Shinho Steel. *See Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Changed Circumstances Review*, 67 FR 69716, (November 19, 2002). Therefore, Husteel will be assigned the same cash deposit rate with respect to the subject merchandise as Shinho Steel, the predecessor company. This cash deposit requirement will be effective upon publication of these final results.

Scope of the Antidumping Duty Order

The products covered by this order are oil country tubular goods (''OCTG''), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Analysis of Comments Received

All issues raised in the briefs filed by parties to this administrative review are addressed in the Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, to Faryar Shirzad, Assistant Secretary for Import Administration: *Issues and Decision Memorandum for the New Shipper Review and the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe, From Korea* dated January 9, 2003 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Internet at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one change in the margin calculation for SeAH. We have removed from our calculation of normal value a deduction for foreign inventory carrying costs (DINVCARU). For a discussion of this issue, please refer to the *Decision Memo* at Comment 2.

Final Results of Administrative Review

We determine that the following weighted-average margin exists for the period August 1, 2000, through July 31, 2001:

Manufacturer/Exporter	Margin (percent)
SeAH Steel Corporation	0.32

Final Results of New Shipper Review

We determine that the following weighted-average margin exists for the period August 1, 2000 through February 28, 2001:

Manufacturer and Exporter	Margin (percent)
Shinho Steel Corporation/ Husteel	0.00

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* assessment rates for SeAH based on entered values. We will direct the Customs Service to assess the *ad valorem* assessment rate against the entered customs value for each entry of subject merchandise from SeAH during the review period. Since the dumping margin for Shinho Steel/Husteel is zero, no duties will be assessed on entries pursuant to the reviewed sales. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of review. For customs purposes only, this case is identified using case number A–580–215.

Cash Deposit Requirements

The following deposit requirements shall be effective for all shipments of the subject merchandise from Korea that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review and the new shipper review, as provided for by section 751(a)(1) of the Act. Since the weighted-average margin for SeAH is less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties for subject merchandise exported by SeAH. Since the weighted-average margin for Shinho Steel/Husteel is less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties for subject merchandise produced and exported by Shinho Steel/Husteel. For subject merchandise exported by Shinho Steel/Husteel but not produced by Shinho Steel/Husteel, the cash deposit rate will be the ''all others'' rate. Bonding will no longer be permitted to fulfill security requirements for shipments from Shinho Steel/Husteel of subject merchandise from Korea entered, or withdrawn from warehouse. For previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period. If the exporter is not a firm covered in this review, or the original 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. The cash deposit rate for all other manufacturers or exporters of this merchandise will continue to be 12.17 percent, the all others rate made effective by the less-than-fair-value investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. 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 the terms of an APO is a sanctionable violation.

These final results of administrative review and new shipper review and notice are issued and published in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: January 9, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Issues

1. Freight Revenue and Constructed Export Price (CEP)
2. Indirect Selling Expenses in Korea
3. Cash Deposit Instructions for Husteel
4. Liquidation of Shinho Steel/Husteel's Entries

[FR Doc. 03–984 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), Morflex, Inc., a U.S. importer of subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on sebacic acid from the People's Republic of China, as described below. In response to this request, the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on sebacic acid from the People's Republic of China.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the People's Republic of China. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China*, 59 FR 35909 (July 14, 1994). On November 26, 2002, Morflex, Inc. (Morflex), a U.S. importer of subject merchandise and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on sebacic acid from the People's Republic of China (PRC) through a changed circumstances review. According to Morflex, Arizona Chemical Corporation (Arizona Chemical) will cease production of subject merchandise in the United States at the end of November 2002. Arizona Chemical is the successor-in-interest to the original petitioner in this proceeding, Union Camp Corporation. In addition, on September 25, 2002, prior to Morflex's request, Arizona Chemical notified the Department that it intended to cease production of sebacic acid no later than December 31, 2002.

Scope of the Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216 and may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Given Moreflex's assertions, we will consider whether there is interest in continuing the order on the part of the U.S. industry.

Interested parties may submit comments for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 10, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–981 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils from Italy: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limits of the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils (''SSSS'') from Italy. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background

On July 2, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 66 FR 34910 (July 2, 2001). On July 31, 2001, domestic industry parties from the original investigation (''petitioners''), ThyssenKrupp Acciai Speciali Terni S.p.A. (''TKAST'') [1], a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. (''TKAST USA''), requested that the Department conduct an administrative review of the antidumping duty order. On August 20, 2001, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On March 5, 2002, the Department extended the time limit for the preliminary results of this administrative review by 90 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 9960 (March 5, 2002). On May 13, 2002, we again extended the preliminary results of administrative review, this time by 25 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy,* 67 FR 32015 (May 13, 2002). On July 26, 2002, the Department extended the time limit for the preliminary results in this administrative review another five days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 50421 (August 2, 2002).

On August 7, 2002 we issued our preliminary results of administrative review. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 51224 (August 7, 2002). On December 10, 2002, the Department extended the time limit for the final results to January 14, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit of Final Results of Antidumping Duty Administrative Review*, 67 FR 75846 (December 10, 2002). The final results of administrative review are currently due January 14, 2003.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by 60 days. Since the Department has already extended these final results 40 days, the Department is allowed to further extend the final results by an additional 20 days. Completion of the final results of this review within the 120-day period is not practicable for the following reasons:

- The review involves a large number of transactions and complex adjustments.
- The review includes complex sales and cost issues which require the Department to analyze a significant amount of information pertaining to sales practices, manufacturing costs and corporate relationships.
- The review requires the Department to issue for comment from interested parties a Department decision concerning the relationship between certain selling agents and their employer Ken-Mac Metals, Inc.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of review by 20 days until February 3, 2003.

[1] On January 18, 2002 Acciai Speciali Terni S.p.A.''s shareholders voted to change the company's name to ThyssenKrupp Acciai Speciali Terni S.p.A. On February 27, 2002, Acciai Speciali Terni USA, Inc. became ThyssenKrupp AST USA, Inc. Throughout most of the responses, the companies refer to themselves as TKAST and TKAST USA, respectively.

Dated: January 8, 2003.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–985 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity to Apply for Membership on the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the APAC. The purpose of the APAC is to advise Department of Commerce officials on issues related to U.S.-made automotive parts and accessories sales in Japanese and other Asian markets. The APAC's functions include: (1) Reporting to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviewing and considering data collected on sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (3) advising the Secretary of Commerce during consultations with other governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; (4) assisting in establishing priorities for the initiative to increase sales of U.S.-made automotive parts and accessories to Japanese markets, and to otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that initiative; and (5) assisting the Secretary in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to the Fair Trade in Automotive Parts Act of 1998, sections 3803 and 3804 of Pub. L. 105–261.

SUPPLEMENTARY INFORMATION: The APAC was originally established pursuant to the Fair Trade in Auto Parts Act of 1988, sections 2121 to 2125 of Public Law 100–418, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts to Japanese markets. The Committee was reauthorized by the Fair Trade in Auto Parts Act of 1998, sections 3803 and 3804 of Pub. L. 105–261, to advise the Secretary of Commerce on issues related to sales of U.S.-made auto parts in Japanese and other Asian markets. The APAC functions as an advisory committee in accordance with the Federal Advisory Committee Act, 15 U.S.C. App. 2 and Department of Commerce policies on advisory committees.

The Office of Automotive Affairs is accepting applications for private sector members to begin serving after the Committee's charter is renewed, which is expected to be in late January 2003. An existing member may be reappointed only if he or she has reapplied and has been accepted through the normal recruitment and selection process. An existing member may reapply for membership by submitting a letter requesting that he or she be considered for a membership position, and any supplemental information necessary to update his or her previous application for membership. Private sector representatives will be appointed to serve until the new APAC charter expires on December 31, 2003. Members will be selected who will best carry out the objectives of the Fair Trade in Automotive Parts Act of 1998. Each APAC member must also serve as the representative of a ''U.S. entity'' engaged in the manufacture of automotive parts or the provision of a related service (including retailing and other distribution services), or an association of such entities. A U.S. entity is a firm incorporated in the United States (or an unincorporated U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Secondary selection criteria will ensure that the committee has a balanced representation of the auto parts industry in terms of point of view, demographics, geography and company size. APAC members are selected on the basis of their experience and knowledge of conditions and problems in automotive parts markets. Members will serve at the discretion of the Secretary.

Private sector members will serve in a representative capacity presenting the views and interests of the particular automotive sector in which they operate. Private sector members are not special government employees, and will receive no compensation for their participation in APAC activities. Members participating in APAC meetings and events will be responsible for their travel, living and other personal expenses. Meetings are held approximately four times a year, usually in Washington, DC. The next APAC meeting date has not yet been determined.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; a letter of recommendation containing a brief statement of why each candidate should be considered for membership on the APAC that includes the individual's export experience, along with a personal resume; a statement that the applicant is a not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended; the company's product or service line and major markets; and the size and ownership of the company. All APAC members must obtain a U.S. Government security clearance.

ADDRESSES: Submit application information to Henry Misisco, Director, Office of Automotive Affairs, U.S. Department of Commerce, Room 4036, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Henry P. Misisco, (202) 482–0554.

Dated: January 7, 2003.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 03–986 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, DOC.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84–00022.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Great Agassiz Basin Export Trading Company, Inc. on September 5, 1984. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Great Agassiz Basin Export Trading Company, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1999). Pursuant to this authority, a certificate of review was issued on September 5, 1984 to Great Agassiz Basin Export Trading Company, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On August 26, 2002, the Department of Commerce sent to Great Agassiz Basin Export Trading Company, Inc. a letter containing annual report questions with a reminder that its annual report was due on October 20, 2002. An additional reminder was sent on November 7, 2002. The Department has received no written response from Great Agassiz Basin Export Trading Company, Inc. to any of these letters.

On November 25, 2002, and in accordance with Section 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Great Agassiz Basin Export Trading Company, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Great Agassiz Basin Export Trading Company, Inc. thirty days to respond was published in the **Federal Register** on December 2, 2002 at 67 FR 71535. Pursuant to Section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Great Agassiz Basin Export Trading Company, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Great Agassiz Basin Export Trading Company, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 13, 2003, to notify Great Agassiz Basin Export Trading Company, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register**, Sections 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and Section 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: January 13, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–1043 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Rookery Bay National Estuarine Research Reserve Revised Management Plan Including a Boundary Expansion

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of the final revised management plan for the Rookery Bay National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce has approved the revised management plan, which includes an expansion of the boundary of the reserve, for the Rookery Bay National Estuarine Research Reserve.

The Rookery Bay Reserve was designated in 1978 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1995. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

The mission of the Rookery Bay Reserve is to provide a basis for informed coastal decisions by communities in Southwest Florida through site-based estuarine research, stewardship and education. The management plan identifies four priority resource issues that are addressed through active management. These priority issues are (1) changing land use in adjacent watersheds that impact freshwater inflows, (2) loss of native biodiversity due to invasive plants and animals, (3) increased public use of reserves resources, and (4) the need to monitor catastrophic storm events, red tides and global climate change. Rookery Bay's management plan addresses these issues with specific programs for resource management and protection, research and monitoring, education and training, public access and visitor use, program administration, and partnerships and regional coordination.

The plan identifies management goals, priority resource management issues or threats that these goals must address, and specific strategies to accomplish these goals. The plan incorporates a modification of an adaptive management approach to ecosystems proposed by Morrison et al. (1998), which seeks a science-based approach to environmental management.

The resource management and protection program addresses issues such as land acquisition, habitat and hydrological restoration, invasive species control and eradication, and listed species protection. The reserve manages important habitats and performs activities such as controlled burns to sustain native biodiversity.

The research and monitoring program includes studies on mangrove and oyster reef ecology, restoration ecology, estuarine fishes, nutrient cycling and the impacts of mosquito control aerial spraying. Staff and visiting researchers conduct monitoring and research within the watersheds and boundaries of the reserve and use GIS to map critical habitats and flow ways. The results of their work is critical for use in adaptive management of the reserve.

The education and training program at the reserve targets a wide variety of audiences including students, teachers, adults, resource users and environmental professionals. The reserve is building a 14,700 square foot environmental learning center to conduct training programs on environmental issues important to Southwest Florida.

The public access and visitor use program at Rookery Bay includes developing a network of aquatic and terrestrial trails and boardwalks to provide for increased access to reserve resources. Visitor use policies are designed to provide for compatible use

and protection of valuable natural resources.

The administration program ensures the staffing and budget necessary to carry out the goals and objectives of the plan; and, the partnerships and regional coordination program defines the range of partners that the reserve works with to achieve their goals. The reserve serves as the Southwest Florida region headquarters for the Florida Department of Environmental Protection Aquatic and Buffer Preserve field offices in Tampa Bay, Charlotte Harbor and Estero Bay. Rookery Bay also works with a plethora of organizations ranging from local governments, community groups, state and federal agencies, and international partners in China.

The boundary expansion incorporates adjacent state-owned coastal and submerged lands of the Rookery Bay Aquatic Preserve and the Cape Romano/Ten Thousand Islands Aquatic Preserve. Incorporating these lands increases the size of the reserve from 9,400 acres to 110,000 acres. The expansion will provide a contiguous estuarine ecosystem with a broader diversity of habitats not found within the old boundary of the reserve. Habitats within the new boundary of the reserve include abundant seagrass communities, tropical hardwood hammocks, coastal strand and barrier beach communities, cypress slough and prairies, and live bottom communities.

FOR FURTHER INFORMATION CONTACT: Erica H. Seiden at (301) 563–1172 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 11th floor, Silver Spring, MD 20910.

Dated: December 23, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–939 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011003D]

Pacific Fishery Management Council; Coastal Pelagic Species Management Team Work Session Focused on Pacific Sardine Allocation.

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a public work session.

DATES: The CPSMT will meet Thursday, January 30, 2003, from 8 a.m. to 5 p.m. and Friday, January 31, 2003, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room (D–203) at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the CPSMT meeting is to develop and review preliminary analyses of management alternatives for revising the CPS fishery management plan's (FMP) annual Pacific sardine allocation framework. Possible management alternatives include:

1. Status quo - 33 percent of the harvest guideline allotted to the northern subarea and 66 percent to the southern subarea, with reallocation nine months after the start of the fishery. (See the CPS FMP for a complete description of the current Pacific sardine allocation framework).

2. No allocation - institute a coastwide harvest guideline.

3. Move northern boundary of southern subarea from 35° 40' to 39° N latitude, change reallocation date from October 1 to September 1 (or August 1), and provide for a December 1 reallocation to a coastwide harvest guideline.

4. Change reallocation date from October 1 to September 1 (or August 1), and provide for a December 1 reallocation to a coastwide harvest guideline.

Alternatives 3 and 4 include allocation percentage sub- alternatives:

a. 33 percent to the north, 66 percent to the south.

b. 50 percent to the north, 50 percent to the south.

This is a public meeting, and time for public comment will be provided at the discretion of the CPSMT chair. Generally, a public comment period will be provided just prior to the end of each day. Please note, this is not a public hearing, it is a work session devoted to completing preliminary analyses for Council consideration at the March 2003 Council meeting.

Although nonemergency issues not contained in the CPSMT meeting agenda may come before the CPSMT 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 document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 13, 2003.

Richard W. Surdi,

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

[FR Doc. 03–1015 Filed 1–15–03; 8:45 am]

BILLING CODE 3510–22–S

Commodity Futures Trading Commission

In the Matter of the New York Mercantile Exchange, Inc. and the Intercontinental Exchange, Inc., Petitions for Treatment of Floor Brokers and Floor Traders as Eligible Commercial Entities Pursuant to Section 1a(11)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to petitions from the New York Mercantile Exchange, Inc. (NYMEX) and the Intercontinental Exchange, Inc. (Intercontinental), the Commodity Futures Trading Commission (Commission or CFTC), pursuant to section 1a(11)(C) of the Commodity Exchange Act (Act), is issuing an order that deems, subject to certain conditions, floor brokers and floor traders who are registered with the Commission, when acting in a proprietary trading capacity, to be ''eligible commercial entities '' as that term is defined in section 1a(11) of the Act. Accordingly, subject to certain conditions as set forth in the Commission's order, registered floor brokers and floor traders, when acting

for their own accounts, are permitted to enter into transactions in exempt commodities on exempt commercial markets pursuant to section 2(h)(3) of the Act. In order to participate, the floor broker or floor trader must either be an eligible contract participant as that term is defined in section 1a(12) of the Act or have its trades on the exempt commercial market guaranteed by a clearing member that is both a member of a CFTC-registered derivatives clearing organization and is an eligible contract participant.

DATES: This order is effective January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202–418–5492. E-mail: *dandresen@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 1a(11) of the Act, as amended by the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. No. 106–554, which was signed into law on December 21, 2000, defines the term ''eligible commercial entity'' (ECE) by listing those eligible contract participants (ECP) [1] that are qualified to be ECEs.[2] Under section 2(h)(3) of the Act, transactions between ECEs in an ''exempt commodity'[3] on an exempt commercial market (ECM) that meet the requirements of 2(h)(3)–(5) are exempt from all but certain limited requirements of the Act.[4] Floor brokers and floor traders, even if determined to fall within the definition of ECP, do not fall within the definition of ECE and, thus, cannot enter into transactions on ECMs. The Act, however, gives the Commission discretion to expand the ECE category. Specifically, section 1a(11)(C) provides that the list of entities defined as ECEs shall include ''such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.'' A determination under this provision that registered floor brokers and floor traders are considered to be ECEs would permit these entities to enter into transactions in exempt commodities on ECMs pursuant to section 2(h)(3) of the Act.

II. The Petitions

A. NYMEX

By letter dated May 23, 2002, NYMEX submitted a petition for a Commission interpretation pursuant to section 1a(11)(C) of the Act.[5] Specifically, NYMEX, acting on behalf of its floor brokers, floor traders and clearing firms, requested that the Commission make a determination pursuant to Section 1a(11)(C) of the Act that floor brokers and floor traders, when acting in a proprietary capacity, may enter into certain specified transactions in exempt commodities on ECMs if such Commission registrants have obtained a financial guarantee for such transactions from an Exchange clearing member that is registered with the Commission as an FCM. NYMEX suggested that the permissible transactions be limited to trading in a commodity that either (1) is listed only for clearing on NYMEX,[6] or (2) is listed for trading and clearing on NYMEX and where NYMEX rules provide for the exchange of futures for swaps (EFS) in that contract.[7] NYMEX further proposed that permissible trading be limited to transactions that would subsequently be cleared at NYMEX and represented that NYMEX would have appropriate compliance systems in place to monitor such trading.[8]

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[1] Section 1a(12) defines the term ECP by listing those entities and individuals considered to be ECPs. Included generally as ECPs are financial institutions; insurance companies and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers, dealers, and futures commission merchants (FCM) subject to regulation and organized as other than natural persons or proprietorships; brokers, dealers, and FCMs subject to regulation and organized as natural persons or proprietorships subject to total asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; floor brokers or floor traders subject to regulation in connection with transactions that take place on or through the facilities of a registered entity or an exempt board of trade; individuals subject to total asset requirements; an investment adviser or commodity trading advisor acting as an investment manager or fiduciary for another ECP, and any other person that the Commission deems eligible in light of the financial or other qualifications of the person.

[2] Section 1a(11) defines the term ECE by listing those entities and individuals considered to be ECEs. Generally, an ECE is an ECP that (1) in connection with its business, demonstrates the ability to make or take delivery of the underlying commodity; incurs risk, in addition to price risk related to the commodity; or is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities with respect to the commodity or derivatives transactions in the commodity; or (2) is other than a natural person or governmental entity and regularly enters into transactions with respect to the commodity or derivatives transactions in the commodity, subject to certain qualification or total asset requirements; or (3) such other persons as the Commission shall determine appropriate.

[3] Section 1a(14) of the Act defines the term ''exempt commodity'' to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term ''excluded commodity'' to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term ''agricultural commodity'' is not defined in the Act, section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest types of commodities that fall into the exempt category are energy and metals products.

[4] Under section 2(h)(3), ECMs are markets that meet the requirements of sections 2(h)(3)-(5) by notifying the Commission of their intention to operate a trading facility in reliance on the exemption and by limiting themselves to transactions: (1) In exempt commodities, (2) entered into on a principal-to-principal basis by ECEs, and (3) executed or traded on an electronic trading facility. An ECM is not a registered entity, but is required to notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3). The notification of operation as an ECM must include several certifications and, pursuant to Commission regulation 36.3(c)(3), a representation that it will require each participant to comply with all applicable law and that it has a reasonable basis for believing that authorized participants are ECEs. Section 2(h)(4) reserves, with respect to transactions eligible for the 2(h)(3) exemption, certain provisions of the Act, including certain anti-fraud and anti-manipulation provisions.

[5] In its petition, NYMEX also requested that the Commission make a determination pursuant to section 1a(12)(C) of the Act that floor brokers and floor traders, when acting in a proprietary capacity, be considered to be ECPs when they enter into certain specified transactions. Such a determination would permit NYMEX floor brokers and floor traders to enter into over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act.

[6] By letter dated May 24, 2002, NYMEX filed rule changes that would implement an initiative to provide clearing services for specified energy contracts executed in the OTC markets. NYMEX certified that the rules comply with the Act and the Commission's regulations. Under the provision, NYMEX initially listed 25 contracts that are entered into OTC and accepted for clearing by NYMEX, but are not listed for trading on NYMEX. In connection with the NYMEX initiative, on May 30, 2002, the Commission issued an order pursuant to section 4d of the Act. The order provides that, subject to certain terms and conditions, the NYMEX Clearing House and FCMs clearing through the NYMEX Clearing House may commingle customer funds used to margin, secure, or guarantee transactions in futures contracts executed in the OTC markets and cleared by the NYMEX Clearing House with other funds held in segregated accounts maintained in accordance with section 4d of the Act and the Commission regulations thereunder.

[7] Commodities listed for trading and clearing on NYMEX where NYMEX rules provide for EFSs would include, for example, an OTC natural gas swap to be exchanged for a futures position in the Exchange's Natural Gas futures contract. EFS transactions are permitted at NYMEX pursuant to NYMEX rule 6.21A, Exchange of Futures for, or in Connection with, Swap Transactions. The swap component of the transaction must involve the commodity underlying a related NYMEX futures contract, or a derivative, by-product, or related product of such a commodity. In furtherance of its effort to permit OTC clearing at the Exchange, NYMEX amended the rule to include as eligible EFS transactions ''any contract executed off the Exchange that the Exchange has designated as eligible for clearing at the Exchange.''

[8] NYMEX also suggested a further limitation on floor members' permissible transactions by not permitting, initially, any transactions in electricity commodities.

In support of its request for a determination that floor members be able to trade as ECEs on ECMs, NYMEX stated, among other things, that floor brokers and floor traders, if determined to be ECPs, would meet the ECE definition requirements of section 1a(11)(A) of the Act in that the floor brokers and floor traders provide risk management and market-making activities in energy and metals derivatives products. NYMEX further stated that allowing floor brokers and floor traders with an FCM guarantee to execute transactions as ECEs on ECMs would simply be an extension of the services and expertise that such entities currently provide to users of NYMEX's markets.

B. Intercontinental

By letter dated June 3, 2002, Intercontinental [9] requested that the Commission issue an order pursuant to section 1a(11) of the Act that would expand the ECE category to include CFTC-registered floor brokers and floor traders, thus permitting them to trade on ECMs.[10] Intercontinental proposed that the floor broker or floor trader must be a member of a designated contract market (DCM) or otherwise have trading privileges on a DCM. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader, but need not have any connection or experience in the underlying products traded on the ECM. Finally, the floor broker or floor trader must be an ECP or, if the floor broker or floor trader is not an ECP, its trades on the ECM must be guaranteed by a clearing member of a U.S.-registered clearing organization.

Intercontinental stated that including floor brokers and floor traders as ECEs would be consistent with the CFMA and would recognize their value as both liquidity providers, and dealers and market makers. Intercontinental noted that the Commission has previously included floor brokers and floor traders in the definition of ECE as it relates to trading on a Derivatives Transaction Execution Facility (DTEF),[11] and contended that there is no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF and allowing them to trade as ECEs on an ECM.[12]

C. Comments

The NYMEX and Intercontinental petitions were published in the **Federal Register** for a 15-day public comment period on June 19, 2002.[13] In addition, the **Federal Register** release included a series of questions posed by the Commission regarding the petitions. The Commission received comments from NYMEX and from Intercontinental.[14] In its comment letter of July 17, 2002, NYMEX generally reaffirmed its strong interest in the determination requested in the petition and its strong belief that such a determination would have numerous pro-competitive results. NYMEX also commented that Intercontinental's petition contained fewer conditions than NYMEX's petition for the recognition of registered floor brokers and floor traders as ECEs for trading on ECMs. Thus, NYMEX requested that if the Commission made a determination along the lines proposed in the Intercontinental petition for registered floor brokers and floor traders generally, NYMEX floor brokers and floor traders be permitted to trade on ECMs consistent with the scope of that determination.

In its comment letter of July 3, 2002, Intercontinental generally noted that under the Act, ECEs include: Certain types of ECPs who, in connection with their businesses, make or take delivery of the underlying commodity or provide hedging and risk management services in the commodity; ECPs other than natural persons or state or local governments that regularly enter into transactions in commodity derivatives; and certain types of investment funds. Intercontinental stated that the Commission, under section 1a(11)(C), has the authority to include within the ECE definition floor brokers and floor traders and, as previously noted, has already issued a rule pursuant to this authority with respect to DTEFs. Intercontinental suggested that any relief mandated by the Commission in response to the petition be broadly based and applicable to any floor brokers or floor traders that wish to be considered to be ECEs for purposes of trading on an ECM.

Intercontinental also responded to a series of questions posed by the Commission. The questions and responses are summarized below:

1. The Commission understands that at some ECMs traders have the capability of specifying the entities that are acceptable counterparties. In light of this capability, would it be reasonable and prudent to maintain a restriction on eligible counterparties, *i.e.*, limit trading by floor brokers and floor traders acting as ECEs such that the counterparties to their trades must not be floor brokers or floor traders, at least with respect to ECMs that provide for such a counterparty pre-approval mechanism.

Intercontinental responded that the Commission should not impose restrictions on eligible counterparties for ECMs, other than requiring that they qualify as ECEs. Intercontinental stated that it provides credit and risk management support capabilities, designed to provide market participants with maximum flexibility and control over their trades, as a service to its participants at no additional cost. ECEs can pre-approve trading counterparties and establish credit limits for trading with each counterparty. Use of this credit management system is voluntary, and Intercontinental is not required, by contract or applicable law or regulation, to maintain these capabilities. Intercontinental noted that because participation on its trading platform is limited to ECEs, all participants are

[9] Intercontinental operates an OTC commodities trading platform for energy and metals and is itself an ECM. Intercontinental submitted its notice of operation as an ECM to the Commission on December 27, 2001. Intercontinental also owns the International Petroleum Exchange (IPE), a U.K. FSA-regulated futures exchange for the trading of energy futures products.

[10] In its petition, Intercontinental also requested that the Commission expand the ECE category to include U.K. local member floor traders who are authorized by the U.K. Financial Services Authority. On November 1, 2001, Intercontinental advised Commission staff that it has decided not to seek relief at this time on behalf of non-U.S. floor brokers or floor traders. Accordingly, the Commission is not, at this time, making any determination with respect to non-U.S. floor brokers and floor traders.

[11] Specifically, Commission regulation 37.1(b) states that, for the purpose of DTEF trading, ''the term 'eligible commercial entity' means, and shall include, in addition to a party or entity so defined in section 1a(11) of the Act, a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a registered futures commission merchant.''

[12] DTEFs are registered with the Commission and generally must meet various standards of operation set forth in section 5a of the Act and part 37 of the Commission's regulations and are subject to the Commission's regulatory oversight. By comparison, ECMs are exempt from Commission regulatory oversight. While ECMs must submit to the Commission a notice of operation that satisfies the filing requirements of section 2(h)(5) of the Act and Commission regulation 36.3, ECMs are not ''registered with, or designated, recognized, licensed or approved by the Commission.'' See section 2(h)(5) of the Act.

[13] 67 FR 41698 (June 19, 2002). In that same **Federal Register** release, the Commission also requested comments with respect to NYMEX's request that the Commission make a determination pursuant to section 1a(12)(C) of the Act that NYMEX floor brokers and floor traders, when acting in a proprietary capacity, may also be considered to be ECPs when they enter into certain specified transactions. Such a determination would permit NYMEX floor brokers and floor traders to enter into over-the-counter (OTC) transactions in exempt commodities pursuant to section 2(h)(1) of the Act.

[14] The Commission also received a comment letter, dated September 27, 2002, from the Managing Member of Hudson Capital Group, L.L.C., an options trading group. The commenter strongly supported the petition to allow NYMEX members to trade over-the-counter energy products, but did not address particular Commission questions.

sufficiently sophisticated to make their own credit determinations with respect to other participants. In addition, requiring maintenance of a function that ECM and market participants might later decide is unnecessary would limit the flexibility of ECMs and is unwarranted. Intercontinental also noted that the Commission currently does not impose any counterparty restrictions on trades executed on its trading platform. Finally, Intercontinental noted that its proposal requires that floor brokers and floor traders must qualify as ECPs or have their trades be guaranteed by a clearing member of a registered clearing organization that is itself an ECP, and that the satisfaction of these requirements reduces any concern by potential counterparties with respect to the credit or collection risk posed by the execution of trades with floor brokers and floor traders.[15]

2. The Commission requested comments regarding whether the transactions that could be entered into by floor brokers and floor traders as ECEs on ECMs should be limited to any of the following: (a) Specifically identified contracts; (b) transactions that would be cleared; (c) commodities in which the floor broker or floor trader had trading expertise; (d) transactions for which the floor broker or floor trader was guaranteed by an Exchange clearing member; or (e) in some other way.

With respect to a limitation to specifically identified contracts, Intercontinental stated that floor brokers and floor traders should be permitted to execute transactions in all exempt commodities pursuant to section 2(h)(3) of the Act. Intercontinental noted that the Act, as amended by the CFMA, generally defines three categories of ECE: (a) Commercials who deal in the underlying physical commodity; (b) dealers and market makers; and (c) collective investment vehicles that generally are liquidity providers. Intercontinental contended that the second and third categories of ECE recognize that traders with no direct connection to the underlying physical market are eligible and valuable contributors to the efficiency of commercial markets.[16] Accordingly, Intercontinental further contended that including floor brokers and floor traders as ECEs would be consistent with the CFMA and would recognize the value of floor brokers and floor traders as both liquidity providers, and dealers and market makers. Intercontinental noted that floor brokers and floor traders understand trading markets, are sophisticated and capable as traders to the same extent as commercials, and would be valuable participants trading in all exempt commodities on Intercontinental's trading platform.

With respect to requiring that transactions be cleared, Intercontinental stated that floor broker and floor trader transactions on ECMs should not be required to be cleared in order for these entities to be included in the ECE definition. The reduction in credit risk that clearing provides would not be necessary in light of Intercontinental's proposed requirement that the floor broker or floor trader must be an ECP or that its trades must be guaranteed by a clearing member of a registered clearing organization that is itself an ECP.[17]

As to limiting floor brokers and floor traders to trading only those commodities in which they have trading expertise, Intercontinental argued that floor brokers and floor traders are desirable because of their expertise in trading, not their specific commodity expertise, and should not be limited to trading in particular commodities in which they have trading expertise. Intercontinental pointed out that its proposal would require floor brokers and floor traders to be registered and have as a part of their business the business of acting as a floor broker or floor trader on the DCM's open outcry market or performing an equivalent function on the DCM's electronic market[18] and that, accordingly, floor brokers and floor traders that satisfied these requirements would have sufficient qualifications and experience to trade in any commodity product on an ECM. Intercontinental contended that allowing floor brokers and floor traders to participate would expand the pool of potential counterparties for market participants, increase competition and efficiency, enhance price discovery and reduce liquidity risk.

With respect to a limitation to transactions for which the floor broker or floor trader was guaranteed by an Exchange clearing member, the Intercontinental proposal would require that the floor broker or floor trader must be an ECP or that its trades must be guaranteed by a clearing member of a registered clearing organization that is itself an ECP. Intercontinental stated that when a floor broker or floor trader qualifies as an ECP, that floor broker or floor trader has been deemed by the Act to be sufficiently responsible to execute trades and there is no need to require further mitigation of credit risk by having a clearing member guarantee the floor broker's or floor trader's payment obligations. Alternatively, when a floor broker or floor trader does not qualify as an ECP, it is appropriate to require that a clearing member of a registered clearing organization that is itself an ECP guarantee the trades in order to mitigate the credit and collection risk created by executing trades with a floor broker or floor trader.

3. The Commission requested comment on the assertion that there would be no meaningful distinction between allowing floor brokers and floor traders to trade as ECEs on a DTEF, as the Commission has already permitted, as compared to trading as ECEs on an ECM, and particularly on whether there should be any distinction in the treatment of floor brokers and floor traders as ECEs based upon the different regulatory regimes applicable to DTEFs and ECMs.

Intercontinental commented that the primary regulatory difference between ECMs and DTEFs is that DTEFs must comply with certain core principles, including monitoring trading and enforcing compliance with rules; making certain trade data publicly available if the Commission determines that the contract performs a price discovery function; recordkeeping; applying fitness requirements for board members, market participants and

[15] The requirement that the clearing member guaranteeing the trades must itself be an ECP was not included as a criterion in the original petition but was added in Intercontinental's comment letter dated July 3, 2002.

[16] The Commission notes that, while it is not agreeing or disagreeing with this assertion at this time, the two general categories of ECE identified by Intercontinental require, by statute, a strong connection to either derivatives transactions in the particular commodity or the underlying physical market. Under paragraph 1a(11)(A), the ECP that can qualify as an ECE based upon dealing or engaging in market-making activities must be an entity (floor brokers, floor traders and individuals are ineligible) that, in connection with its business, regularly provides risk management or hedging services or engages in market-making activities with other ECEs involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity. Under paragraph 1a(11)(B), the ECP that can qualify as an ECE based upon its status as a collective investment vehicle cannot be a natural person and regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity.

[17] As previously noted, the requirement that the clearing member guaranteeing the trades must itself be an ECP was added in Intercontinental's comment.

[18] The provision concerning performing an equivalent function on the electronic market was not included as a criterion in the original petition, but was added in Intercontinental's November 1, 2002, submission. Intercontinental represents that the intent is to include those floor brokers and floor traders who, as part of their business, provide liquidity to the markets as dealers and market makers, either on the exchange's open outcry market or on the exchange's electronic market.

others; and addressing potential conflicts of interest. The regulatory concerns addressed by these core principles primarily relate to the protection of the integrity of DTEF markets rather than particular participants within those markets.

Intercontinental stated that the current ECM regulatory framework similarly provides the Commission with sufficient authority to protect the integrity of the market.[19] Intercontinental pointed out that the Commission has real-time access to Intercontinental's trading screens and can observe and evaluate prices and trading activity on a real-time basis. In the event that the Commission detected possible problems in the market, such as manipulation or attempted manipulation, it has the authority to take action against the appropriate market participants. Intercontinental further noted that the Commission also retains anti-fraud authority with respect to transactions on ECMs.

Intercontinental noted that since trading on its trading platform is entirely electronic, there are no trading rules to be enforced because buy and sell orders are electronically matched by the platform. Intercontinental represented that it applies rigorous standards to the selection of directors and all of its board members have significant experience in the commodity trading industry and many are executives of major corporations in the industry. Intercontinental concluded that the participation of floor brokers and floor traders would not require any additional regulation beyond that which already applies to ECMs under Sections 2(h)(3)–(5) and that this approach is consistent with the CFMA which was designed, in part, to provide a more flexible and less burdensome regulatory framework for futures and derivatives markets.[20]

III. Conclusion

After consideration of the NYMEX and Intercontinental petitions and review of the comments, the Commission has determined, consistent with the Intercontinental petition, that it is appropriate to issue an order, pursuant to section 1a(11)(C) of the Act, that includes CFTC-registered floor brokers and floor traders, subject to certain conditions, within the definition of ECEs who can trade on ECMs.[21] Although the Commission is neither agreeing nor disagreeing with Intercontinental's contention that two of the three general categories of ECE defined under the CFMA recognize that traders with no direct connection to the underlying commodity are eligible and valuable contributors to the efficiency of commercial markets,[22] the Commission does believe that its action is consistent with the purposes of the CFMA and that it will provide floor brokers and floor traders access to a wider range of products and expand the pool of potential counterparties for ECM participants. The Commission also believes that its action potentially could increase competition and efficiency and reduce liquidity risk on ECMs. As noted above, the Commission has previously determined, for purposes of trading on a DTEF, to include within the ECE definition registered floor brokers and floor traders trading for their own accounts, whose trading obligations are guaranteed by a registered FCM.[23]

In order to qualify as an ECE under the Commission's order, a CFTC-registered floor broker or floor trader must be a member of a DCM or otherwise have trading privileges on a DCM. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader, either on a DCM's open outcry market or performing an equivalent function on the DCM's electronic market, but need not have any connection to or experience in the underlying physical commodity. The Commission believes that the trading expertise that floor brokers and floor traders would bring to the ECM would be applicable to trading in any commodity product being traded. A floor broker's or floor trader's ability to, among other things, interpret market momentum and facilitate the adjustment of the market price to new information, is more a function of trading expertise than of experience in the underlying physical commodity.

The floor broker or floor trader must either be an ECP or have its trades on the ECM guaranteed by a clearing member that is both a member of a CFTC-registered derivatives clearing organization and an ECP. The Commission believes that the requirement that either the floor broker or floor trader or the guarantor of the trades must be an ECP provides sufficient financial backing for the floor broker or floor trader and mitigates any credit and collection risk that might otherwise arise in executing trades with a floor broker or floor trader.[24]

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to reduce regulatory barriers to permit CFTC-registered floor brokers and floor traders, when acting in a proprietary capacity, to enter into transactions in

[19] Pursuant to paragraph 2(h)(5)(F) of the Act, an ECM shall not represent to any person that the facility is registered with, or designated, recognized, licensed or approved by the Commission.

[20] The Commission posed an additional question concerning ECE treatment for non-U.S. registrants. That question and response are not discussed here because, as previously noted, Intercontinental has decided not to seek relief at this time on behalf of non-U.S. floor brokers or floor traders. See note 10.

[21] The Commission notes that the Intercontinental petition is broader is scope than the NYMEX petition in that Intercontinental requested that, subject to the condition discussed above, all CFTC-registered floor brokers and floor traders be included in the definition of ECE. As previously stated, NYMEX requested that if the Commission made a determination along the lines proposed in the Intercontinental petition, NYMEX floor brokers and floor traders be permitted to trade on ECMs consistent with the scope of that determination. Accordingly, a single order addressing Intercontinental's petition eliminates the need for an order separately addressing the NYMEX petition.

[22] *See* note 16.

[23] Commission regulation 37.1(b).

[24] The Commission notes that although the guarantor for the trading on the ECM, if one is required, must be a clearing member of a CFTC-registered derivatives clearing organization, there is no requirement that the trades thus executed must be cleared. No liability resulting from a guarantor's guarantee of an uncleared ECM transaction would extend to any of the guarantor's fellow clearing members. The Commission also notes that the guarantor could restrict or otherwise condition the trading for which the guarantee is provided. The guarantor could, for instance, limit trading to certain commodities or ECMs, place financial limits on overall or daily positions, or restrict trading by number or size of acceptable transactions.

exempt commodities on exempt commercial markets pursuant to section 2(h)(3) of the Act if such entities are either eligible contract participants or have obtained a financial guarantee for such transactions from a clearing member that is both a member of a CFTC-registered derivatives clearing organization and an eligible contract participant. The Commission has considered the costs and benefits of the order in light of the specific provisions of section 15(a) of the Act.

A. Protection of Market Participants and the Public

The order would permit CFTC-registered floor brokers and floor traders who are eligible contract participants, or who have guarantees from clearing members that are members of CFTC-registered derivatives clearing organizations and are eligible contract participants, to enter into proprietary transactions in exempt commodities on exempt commercial markets. Under the Act, eligible commercial entities involve sophisticated investors who have the financial wherewithal or trading expertise to participate in these markets. Accordingly, there should be no effect on the Commission's ability to protect market participants and the public.

B. Efficiency and Competition

The order is expected to benefit efficiency and competition by, among other things, increasing the flow of trading information between contract markets and exempt commercial markets, increasing the pool of potential counterparties for participants trading on exempt commercial markets, and providing essential trading expertise to the market that enhances price discovery through both the speed and efficiency of market adjustment to new fundamentals.

C. Financial Integrity of Futures Markets and Price Discovery

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of the futures and options markets. The order should enhance the price discovery function of such markets.

D. Sound Risk Management Practices

The order should have no effect, from the standpoint of imposing costs, on the risk management practices of the futures and options industry. Where the floor broker or floor trader is qualified as an eligible contract participant, the entity has been deemed to be sufficiently responsible to execute trades by the Act, and no further mitigation of credit risk is necessary. Where the floor broker or floor trader does not qualify as an eligible contract participant, the order requires that a clearing member of a registered derivatives clearing organization that is itself an eligible contract participant guarantee the trades in order to mitigate the credit and collection risk.

E. Other Public Interest Considerations

The order is consistent with one of the purposes of the Act as articulated in section 3 in that it would promote responsible innovation and fair competition among boards of trade, other markets and market participants.

V. Order

Upon due consideration, and pursuant to its authority under section 1a(11)(C) of the Act, the Commission hereby determines that floor brokers or floor traders who are registered with the Commission, when acting in a proprietary trading capacity, are appropriate persons as defined in section 1a(11)(C) and, thus, are deemed to be eligible commercial entities and may enter into contracts, agreements or transactions in an exempt commodity on an exempt commercial market under the following conditions:

1. Transactions must be executed on an exempt commercial market that meets the requirements of section 2(h)(3)–(5) of the Act.

2. The floor broker or floor trader must be a member of a designated contract market or otherwise have trading privileges on a designated contract market.

3. The floor broker or floor trader must have as a part of its business the business of acting as a floor broker or floor trader on a designated contract market's open outcry market or performing an equivalent function on a designated contract market's electronic market.

4. The floor broker or floor trader must either be an eligible contract participant or have its trades on the exempt commercial market guaranteed by a clearing member that is a member of a Commission-registered derivatives clearing organization and is an eligible contract participant.

Issued in Washington, DC, on January 9, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–893 Filed 1–15–03; 8:45 am]

BILLING CODE 6351–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission (''Commission'') will hold an informal conference followed by a public hearing on Wednesday, January 29, 2003. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion include: a progress report on development of the Commission's new comprehensive plan; a progress report on the Tri-State Water Management Plan; a status report on the PCB TMDL for the Delaware Estuary; an opportunity for stakeholder comment on the structure and mandate of the TMDL Implementation Advisory Committee; a report on the activities of the Flow Management Technical Advisory Committee; a discussion regarding the Commission's fee structure for project review under Section 3.8 of the Delaware River Basin Compact; and a presentation on stormwater management approaches in Chester County.

The subjects of the public hearing to be held during the 1 p.m. business meeting include, in addition to the dockets listed below, a resolution approving the Commission's budgets for the fiscal year ending June 30, 2004.

1. *Merrill Creek Owners Group D–77–110 CP (Amendment 15).* A resolution to amend Table A (Revised) of Docket D–77–110 CP (Amendment 14) to include the addition of the PPL Corporation, PPL Global, LLC and Lower Mount Bethel Energy, LLC facility in Lower Mount Bethel Township, Northampton County, Pennsylvania as a ''Designated Unit.'' The power facility is a 600 megawatt independent power project approved via Docket D–99–54 on March 7, 2000. The project is subject to curtailment unless its consumptive water use during DRBC lower basin drought conditions can be made up by releases from storage. The Merrill Creek reservoir will provide the storage and is located in Harmony Township, Warren County, New Jersey.

2. *Covanta Warren Energy Resource Co., L.P. D–85–90 RENEWAL.* A renewal of a ground water withdrawal project to continue an allocation of 17 million

gallons (mg)/30 days for existing Wells Nos. 1 and 2 in the Leithsville Formation. The purpose of the withdrawal is provision of industrial cooling, process and potable/sanitary water to the applicant's solid waste disposal/power generation facility. The project is located in White Township, Warren County, New Jersey.

3. *Peronic Enterprises D–89–80 RENEWAL.* A ground water withdrawal project to supply up to 8 million gallons per day (mgd) of water to the applicant's Gambler Ridge Golf Club irrigation system from Wells Nos. 1 and 2 in the Mt. Laurel and Englishtown Formations, and Ponds Nos. 1 and 2 in the Red Bank Formation. The applicant requests that the total withdrawal from all wells remain limited to 8 mg/30 days. The project is located in Upper Freehold Township, Monmouth County, New Jersey.

4. *Berks-Montgomery Municipal Authority D–2001–10 CP.* A project to expand the applicant's existing Swamp Creek sewage treatment plant (STP) from 1.9 mgd to 2.3 mgd. The plant will continue to provide tertiary treatment to serve portions of Boyerstown and Bechtelsville Boroughs; and portions of Colebrookdale and Washington Townships, all in Berks County; plus a portion of Douglass Township in Montgomery County; all in Pennsylvania. Treated effluent will continue to discharge to Swamp Creek in the Perkiomen Creek Watershed in Douglass Township, Montgomery County, Pennsylvania.

5. *Lower Makefield Township D–2002–48 CP.* A ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's golf course irrigation system from new Wells Nos. PW–1 and PW–2 in the Stockton and Lockatong Formations. The project is located in the Delaware River Watershed in Lower Makefield Township, Bucks County, Pennsylvania.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the November 25, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution authorizing the executive director to receive and expend funds from the City and State of New York for the purpose of engaging a consultant to perform OASIS flow model analyses; and a resolution replacing a departing member of the expert panel that is advising the Commission on development of a hydrodynamic and water quality model for the Delaware Estuary.

Draft dockets scheduled for public hearing on January 29, 2003 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: January 10, 2003.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 03–940 Filed 1–15–03; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–093]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

January 10, 2003.

Take notice that on December 31, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective January 1, 2003:

Third Revised Sheet No. 638

CEGT states that the purpose of this filing is to reflect the amendment to an existing negotiated rate transaction.

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.

Comment Date: January 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1036 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–074]

Columbia Gulf Transmission Company; Notice of Compliance Filing

January 10, 2003.

Take notice that on January 7, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003:

Second Revised Sheet No. 20C
Second Revised Sheet No. 20E
Second Revised Sheet No. 20F
Second Revised Sheet No. 20G

Columbia Gulf states that it is filing these tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 055, 060 and 067. The instant filing contains revised tariff sheets reflecting the rate effective on January 1, 2003. Columbia Gulf states further that copies of the filing has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

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: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1037 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–06–000]

EPGT Texas Pipeline, L.P.; Notice of Petition for Rate Approval

January 10, 2003.

Take notice that on December 20, 2002, EPGT Texas Pipeline, L.P. (EPGT) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve market based rates for firm and interruptible storage services provided through its Wilson Storage Facility in the state of Texas. These services are performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). EPGT proposes to offer several categories of interruptible services, in addition to firm storage service.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval 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 I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (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(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1032 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–396–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

January 10, 2003.

Take notice that on January 8, 2003, Great Lakes Gas Transmission Limited

Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, Third Substitute Eighth Revised Sheet No. 41; and Second Substitute Sixth Revised Sheet No. 42 proposed to be effective October 1, 2002.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Letter Order of December 24, 2002 in Docket No. RP02–396–001, wherein Great Lakes' October 15, 2002 Order No. 587—O compliance filing was conditionally accepted pending filing of certain revised tariff sheets, and subject to the outcome of Great Lakes' Order No. 637 proceedings in Docket No. RP00–329–002. Order No. 587—O adopted Version 1.5 of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB).

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: January 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1035 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–003]

Northern Border Pipeline Company; Notice of Negotiated Rates

January 10, 2003.

Take notice that on January 8, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 99A, to become effective December 1, 2002.

Northern Border states that the purpose of this filing is to implement a negotiated rate agreement between

Northern Border Pipeline Company and Peoples Energy Resources Corp.

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.

Comment Date: January 21, 2003

Magalie R. Salas,

Secretary.

[FR Doc. 03–1034 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–325–000, et al.]

Central Illinois Company, et al.; Electric Rate and Corporate Filings

January 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company

[Docket Nos. ER03–325–000 and EL03–39–000]

Take notice that on December 23, 2002, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a proposed delineation of transmission and local distribution facilities.

CILCO states that copies of the filing were served on the Illinois Commerce Commission.

Comment Date: January 22, 2003.

2. Midwest Independent Transmission System Operator, Inc. American Transmission Company LLC

[Docket No. ER03–362–001]

Take notice that on January 6, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing an errata to its December 31, 2002 filing, which proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, to revise its formula rate to reflect changes to certain rate calculations applicable to the American Transmission Company LLC (ATCLLC) rate zone (Zone 1). The errata replaces the redline version of the proposed tariff sheets.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all required parties. The Midwest ISO has posted this filing on its Internet site at *http://www.midwestiso.org*, and the Midwest ISO or ATCLLC will provide hard copies to any interested parties upon request.

Comment Date: January 27, 2003.

3. Southern Company Services, Inc.

[Docket No. ER03–379–000]

Take notice that on January 6, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), filed an unexecuted transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). Specifically, Southern Companies filed an unexecuted rollover agreement for long-term firm point-to-point transmission service (First Revised Service Agreement No. 451 under the Tariff) with Williams Energy Marketing & Trading Company.

Comment Date: January 27, 2003.

4. Tampa Electric Company

[Docket No. ER03–380–000]

Take notice that on January 6, 2003, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of rate schedules for three agreements with Florida Power Corporation (FPC) concerning construction or operation and maintenance of interconnection facilities. Tampa Electric states that the agreements are outdated and that the parties have agreed to their termination and cancellation of the associated rate schedules.

Tampa Electric proposes that the cancellations be made effective on October 1, 2002. Tampa Electric states that copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment Date: January 27, 2003.

5. Cleco Power LLC

[Docket No. ER03–381–000]

Take notice that on January 6, 2003, Cleco Power LLC, tendered for filing Fourth Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled ''Index of Point-to-Point Transmission Service Customers'', to include Union Power Partners, L.P. as a short-term firm and non-firm transmission customer. Cleco Power LLC and Union Power Partners, L.P. have executed agreements under which Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to Union Power Partners, L.P. under its Open Access Transmission Tariff.

Comment Date: January 27, 2003.

Standard Paragraph

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 filed to access the document. For assistance, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1030 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–13–002, et al.]

New York Independent System Operator, Inc., et al.; Electric Rate and Corporate Filings

January 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket No. ER03–13–002]

Take notice that on January 6, 2003, the New York Independent System Operator, Inc. (NYISO) filed a corrected version of the Unforced Capacity Deliverability compliance filing in accordance with the Commission's November 22, 2002 order in the above captioned hearing.

The NYISO has served a copy of this corrected filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 27, 2003.

2. Reliant Energy Electric Solutions, LLC

[Docket No. ER03–382–000]

Take notice that on January 7, 2003, Reliant Energy Electric Solutions, LLC (REES) petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain Commission's Regulations, and to issue an order accepting REES's FERC Electric Rate Schedule No. 1.

Comment Date: January 28, 2003.

3. Virginia Electric and Power Company

[Docket No. ER03–383–000]

Take notice that on January 7, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing an executed final letter enabling the energization of ODEC's generating facility in parallel operation with Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission allow the Revised Interconnection Agreement to become effective January 8, 2003, the day after filing. Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: January 28, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–384–000]

Take notice that on January 7, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) containing an executed final letter enabling the energization of ODEC's generating facility in parallel operation with Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission allow the Revised Interconnection Agreement to become effective January 8, 2003, the day after filing.

Dominion Virginia Power also states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: January 28, 2003.

Standard Paragraph

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 filed to access the document. For assistance, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1029 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–74–002, et al.]

Western Electricity Coordinating Council, et al.; Electric Rate and Corporate Filings

January 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Western Electricity Coordinating Council

[Docket Nos. EL01–74–002 and ER01–2058–002]

Take notice that on December 20, 2002 Western Electricity Coordinating Council (WECC) tendered for filing an amendment to the WECC Bylaws adding Appendix B, the WECC Officers and Employee Standards of Conduct, to WECC Rate Schedule FERC No. 1. WECC was established as a result of the merger of Western Systems Coordinating Council, Western Regional Transmission Association, and Southwest Regional Transmission Association.

This filing is made in accordance with the Commission's September 27, 2001 Order Granting Request to Transfer Programs and Directing Additional Filings, 96 FERC § 61,348 (2001). WECC

states that copies of the filing were served upon all parties in the above-captioned proceedings.

Comment Date: January 24, 2003.

2. California Power Exchange Corporation

[Docket No. ER02–2234–007]

Take notice that on January 8, 2003, the California Power Exchange Corporation made a filing to amend its December 31, 2002 compliance filing in this proceeding. The amendment proposed only one change to clarify the heading in Column I of Rate Schedule Sheet No. 3.

Comment Date: January 29, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2595–003]

Take notice that on January 6, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC § 61,221. The Midwest ISO has requested an effective date of November 25, 2002, which is the original date of effectiveness as granted by the Commission in Docket No. ER02–2595–000.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: January 27, 2003.

4. California Power Exchange Corporation

[Docket No. ER03–139–002]

Take notice that on January 8, 2003, the California Power Exchange Corporation made a filing to comply with the Commission's December 31, 2002 Order in this proceeding (101 FERC § 61,403).

Comment Date: January 8, 2003.

5. FPL Energy New Mexico Wind, LLC

[Docket No. ER03–179–001]

Take notice that on January 7, 2003, FPL Energy New Mexico Wind, LLC tendered for filing an amended FERC Electric Tariff, Original Volume No. 1, to be included as Attachment B to FPL Energy New Mexico Wind's prior application for authorization to sell energy and capacity at market-based rates pursuant to Section 205 of the Federal Power Act filed with the Commission on November 12, 2002.

Comment Date: January 28, 2003.

6. Central Maine Power Company

[Docket No. ER03–385–000]

Please take notice that on January 8, 2003, Central Maine Power Company (CMP) tendered for filing an executed Local Network Operating Agreement (LNOA) and executed service agreement for Local Network Transmission Service (LNSA) entered into with Boralex Livermore Falls, Inc. These agreements supersede unexecuted agreements previously filed under Docket No. ER00–2242–000. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

FERC Original Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement No. 86 (the LNSA agreement), and

FERC Original Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement No. 86, First Revised Supplement No. 1 (the LNOA agreement).

Comment Date: January 29, 2003.

7. Southern Company Services, Inc.

[Docket No. ER03–386–000]

Take notice that on January 6, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement between Athens Development Company, L.L.C. and GPC (Service Agreement No. 461 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of January 6, 2003 has been requested.

Comment Date: January 27, 2003.

8. Upper Peninsula Power Company

[Docket No. ER03–387–000]

Take notice that on January 8, 2003, Upper Peninsula Power Company (UPPCo) tendered for filing a cover sheet and rate sheets setting forth its ''Rate WR–1—Wholesale Service to Electric Utility'' (Rate Sheets) to supplement First Revised Rate Schedule FERC No. 26 (Revised Rate Schedule) between UPPCo and the City of Escanaba, Michigan (City). The Rate Sheets which incorporate a Capital Gain Refund Factor set forth the rates for the provision of service under the Revised Rate Schedule and were inadvertently omitted from UPPCo's original June 28, 2002 filing in Docket No. ER02–2200–000 that revised certain portions of the Revised Rate Schedule.

UPPCo respectfully requests that the cover sheet and Rate Sheets become effective as of June 1, 2002, the date the Commission made the Revised Rate Schedule effective in Docket No. ER02–2200–000. UPPCo also states that copies of the filing were served upon the City of Escanaba and the Michigan Public Service Commission.

Comment Date: January 29, 2003.

9. Consumers Energy Company

[Docket No. ER03–388–000]

Take notice that on January 8, 2003, Consumers Energy Company (Consumers) tendered for filing changes to its First Revised Rate Schedule No. 116. Consumers states that the changes are being made to reflect the October 1, 2002 Order in Docket No. ER02–2420–000 and are being filed subject to the ultimate resolution of that docket. The revised pages filed are the Second Revised Sheet Nos. 11 and 23

Copies of the filing were served upon the customer and the Michigan Public Service Commission.

Comment Date: January 29, 2003.

10. Entergy Services, Inc.

[Docket No. ER03–389–000]

Take notice that on January 8, 2003, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing a unilaterally executed, amended and restated Interconnection and Operating Agreement with Union Carbide Corporation (Union Carbide), and an updated Generator Imbalance Agreement with Union Carbide (the First Revised Interconnection Agreement).

Comment Date: January 29, 2003.

Standard Paragraph

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 filed to access the document. For assistance, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1027 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 10, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for Minor Project.

b. *Project No.:* 719–007.

c. Date filed: October 31, 2000.

d. *Applicant:* Trinity Conservancy, Inc.

e. *Name of Project:* Trinity Power Project.

f. *Location:* On Phelps Creek and James Creek in the Columbia River Basin in Chelan County, near Leavenworth, Washington. The project occupies 47.9 acres of federal lands in Wenatchee National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Reid L. Brown, President, Trinity Conservancy, Inc., 3139 E. Lake Sammamish SE, Sammamish, WA 98075–9608, (425) 392–9214 or *rlbrown@legato.com*.

i. *FERC Contact:* Charles Hall, (202) 502–6853 or *Charles.Hall@ferc.gov.us*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The Trinity Project consists of: (1) A deteriorated wooden diversion dam, 70-foot-long flume and settling tank on James Creek, and a 3,350-foot-long, partially destroyed steel penstock, all of which is proposed for decommissioning with this license application; (2) a 45-foot-long, 10-foot-high timber crib diversion dam and screened intake on Phelps Creek; (3) a 24-inch-diameter, 6,000-foot-long, gravity-flow, steel pipe aqueduct; (4) a 20-foot-long, 14-foot-wide, 9-foot-deep, reinforced concrete settling tank; (5) a 42-inch-to 12-inch-diameter, 2,750-foot-long, riveted spiral-wound penstock; (6) a 145-foot-long, 34-foot-wide, wood-frame powerhouse building containing a single Pelton impulse turbine and 240-kilowatt synchronous generator; (7) a tailrace; and (8) appurtenant facilities. The generator supplies the electricity needs of four residences, a cabin and shed; the project is not connected to the electric transmission grid. The licensee proposes to decommission the inoperable James Creek diversion facilities and adjust the project boundary accordingly.

m. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft NEPA document, May 2003.

Notice of the availability of the final NEPA document October 2003

Ready for Commission decision on the application, February 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1031 Filed 1–15–03; 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]

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 Agenda for Technical Conference

January 10, 2003.

1. As announced in a Notice of Technical Conference issued December 3, 2002, Commission staff will convene a technical conference to discuss queuing of generator interconnection requests. The conference will be held January 21, 2003 starting at 10 am and ending at 4:30 pm (a change from the previously announced starting and ending times) in the Commission Meeting Room (Room 2C) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC On December 17, 2002, a Notice of Possible Discussion Items for the queuing conference was issued.

2. The purpose of the conference is to explore the significant issues participants have raised during the course of the Large Generator Notice of Proposed Rulemaking (NOPR) and Small Generator Advance Notice of Proposed Rulemaking (ANOPR) proceedings (RM02–1–000 and RM02–12–000, respectively), as well as the Commission's Standard Market Design NOPR proceeding (SMD NOPR) (RM01–12–000) concerning queuing procedures for managing generator interconnections. The technical conference will allow the development of a more complete record in these proceedings but is not intended to revisit non-queuing issues that have already been raised and explored in the Large Generator NOPR and the Small Generator ANOPR proceeding.

3. The conference is open for the public to attend; to ensure sufficient seating, attendees are asked to register in advance a *http://www.ferc.gov/queuing-registration-012103.htm*. FERC Commissioners may attend and participate in the discussions.

4. There will be three panels. The conference Agenda is attached to this Notice. It has tentative and confirmed lists of the panelists and the content that is to be covered during each panel. Each panelist will have 5 minutes for opening remarks. Panelists are asked to limit the hard-copy of Powerpoint presentations they may use to four pages of major points and observations, including a cover page. The use of black-and-white graphics to summarize and aggregate observations is strongly encouraged. Electronic files of these 4-page presentations should be sent to *norma.mcomber@ferc.gov* by January 15, 2003 to allow copying of the material because there will be no slide projection at the conference. Panelists are also encouraged to file electronic copies of their proposals and/or other presentation materials as part of the referenced proceedings. Anyone may submit comments on issues addressed in this technical conference by February 4, 2003. The filing should not exceed 20 pages, including an executive summary. This conference will be transcribed and will broadcast over the Internet. For information on getting a copy of the transcript or viewing the broadcast please refer to the previous notices, which can be found at the following link: *http://www.ferc.gov/electric/gen_inter.htm*. Questions related to this conference can be directed to Norma McOmber at the email listed above or (202) 502–8022.

Magalie R. Salas,

Secretary.

Attachment: Agenda of Technical Conference.

Panel 1: The Current Status of Generator Interconnection Queues—10 am–11:30 am

Confirmed List of Panelists

David Cory, PacifiCorp
Steven R. Herling, PJM
Rich Kowalski, ISO New England
Paul D. Olivier, Entergy
Phil Pettingill, California ISO
Bruce Rew, Southwest Power Pool

Discussion Topics

A. Describe generally the current status of the interconnection queue, including: the total size of the queue (MW); the location, size, queue position, date of request and expected completion date of active projects; and the number, size, queue position and date of request of any inactive projects.

B. Explain existing interconnection queuing policies and practices: Summarize the rules that govern the queue of a specific transmission provider; how a generator's queue position is determined; 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; is there currently information available on queue status; whether interconnection requests are currently being processed on a first-come, first-served basis, on a clustered (time or geographically) basis, or both, and why.

C. Describe any differences in the way small and large generators are treated for queuing purposes.

D. Describe any differences in the way ''energy resources'' and ''network (or capacity) resources'' are treated for queuing purposes.

E. 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)?

F. Do all TOs and ISOs/RTOs conduct the same interconnection studies, grid impact studies or other analyses for new project interconnection?

Break, 11:30 am–11:45 am

Panel 2: Experience with the Administration of Generator Interconnection Queues—11:45 am–1:15 pm

Confirmed List of Panelists

James Caldwell, American Wind Energy Association
J. Jolly Hayden, Calpine
John Jimison, U.S. Combined Heat and Power Association
Donald Jones, Xcel
John Simpson, Reliant
Justin Thompson, Pinnacle West
Weston L. Williams, Southern California Edison

Discussion Topics

A. Provide examples of good and bad experiences with queues, being as specific as possible regarding the facts pertaining to your company's 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 within the queue process.

C. Describe the impact of letting the generator choose whether 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.

E. Describe solutions to the problems identified by discussion of the items above.

Lunch, 1:15 pm–2 pm

Panel 3: Further Ideas for Improving Queue Management—2 pm–4:30 pm

Confirmed List of Panelists

John P. Buechler, New York ISO
Scott M. Helyer, Tenaska
Sam Jones, ERCOT
Pete Landrieu, Public Service Electric and Gas Company
Beth Soholt, Wind on the Wires
Lou Ann, Westerfield Idaho Public Utilities Commission
Kim Wissman, Ohio Public Utilities Commission

Discussion Topics

A. Are there particular queuing policies or practices that should change to make queue management more effective? Consider: common study/analytical techniques and tools; different or new analytical 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; whether there should be a link between siting requests and transmission service requests; use of milestones to maintain queue position; and a list of actions or events that can trigger a change in queue position.

B. 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? 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. Should small and large non gas-fired generators receive different treatment within a queue? If so, how should it be different?

D. Should the Commission standardize specific queue management practices or allow regional variations around a set of core principles?

E. Should queue position be treated as a property right which can be transferred?

Audience Comments

[FR Doc. 03–1033 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2233–001, EC03–14–000, ER03–242–000, ER03–257–000, ER03–262–000, ER03–263–000, RT01–2–000, RT01–98–000, RT01–87–000 and RT02–2–000]

Ameren Services Company, FirstEnergy Corporation, Northern Indiana Public Service Company, National Grid USA, Midwest Independent Transmission System Operator, Inc., American Electric Power Service Corporation Virginia Electric and Power Company, American Electric Power Service Corporation, 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., Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., PJM Interconnection, L.L.C., PJM Interconnection, L.L.C., Midwest Independent System Operator, Inc., and State-Federal Regional RTO Panels; Notice of State-Federal Regional Panel Discussion

January 10, 2003.

1. At the request of the Indiana Utility Regulatory Commission (Indiana Commission), the Federal Energy Regulatory Commission will hold a discussion with the Commissioners and staff of the Indiana Commission to discuss dockets related to RTO formation that are currently pending before both the Commission and the Indiana Commission. These cases involve the transfer to PJM Interconnection, L.L.C. of functional control of transmission assets that American Electric Power Service Corporation requested on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company (collectively AEP); and Northern Indiana Public Service Company's request for transfer of functional control of its transmission facilities to GridAmerica and the Midwest ISO. The conference is established pursuant to the Order Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, 97 FERC 61,182 (2001), reh'g denied 98 FERC 61,309 (2002). The conferences will not involve any discussion of the Indiana Commission's open dockets.

2. The Indiana Commission has indicated that the Commissioners and staff of the Indiana Utility Regulatory Commission, the Public Service Commission of Kentucky, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the Tennessee Regulatory Authority, the Virginia State Corporation Commission, and the Public Service Commission of West Virginia, who represent the states served by AEP, may wish to participate in this discussion; other affected state commissions also may have an interest in this matter and may wish to participate. Attendance at the meeting is limited to the Commission, state commissioners, and their respective staffs.

3. The discussion will take place at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, at 10 a.m. on Tuesday, January 14, 2003. A transcript of the discussion will be placed in the above-captioned dockets.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1028 Filed 1–15–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0047; FRL–7439–4]

Agency Information Collection Activities: Submission EPA ICR Number 1814.03 (OMB No. 2040–0189) 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: National Health Protection Survey of Beaches (OMB Control Number 2040–0189, EPA ICR Number 1814.03). The ICR, which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before February 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Rick Hoffmann, Standards and Health Protection Division (MC 4305T), Office of Science and Technology, Office of Water, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566–0388; fax number: (202) 566–0409; e-mail address: *hoffmann.rick@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 08/13/2002 (67 FR 52716), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0047, which is available for public viewing at the Water Docket in the EPA Docket Center, 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: National Health Protection Survey of Beaches (OMB Control No. 2040–0189, EPA ICR Number 1814.03). This is a request to renew an existing approved collection that is scheduled to expire on 1/31/2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are ''fishable'' and ''swimmable.'' In 1986, EPA formally issued a revision to its bacteriological ambient water quality criteria recommendations to protect persons participating in body contact recreation. In addition, recent studies have confirmed the adverse health effects resulting from bathing in contaminated waters. Therefore, water quality in bathing beach areas is a critical concern to EPA.

EPA believes there is a need to improve the overall quality and availability of public information about health protection activities at beaches, which include, but are not limited to, water quality standards, monitoring and assessment activities, and beach closures. Many organizations share responsibility for these activities. Consequently, EPA's Office of Water will conduct an annual ''beach'' survey which will be sent to environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches at inland sites around the Nation. Responses to the questionnaire (either on paper or electronically via the Internet) will help to determine compliance with water quality standards, to assess public health risks, and to determine what steps EPA should take next, if any. Completion of the questionnaire and map marking will be voluntary.

EPA will assemble the information (maps and questionnaire responses) into electronic database and graphic formats that can be readily analyzed and shared with responsible parties (*e.g.*, EPA program and regional offices, other federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is being conducted in phases over three years, with an average estimated number of respondents of 130 per year. When the survey is fully implemented, it is estimated that 391 respondents per year will be involved. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only

be requested to provide information that has changed during the year.

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 2.4 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: State and county, public health, and environmental protection agencies.

Estimated Number of Respondents: 130.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 312.

Estimated Total Annualized Cost Burden (non-labor costs): $195.

Changes in the Estimates: There is a decrease of 968 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 respondents for this ICR. This ICR will collect information only from inland beaches that are not required to report to EPA, or those states that do not apply for the BEACH Act Grants.

Dated: January 8, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–966 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7439–3]

EPA National Advisory Council for Environmental Policy and Technology Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Wednesday, January 29 from 10 a.m. to 12 p.m. Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The Compliance Assistance Advisory Committee (CAAC) is one of the subcommittees under the auspices of NACEPT.

Purpose of Meeting: The NACEPT Council will review and discuss the Compliance Assistance Advisory Committee's comments on EPA's Draft 2003–2008 Strategic Plan Architecture. EPA is currently soliciting public comments on the draft goals and objectives that will provide the structure for the new Strategic Plan. This meeting will also provide the full NACEPT Council the opportunity to make recommendations on EPA's strategic planning architecture. If NACEPT approves the recommendations provided by the CAAC, then it will be submitted to EPA's Office of the Chief Financial Officer.

Availability of Review Materials: EPA's Draft FY 2003–2008 Strategic Plan Architecture is available electronically from EPA's Office of Chief Financial Officer, at *http://www.epa.gov/ocfopage/plan/plan.htm.*

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Gwen Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0079 or via e-mail at *whitt.gwen@epa.gov.* You may also contact Sonia Altieri at (202) 233–0061 if you have any questions. The agenda will be available to the public upon request. Written comments from the public are welcome any time before or during the meeting.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our Web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Whitt at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 9, 2003.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 03–967 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7428–9]

Proposed Administrative Cashout Deminimis Settlement Under Section 122(g) of the Comprehensive Environmental Response Compensation and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment for the NL Industries (Taracorp) Site.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future

response costs concerning the NL Industries (Taracorp) Site, with the total of 74 settling parties listed in the **SUPPLEMENTARY INFORMATION** portion of this notice. The settlement requires the settling parties to pay $1,163,125.65 to the Hazardous Substance Superfund.

The total cost of the cleanup is approximately $63 million. This number is the sum of EPA's past costs of approximately $43 million, plus costs incurred by certain potentially responsible parties of approximately $ 20 million. For purposes of settlement, site costs have been allocated approximately 50% to generators and 50% to owner/operators. Since all *deminimis* parties are generators, the *deminimis* percentage share of site costs is based on fifty percent of total site costs, or $30 million. Total future site costs were assigned a premium of 20%. Payment amounts for each *deminimis* generator were calculated by multiplying the generator site cost by each *deminimis* generator's percentage share of volume contributed to the site.

Under the terms of the settlement, the *deminimis* generators who sign the Consent Order agree to pay their respective settlement amounts. In exchange for those payments, the United States covenants not to sue or take administrative action pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, participating *deminimis* generators will be entitled to protection from contribution action or claims as provided by sections 113(f) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f) and 9622(g)(5), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before February 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6609. Comments should reference the NL Industries (Taracorp) Site, and EPA Docket No. 91–00578–JLF, and should be addressed to Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Larry L. Johnson, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone 312–886–6609.

SUPPLEMENTARY INFORMATION: The following is a list of the settling *de minimis* generators:

1. 3–H Industries (Now known as Mayfield Manufacturing Company).
2. A. Edelstein & Sons.
3. A.O Smith Corporation.
4. Ace Comb Company.
5. Acme Iron & Metal Co.
6. Acro Sale & Engineering.
7. Allied Metal Company.
8. Amax Inc./Amax Lead & Zinc.
9. American National Can Company.
10. Baker Iron & Metal.
11. Ball Metal & Chemical.
12. Barter Machinery & Supply Company.
13. Bill's Auto Parts.
14. C & D Battery dba/C&D Charter Power c/o Allied Signal , Inc.
15. C.L. Downey Company.
16. CNC Industries, Inc.
17. Cerro Copper Products Co.
18. Chrysler Corporation (Daimler-Chrysler Corporation).
19. Delhi Battery & Supply Co, Inc.
20. Douglas Battery Manufacturing Comp.
21. Dumes, Inc.
22. Elden R. Erikson & Sons, Inc.
23. Electro Battery Manufacturing Co.
24. Farmland Industries.
25. Fisher Steel & Supply Co.
26. G & M Scrap Metal.
27. GSA—General Services Administration.
28. Grossman Iron & Steel Company.
29. Herman Strauss, Inc.
30. Houston Salvage.
31. Industrial Electrical Equipment Co.
32. Intra-American Metals.
33. J. Trockman & Sons.
34. L. Kahn & Sons.
35. La Salle Steel Company.
36. M. Katch.
37. Mc Graw Edison Company.
38. Mallin Brothers Company.
39. Marco Steel Supply.
40. Martin Brothers Mill & Foundry Supply.
41. Miller Compressing Company.
42. Milwaukee Scrap Metal Co.
43. Modine Manufacturing.
44. Northbrook Sports Club.
45. Olin Corporation.
46. Parks Iron & Metal.
47. Peltz Brothers.
48. Pequena Battery Company.
49. Pet, Inc.
50. Plough, Inc.
51. Reeves Scrap Metal.
52. Sam Allen & Son, Inc.
53. School of the Ozarks (Now known as College of the Ozarks).
54. Schuster Metals, Inc.
55. Senser Metal Company.
56. Shapiro Sales Company.
57. Slesnick Iron & Metal.
58. Southwestern Bell Telephone Company.
59. Stewart-Warner Corp.
60. Stewart-Warner Corporation c/o Invensys.
61. Superior Companies, Inc.
62. University of Illinois of Urbana.
63. Vivo Iron & Metal.
64. Wallach Iron & Metal Company.
65. Willoughby Iron & Waste Material Co.
66. Young Radiator Company.
67. United Technologies Corporation.
68. Parkans International, Inc.
69. Sherwin-Williams.
70. Marchem Resources, Inc.
71. Rankin Technical Institute.
72. Crown Cork & Seal Corporation.
73. Centritech Corporation.
74. Milford Rivet & Machine Company.

Dated: January 7, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–968 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7438–5]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations revising the public notification rule. EPA has determined that the public notification rule meets all minimum federal requirements, and is no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by February 18, 2003 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 18, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 18, 2003. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404–562–9480).

Authority: (Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142).

Dated: December 13, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–859 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7439–5]

Public Water System Supervision Program Revision for the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved Public Water System Supervision Program. Georgia has adopted drinking water regulations which incorporate the requirements of the Interim Enhanced Surface Water Treatment Rule and Stage 1 Disinfectants/Disinfection Byproducts Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by February 18, 2003, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 18, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 18, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Natural Resources, Environmental Protection Division, Water Resources Branch, 205 Bulter Street, SE., Atlanta, GA 30334 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Lori Brown, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9482.

Authority: (Section 1401, 1412, and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 9, 141 and 142 of the National Primary Drinking Water Regulations).

Dated: December 30, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–965 Filed 1–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–61]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 13, 2003, the Commission released a public notice announcing the January 22, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Wednesday, January 22, 2003 at 9 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue. Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 92–237, released on January 13, 2003. The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, January 22, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the

general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, January 22, 2003 9 a.m.

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of November 19, 2002
3. Report of the North American Numbering Plan Administrator (NANPA)
   —State of NANP resources
   —NANPA activity
4. Report of National Thousands Block Pooling Administrator
   —Activity report
   —Optional pooling implementation
   —Connecticut UNP trial
5. Report of Oversight Working Group
   —Review of Change Orders
   —PAS ''workaround''
   —2002 Performance Survey
   —Performance Improvement Plan
6. Report of NANP Expansion/Optimization IMG
   —Transmittal of Final Report to FCC
   —Monitoring in future
7. Report of Intermediate Numbering/Soft Dial Tone IMG
8. Status of Industry Numbering Committee activities
9. Report of the Local Number Portability Administration (LNPA) Working Group
   —Wireless Number Portability Operations (WNPO) Subcommittee
10. Report from NBANC
11. Report of Cost Recovery Working Group
12. Report of E-Conferencing Working Group
13. Presentation by VoIP provider (Vonage) regarding use of numbers
14. Steering Committee
   —Table of NANC Projects
15. Report of Steering Committee
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Wednesday, March 19, 2003.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–1095 Filed 1–15–03; 8:45 am]

BILLING CODE 6712–01–P

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 February 10, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Liberty Financial Services, Inc., Sioux City, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty National Bank, Sioux City, Iowa.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. First National Bancorp, Inc., Libby, Montana; to merge with Montana First National Bancorporation, Kalispell, Montana, and thereby indirectly acquire Montana First National Bank, Kalispell, Montana.

Board of Governors of the Federal Reserve System, January 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–925 Filed 1–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10067]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

It is widely acknowledged that the elderly are going without critical

pharmaceutical therapy and that there are morbidity and mortality consequences. The Administration has developed a proposal for paying for prescriptions for low-income elderly Medicaid recipients. This proposal will allow States to run 1115 demonstration projects specifically for a drug benefit for the elderly.

CMS has recently completed work on an innovative, electronic approach for easing the burden of States in applying for participation in the Pharmacy Plus demonstration initiative. We are seeking approval of the forms that would be used to collect data from applicants under this initiative.

The initiative will greatly reduce the time period required for States to develop and apply for demonstration authority; in addition the initiative is intended to expedite the review and approval time required by CMS. The initiative specifies the requirements of States to participate in the initiative—if the criteria are met by the State then deliberation by CMS on the application should be minimal. The result will be an expeditious approval, implementation and operation of demonstration programs that will provide prescription coverage to lessen the morbidity and mortality that is occurring. Without approval of these forms on an emergency basis, millions of Seniors will continue to under-utilize pharmaceutical therapy for chronic and acute morbidity. The use of the forms will expedite prescription coverage and utilization of important medicines.

CMS is requesting OMB review and approval of this collection by January 28, 2003, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by January 27, 2003.

Type of Information Collection Request: New collection; *Title of Information Collection:* Pharmacy Plus Template for Low Income Seniors under Medicaid; Form No.: CMS–10067 (OMB# 0938–XXXX); *Use:* The template for the Pharmacy Plus program for low income seniors under Medicaid will enable states to apply, via a standard format, to provide a drug benefit to elderly recipients; use of this format will expedite the process of obtaining CMS review and approval of an application; *Frequency: Other:* 3 years after initial submission for the 1915 (c) waiver; 5 years after initial submission for the 1115 demonstration; *Affected Public:* State Government; *Number of Respondents:* 51; *Total Annual Responses:* 25; *Total Annual Hours:* 115.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by January 27, 2003:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262. Attn: Julie Brown, CMS–10067. And, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn.: Brenda Aguilar, CMS Desk Officer.

Dated: January 8, 2003.

Julie Brown,

Acting Paperwork Reduction Act Team Leader and, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–910 Filed 1–15–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0131]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that a proposed collection of information entitled ''FDA Rapid Response Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63928), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0500. The approval expires on June 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: January 9, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–903 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0284]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2002 (67 FR 63931), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0428. The approval expires on December 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 9, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–905 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1528]

Delfina Hernandez; Rescission of Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is rescinding an order issued under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Delfina Hernandez for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA is issuing this rescission because service of a notice proposing to debar Ms. Hernandez and offering her an opportunity for a hearing on the proposal was sent to the wrong person.

DATES: This notice is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 6, 2002 (67 FR 67629), FDA issued an order debarring Ms. Delfina Hernandez for 5 years from providing services in any capacity to a person that has an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))).

The debarment order stated that FDA had served Ms. Hernandez by certified mail on May 13, 2002, a notice proposing to debar her and offering her an opportunity for a hearing on the proposal. The debarment order further stated that Ms. Hernandez had failed to request a hearing and thereby waived her opportunity for a hearing and waived any contentions concerning her debarment.

FDA has learned that the notice proposing to debar Ms. Hernandez and offering her an opportunity for a hearing was sent to an incorrect address and was apparently signed for by a person with the same name as Ms. Hernandez, but who was not the intended subject of the notice. Accordingly, FDA is rescinding the November 6, 2002, order.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 306 (21 U.S.C. 335a)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.34).

Dated: January 2, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–1020 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0361]

International Conference on Harmonisation; Guidance on Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q1D Bracketing and Matrixing Designs for Stability Testing of New Drug Substances and Products.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This guidance is an annex to an ICH guidance entitled ''Q1A(R) Stability Testing of New Drug Substances and Products'' (66 FR 56332, November 7, 2001). It is intended to provide guidance on the application of reduced designs (i.e., bracketing and matrixing) for stability studies conducted in accordance with the principles outlined in ICH Q1A(R).

DATES: The guidance is effective January 16, 2003. Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Chi-wan Chen, Center for Drug Evaluation and Research (HFD–830), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2001, or Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–402–4635.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance

harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see **ADDRESSES**). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of September 25, 2001 (66 FR 49029), FDA published a draft tripartite guidance entitled ''Q1D Bracketing and Matrixing Designs for Stability Testing of Drug Substances and Drug Products.'' The notice gave interested persons an opportunity to submit comments by November 26, 2001. After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three regulatory agencies on February 7, 2002.

This guidance is an annex to an ICH guidance entitled ''Q1A(R) Stability Testing of New Drug Substances and Products'' (66 FR 56332). It is intended to provide guidance on the application of bracketing and matrixing for stability studies conducted in accordance with the principles outlined in Q1A(R).

ICH Q1A(R) notes that, if justified, the use of two types of reduced stability study designs (i.e., bracketing and matrixing) can be applied to the testing of new drug substances and products, but ICH Q1A(R) provides no further guidance on the subject. This ICH Q1D guidance is intended to provide guidance on bracketing and matrixing designs. Specific principles are defined in this guidance for situations in which bracketing or matrixing can be applied and where bracketing or matrixing can be applied if additional justification is provided. Design factors and other considerations are presented, and potential risks of using reduced designs are discussed. Sample designs are also provided for illustrative purposes.

This guidance represents the agency's current thinking on reduced stability testing of new drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statues and regulations.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (see **ADDRESSES**) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/publications.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 8, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–904 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0492]

Draft Guidance for Industry and Reviewers on Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and reviewers entitled ''Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers.'' This draft guidance outlines a common process (algorithm) and terminology for deriving a maximum recommended starting dose for ''first in human'' clinical trials of new molecular entities in adult healthy volunteers. Described in the guidance is a method for using nonclinical data to select a maximum starting dose in adult humans that is not expected to result in significant toxicity. The goal is to ensure the safety of adult human volunteers in initial clinical trials.

DATES: Submit written or electronic comments on the draft guidance by March 17, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–5482 or M. David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and reviewers entitled ''Estimating the Safe Starting Dose in Clinical Trials for Therapeutics in Adult Healthy Volunteers.'' When selecting the starting dose in an initial clinical trial for a new molecular entity (NME), one can only rely on the safety data generated in nonclinical studies since, by definition, there are no human data. The draft guidance describes a method by which a starting dose may be selected for an initial clinical trial that is not expected to result in significant toxicity, but that will allow reasonably rapid attainment of phase I trial objectives (e.g., assessment of the NME's tolerability, pharmacodynamic and/or pharmacokinetic profile). The draft guidance establishes a consistent terminology for discussing the starting dose and a strategy for selecting a maximum recommended safe starting dose based on no-observed-adverse-effect levels in animals. Common conversion factors for deriving human equivalent doses from animal data are provided, and factors to be considered in determining reasonable safety margins are discussed in detail. The draft guidance also addresses the use of the nonclinical pharmacologically active dose and systemic exposure data in selection of a maximum recommended clinical starting dose. Comments on dose escalation are outside the scope of this draft document.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on estimating a maximum safe starting dose in initial clinical trials for therapeutics in adult healthy volunteers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 8, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–906 Filed 1–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following advisory committee meeting. The meeting will be open to the public.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: February 10, 2003; 8:30 a.m.–4:30 p.m., February 11, 2003; 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. This meeting will be devoted to drafting the third report of the Advisory Committee which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2003. The third report will focus on disparities in health care and their implications for primary care medical education.

Agenda: The meeting on February 10 will begin with welcoming and opening comments from the Chair and Executive Secretary of the Advisory Committee. A plenary session will follow in which the Advisory Committee members will work to draft various sections of the third report. The Advisory Committee will also divide into two workgroups to further develop the report.

On February 11 the Advisory Committee will meet in plenary session to discuss performance measures for programs under section 747 of the Public Health Service Act and methods of disseminating Advisory Committee recommendations. The Advisory Committee will discuss its role and provide an opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Acting Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd*.

Dated: January 10, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–1021 Filed 1–15–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; the Ethical Problems Encountered by Nurses and Social Workers: Implications for Job Satisfaction and Retention

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Ethical Problems Encountered by Nurses and Social Workers:

Implications for Job Satisfaction and Retention. Type of Information Collection Request: new. Need and Use of Information Collection: The purposes of the study are (1) to identify common ethical problems experienced by nurses and social workers in health care settings; (2) to identify the relationships between selected individual and organizational factors and perceptions of ethical stress, job satisfication and retention; and (3) to identify the availability of ethics support services. The findings will provide valuable information concerning: (1) The extent to which ethical problems and stress are contributing to a shortage of health care providers; (2) the importance of ethics related content in nurses' and social workers' education; and (3) the importance of ethics support services. Frequency of Response: Once. Affected Public: Individuals; academic institutions; business or other for-profit; not-for-profit organizations. Type of Respondents: Registered nurses and social workers. The annual reporting burden is as follows: Estimated Number of Respondents: 2,700; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .33; and Estimated Total Annual Burden Hours Requested: 891. The annualized cost to respondents is estimated at: $59,400. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comment: 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) 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: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Connie Ulrich, RN, PhD, Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to: *culrich@cc.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 9, 2003.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 03–938 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National 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 Cancer Institute Special Emphasis Panel; Host-Tumor Cell Interactions in Myeloma.

Date: January 28, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate to review and evaluate grant applications.

Place: National Institutes of Health, 6116, Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–930 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 the meeting of the National Cancer Advisory Board.

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.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidentiality 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 Cancer Advisory Board, Ad Hoc Subcommittee on Confidentiality of Patient Data.

Dates: February 10–12, 2003.

Open: February 10, 2003, 7:15 p.m. to 8:15 p.m.

Agenda: To discuss activities related to the Ad Hoc Subcommittee on Confidentiality of Patient Data.

Place: Bethesda Hyatt Hotel, 1 Metro Place, Bethesda, MD 20892.

Contact Person: Ms. Mary McCabe, Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6404.

Name of Committee: National Cancer Advisory Board.

Open: February 11, 2003, 8:30 a.m. to 12:05 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room, 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 11, 2003, 12:15 p.m. to 1:15 p.m.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892. (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: February 11, 2003, 1:20 p.m. to 2:10 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: February 11, 2003, 2:10 p.m. to 3:10 p.m.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board, Ad Hoc Subcommittee on Bioinformatics Vocabulary.

Open: February 11, 2003, 3:10 p.m. to 4:10 p.m.

Agenda: To discuss activities related to the Ad Hoc Subcommittee on Bioinformatics Vocabulary.

Contact Person: Dr. Frank Hartel, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Building 6116, Room 4019, Bethesda, MD 20892–8327, (301) 435–3869.

Name of Committee: National Cancer Advisory Board.

Closed: February 11, 2003, 4:10 p.m. to recess.

Agenda: Review of grant applications.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 12, 2003, 8:30 a.m. to adjournment.

Agenda: Program reports and presentations; business of the Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327. (301) 496–5147.

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.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 9, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–937 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 a meeting of the National Advisory Environmental Health 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 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 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 Environmental Health Sciences Council.

Date: February 10–11, 2003.

Open: February 10, 200, 8:30 am to 5 pm.

Agenda: Discussion of Program Policies and Issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Conference Rooms ABC, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 11, 2003, 9 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Conference Rooms ABC, 111 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institutes of Environmental Health, Sciences, National Institutes of Health, PO Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–929 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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/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 Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference (R13) Applications.

Date: February 6, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Nat. Institute of Environmental Health Sciences, East Campus, Building 4401, Room 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Rose M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 90.

Date: February 12, 2003.

Time: 9:30 am to 10:30 am.

Agenda: To review and evalute contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnn M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233; MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 92.

Date: February 12, 2003.

Time: 10:30 am to 1 pm.

Agenda: To review and evalute contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnn M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233; MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 93.

Date: February 19, 2003.

Time: 10 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 91.

Date: February 19, 2003.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–931 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee, Review of R03's Ts, and Fs.

Date: February 20–21, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. 301–594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–933 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial 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 a meeting of the National Advisory Dental and Craniofacial Research 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 Advisory Dental and Craniofacial Research Council.

Date: February 3, 2003.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Director's report, NIH Director's comments, concept clearances.

Place: National Institutes of Health, Building 45 (Natcher), 45 Center Drive, Conference Room E1 & E2, Bethesda, MD 20892.

Closed: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 45 (Natcher), 45 Center Drive, Conference Room E1 & E2, Bethesda, MD 20892.

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/nadrc/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–934 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 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 Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–31, review of R13 grants.

Date: January 28, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grants applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations posed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–35, Review of R13 grants.

Date: February 13, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grants applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F,

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–25, Review of T32 grants.

Date: February 19, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grants applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD., Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 7, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–935 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Library of Medicine Special Emphasis Panel, January 13, 2003, 9 a.m. to January 14, 2003, 5 p.m., which was published in the **Federal Register** on November 19, 2002, 67 FR 69754.

The meeting is canceled due to more time needed to process reviews and reports.

Dated: January 7, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–928 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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: Biomedical Library and Informatics Review Committee.

Date: March 6–7, 2003.

Time: March 6, 2003, 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, Bethesda, MD 20894.

Time: March 7, 2003, 8:30 am too 2 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, Bethesda, MD 20894.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705

Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHD)

Dated: January 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–932 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director

Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee (RAC).

Date: January 17, 2003.

Time: 9:30 a.m. to 3 p.m.

Agenda: The Committee will review new data from a retroviral-mediated gene transfer clinical trial in Severe Combined Immunodeficiency (SCID) that could be important to the safety of participants in gene transfer clinical trials that use retroviral vectors. The discussion of this new information may lead to changes in the recommendations on the safety of the clinical gene transfer trials in SCID formulated by the RAC at its December 2002 meeting. In addition, the RAC may make recommendations pertaining to the safety and conduct of gene transfer clinical trials using retroviral vectors.

The RAC is meeting due to the potential significance of this new data and the need for expeditious deliberation and public discussion of its potential implications for the safety and conduct of clinical gene transfer trials using retroviral vectors.

Place: National Institutes of Health, 9000 Rockville Pike, Building 45, Conference Room F1/F2, Bethesda, Maryland 20892.

Contact: Stephen Rose, Ph.D., Executive Secretary, Recombinant DNA Advisory Committee, Office of Biotechnology Activities, Rockledge 1, Room 750, Bethesda, MD 20892. (301) 496–9839.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecules techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 10, 2003.

Anna P. Snouffer,

Director, Office of Federal Advisory Committee Policy.

This notice is being published less than 15 days before the meeting due to the emergency nature of the actions involved.

[FR Doc. 03–936 Filed 1–15–03; 8:45 am]

BILLING CODE 4140–01–M

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; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** of December 24, 2002, requesting comments from the general public on our proposal to change the Substance Abuse Prevention and Treatment Block Grant Program into the Substance Abuse Prevention and Treatment Performance Partnership Program. The document was mis-titled.

FOR FURTHER INFORMATION CONTACT: Joseph D. Faha, Director of Legislation, (301) 443–7017.

Correction

In the **Federal Register** of December 24, 2002 in FR DOC 02–32305 on page 78496, concerning a request for comments from the general public on our proposal to change the Substance Abuse Prevention and Treatment Block Grant Program into the Substance Abuse Prevention and Treatment Performance Partnership correct the title of the document to read:

Substance Abuse Prevention and Treatment Performance Partnership

Dated: January 9, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–885 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in February 2003.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will receive reports from several of its subcommittees, including Medicaid, Evidence-Based Practice/Medication Issues, Consumer Issues, Cultural Competence, Housing and Homelessness, Employment and Income Support, and Children and Families.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission

Web site, *http://www.mentalhealthcommission.gov*, or by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time:

Open: February 4, 2003, 1 p.m. to 4 p.m.

Open: February 5, 2003, 8:30 a.m. to 4 p.m.

Open: February 6, 2003, 8:30 a.m. to 12 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554, e-mail: *Cheffern@samhsa.gov*, Web site: *http://www.mentalhealthcommission.gov.*

Dated: January 13, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–1022 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in January and February 2003.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: January 29, 2003.

Place: Substance Abuse and Mental Health Services Administration, Division of Extramural Policy Management, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Closed: January 29, 2003.

Panel: Evaluation Technical Assistance Center, SM 03–002.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: February 3–7, 2003.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. February 3, 2003 to adjournment February 7, 2003.

Panel: Targeted Capacity Expansion-Prevention and Early Intervention, SM 03–004—3 Committees.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Date: February 3–5, 2003.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 8:30 a.m. February 3, 2003 to adjournment February 5, 2003.

Panel: American Indian/Alaska Native—NRC SP 03–001, 1 Committee.

Contact: Diane McMenamin, Division of Extramural Policy Management, Review Branch, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Dated: January 3, 2003.

Diane McMenamin,

Division of Extramural Policy Management, Review Branch, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–907 Filed 1–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval; Application, Permit, and Reporting for Federal Subsistence Hunt, Designated Hunter, and Fish/Shellfish Harvest in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that we provide an opportunity for interested members of the public and affected agencies to comment on our information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We are notifying the public that we will submit a request to OMB to renew its approval of the collection of information for application, permit, and reporting for Federal Subsistence Hunt, Designated Hunter, and Fish/Shellfish Harvest in Alaska.

DATES: Comments must be submitted on or before March 17, 2003.

ADDRESSES: Send your comments to: Harvest Data Coordinator, Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; and Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Dr., Arlington, VA 22203, or e-mail *anissa_craghead@fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the Information Collection request, explanatory information, and related forms, contact Anissa Craghead, Service Information Collection Clearance Officer, at 703/358–1730 or *anissa_craghead@fws.gov*; or Charles Miller, Office of Subsistence Management, at 907/786–3888.

SUPPLEMENTARY INFORMATION: We will submit a request to OMB to renew its approval of the collection of information associated with three forms used by the U.S. Fish and Wildlife Service. Those forms are discussed below.

Title: Federal Subsistence Hunt Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number: 7FS–1.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .25 hours per response. The total annual burden is 1,225 hours.

Total Annual Responses: 4,900.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations at 50 CFR part 100, require that persons engaged in taking fish and wildlife in Alaska must report their take to the Federal Subsistence Board (the Board) and that rural residents who want to participate in special hunts must apply for and obtain a special permit to do so. The Board uses harvest information to

evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Then the Board uses this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

The Federal Subsistence Hunt Application, Permit, and Report form allows Federal subsistence users to participate in special hunts that are not available to the general public but are provided for by Title VIII of ANILCA. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the animal population.

Title: Designated Hunter Permit Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number(s): 7FS–2.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .25 hours per response. The total annual burden is 100 hours.

Total Annual Responses: 400.

Abstract: Under the authority of ANILCA and Fish and Wildlife Service regulations at 50 CFR part 100, the Board obtains harvest information from persons engaged in taking fish and wildlife in Alaska and uses that information to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Then the Board uses this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations.

The Designated Hunter Application, Permit, and Report form allows qualified subsistence users to harvest fish or wildlife for others and report the harvest of multiple animals by a single hunter who is acting for others. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the animal population.

Title: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, Permit, and Report.

OMB Number: 1018–0075.

Service Form Number(s): 7FS–3.

Frequency: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: The reporting burden is estimated to average .5 hours per response. The total annual burden is 62.5 hours.

Total Annual Responses: 125.

Abstract: ANILCA allows the taking of fish and wildlife on public lands in Alaska for subsistence use, if users possess and comply with the provisions of any pertinent permit, harvest tickets, or tags required by the State or Federal government. All Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of fish and shellfish under the regulations at 50 CFR part 100. The Board needs information on the fisherman, qualified subsistence users fished for (*i.e.*, users who have designated another person to harvest for them), the fish or shellfish harvested, and the location of harvest in order to make recommendations on subsistence use. Once the Board evaluates harvest information, the Board uses that information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence fisherman without adversely impacting the health of existing fish and shellfish populations.

The Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, Permit, and Report form allows qualified subsistence users to harvest fish and shellfish for themselves or for others. This form also allows Federal subsistence users to participate in special fishing opportunities that are not available to the general public but are provided for by Title VIII of ANILCA. The collection of information on this form is essential to the missions of the U.S. Fish and Wildlife Service and the Board. Without this information, the Service would be unable to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health of the fish and shellfish populations.

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. We are requesting a 3-year term of approval of this information collection. We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: January 13, 2003.

Anissa Craghead, Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–943 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Regional Council Application, Nomination, and Interview Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We will accept comments until February 18, 2003.

ADDRESSES: Send your comments on the requirement to Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203, (705) 358–2445.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB for approval of the collection of information related to the recruitment of Federal Subsistence Advisory Council members. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies 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.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101) designates the Departments of the Interior and Agriculture as the key agencies responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. These responsibilities include the establishment of Regional Advisory Councils with members from each region who are knowledgeable about the region and subsistence uses of the public lands. In order for the Federal Board to make recommendations to the Secretaries for membership on these Regional Councils, it is necessary to recruit and screen applicants. These three associated forms allow the Federal Subsistence Board to recruit applicants and to review their credentials in order to make recommendations to the Secretaries for appointment of members to the Regional Councils. One-third of the seats on the Regional Councils become vacant each year. Additional vacancies may occur due to resignations or deaths of sitting members.

On October 29, 2002, we published in the **Federal Register** (67 FR 65993) a notice informing the public that we are submitting the three forms described below to OMB for approval under the Paperwork Reduction Act. We included the forms, in their entirety, in that notice. We requested public comment on the forms for 60 days, ending December 30, 2002. By that date, we received two comments. The comments raised several issues that are not relevant to the forms. The comments that are relevant to the forms suggest that we: (1) Elaborate on our ''criteria for membership''; (2) ask applicants and nominees to identify all groups—instead of just the primary group—that they feel they would represent if they were selected to be Council members; (3) require a letter of recommendation for each applicant; and (4) ask applicants and nominees to identify potential conflicts of interest (such as a loyalty or interest that would supercede the needs of the entire region) if they were selected to sit on the Council. We are not making any changes to our submission to OMB based on these comments. We believe that, in the case of item (1), our criteria for membership list appropriate minimum qualifications for applicants and nominees to the Council. Further, in the case of items (2) through (4), we believe that requesting additional information from an applicant or nominee is an unnecessary burden. The detailed qualifications and interests of individuals applying or nominated for a position on the Council will be evident in their responses to questions on the application or nomination forms and during the candidate evaluation interviews.

Title: Federal Subsistence Regional Advisory Council Membership Application Form.

Form number: 7–FW 4.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per respondent. With an estimated 120 applicants annually, the estimated total annual burden hours is 60 hours.

Total Annual Responses: We expect about 120 applications to be submitted annually.

Title: Federal Subsistence Regional Advisory Council Membership Nomination Form.

Form number: 7–FW 5.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Local governments, Tribal organizations, and special interest groups.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per respondent. With an estimated 50 nominations annually, the estimated total annual burden hours is 25 hours.

Total Annual Responses: We expect about 50 nominations to be submitted annually.

Title: Regional Advisory Council Member Evaluation—Candidate Interview Form.

Form number: 7–FW 6.

Approval Number: 1018–XXXX.

Frequency of Collection: Annually.

Description of Respondents: Alaska residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per interview. We will conduct 5 interviews per applicant or nominee. Therefore, with an estimated 170 applicants/nominees, the estimated total annual burden hours is 425 hours.

Total Annual Responses: We expect to conduct about 850 interviews annually.

Note: The total annual burden hours estimated in this notice differ from the total annual burden hours we provided in the notice published in the **Federal Register** on October 29, 2002. In the previous notice, we neglected to include the burden hours associated with interviewing nominees for Council positions. Therefore, our corrected estimate is 250 hours greater than our previous estimate.

We again invite comments concerning this proposed information collection on: (1) Whether the collection of information is necessary for the proper selection of Regional Council members, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: January 13, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–942 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or

before February 18, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (fax: (503) 231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: 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 20 days of the date of publication of this notice to the address above (telephone: (503) 231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–006112

Applicant: Gretchen Padgett-Flohr, Fremont, California.

The permittee requests an amendment to take (harass by survey, capture, release, and collect voucher specimens) the Sonoma and Santa Barbara distinct population segments of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–065493

Applicant: Peter Trenham, Davis, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with population demographic studies throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–065741

Applicant: John Lovio, San Diego, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–065923

Applicant: Jon Winter, Santa Rosa, California.

The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: December 13, 2002.

Rowan Gould,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–908 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Zapata Bladderpod (*Lesquerella thamnophila*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Zapata bladderpod (*Lesquerella thamnophila*). Six populations are still known to exist in varying numbers. The Service solicits review and comment from the public on this draft plan.

DATES: The comment period for this draft Recovery Plan closes on February 18, 2003. Comments on the draft Recovery Plan must be received by the closing date.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. If you wish to comment, you may submit your comments and materials concerning this draft Recovery Plan to the Field Supervisor at the address above.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the above address; telephone (361) 994–9005, facsimile (361) 994–8262.

SUPPLEMENTARY INFORMATION:

Background

The Zapata bladderpod (*Lesquerella thamnophila*), a plant of the Brassicaceae Family, is listed as endangered with critical habitat. Historically, 10 populations of the plants have been located and described. Currently, six of those 10 populations remain; three of the populations are located in Starr County, and three in Zapata County. This species is threatened by increasing urban development, highway construction, increased oil and gas activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers. The plant in all likelihood has a more extensive range than what is currently known; access for surveying on private land has been limited. This draft Recovery Plan includes information about the species and provides objectives and actions needed to downlist, then delist the species. Recovery activities designed to achieve these objectives include protecting known populations, searching for additional populations, performing outreach activities to educate and obtain assistance from the general public to conserve the species and its habitat, and establishing additional populations through reintroduction in the known range of the plant.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in

1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Recovery Plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 28, 2002.

Charlie Sanchez, Jr.,

Acting Regional Director, Region 2.

[FR Doc. 03–1019 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

National Park Service

Boundary Revision: Chesapeake and Ohio Canal National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of the Chesapeake and Ohio Canal National Historical Park to include one additional tract of land.

FOR FURTHER INFORMATION CONTACT: Judy L. Brumback, Chief, Acquisition Division, National Park Service, ATLAFO, PO Box 908, Martinsburg, WV 25402, (304) 263–4943.

SUPPLEMENTARY INFORMATION: Pub. L. 91–664, enacted January 8, 1971 authorizes the acquisition of certain lands for the Chesapeake and Ohio Canal National Historical Park. Section 7 (c) (ii) of the Land and Water Conservation Fund Act, as amended by Pub. L. 104–333, authorizes minor boundary revisions of areas within the National Park System. In accordance with the statutes, such boundary revisions may be made, when necessary, after advising the appropriate Congressional Committees and following publication in the **Federal Register**.

In order to properly interpret and preserve the historic character of the Chesapeake and Ohio Canal National Historical Park, it is necessary to revise the existing boundary to include one additional tract of land comprising approximately 2.91 acres.

Notice is hereby given that the exterior boundary of the Chesapeake and Ohio Canal National Historical Park is hereby revised to include the following tract of land:

Tract P76–1, Chesapeake and Ohio Canal National Historical Park, is all of the same land acquired by Barbara Ellen Embly from Barbara E. Roher by deed dated July 19, 2001, recorded in Deed Book 1677, Page 591, in the Land Records of Washington County, State of Maryland.

Tract 76–130, Chesapeake and Ohio Canal National Historical Park, is a part of the same land acquired by the United States of America (NPS) from Charles Harold Snyder, a.k.a. C. Harold Snyder by deed dated September 5, 1974, recorded in Liber 585, folio 802 in the Land Records of Washington County, State of Maryland.

Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

This tracts of land is depicted on Segment Map 76 and are identified as Tracts P76–1 and 76–130. The map is on file and available for inspection in the office of the National Park Service, Appalachian Trail Land Acquisition Field Office, 1314 Edwin Miller Boulevard, PO Box 908, Martinsburg, West Virginia 25402–0908.

Dated: July 22, 2002.

Terry R. Carlstrom,

Regional Director.

[FR Doc. 03–992 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision; Indiana Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision, Indiana Dunes National Lakeshore, Indiana.

SUMMARY: This notice announces a revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include two (2) parcels of land within the boundaries of the National Lakeshore. This action is taken under the authority of 16 U.S.C., Section 460u–19 (Pub. L. 94–549, enacted October 18, 1976).

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299, or by telephone at 219–926–7561, extension 410.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is to include certain parcels of real property situated in Lake County, Indiana, and is effective upon publication of this notice. These parcels will be donated to the United States of America and they are contiguous to the National Lakeshore boundaries. These parcels contain, in aggregate, 15.93 acres of land, more or less.

The parcels are identified as follows:

Tract 12–117 on Segment Map 12, Drawing No. 626/35,012.

Tract 13–163 on Segment Map 13, Drawing No. 626/35,013.

Both of the above-cited segment maps are dated October 16, 2002.

These maps are on file at the following locations:

U.S. Department of the Interior, National Park Service, Midwest Region, Land Resources, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299.

Dated: October 17, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 03–995 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Amistad National Recreation Area, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for a general management plan for Amistad National Recreation Area.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a general management plan for Amistad National Recreation Area. This effort

will result in a comprehensive general management plan that provides a framework for making management decisions regarding the preservation of natural and cultural resources, visitor use and interpretation, and development of appropriate park facilities. In cooperation with the Texas State Historic Preservation Office, the Texas Game and Fish Department, and the Texas Department of Water Quality, attention will also be given to resources outside the boundaries that affect the integrity of Amistad National Recreation Area. Alternatives to be considered include no-action, the proposed action, and other reasonable alternatives.

Major issues at Amistad National Recreation Area include:

1. Declining water levels in the reservoir have exposed numerous significant archeological sites to erosion, vandalism, and damage from livestock;
2. Lower water levels have reduced the number of access points to the reservoir, affecting recreational uses at the park and leading to the creation of a network of social trails;
3. Increasing numbers of domestic livestock and exotic game species are grazing on park land, posing potential impacts on cultural sites and habitat for native species;
4. The need to consider establishing fees for hunting in the park;
5. The need to address the potential acquisition of additional private lands within the legislated boundaries of the park;
6. The need for a new administration facility and visitor center;
7. Trans-boundary issues and the need for increased cooperation between the NPS and its counterparts in the government of Mexico.

A public forum for comment on the full range of appropriate visitor experiences and areas in which these experiences may be in conflict will be provided throughout the course of the GMP process. Public involvement is essential for the development of creative solutions to guide future park management. A briefing statement has been prepared that summarizes the issues identified to date. Copies of that information may be obtained from: Superintendent, Amistad National Recreation Area.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Alan Cox, Amistad National Recreation Area. The director, Intermountain Region, National Park Service will approve the environmental impact statement.

The National Park Service will conduct public scoping (public meetings and solicitation of comments from state, county and town agencies and organizations; park neighbors; state historic preservation officer; and associated American Indian tribes) for the Amistad General Management Plan/Environmental Impact Statement from January, 2003 to August, 2005. Public involvement will play a critical role in the preparation of the environmental impact statement that will analyze the impacts of the management alternatives in the draft general management plan.

DATES: The National Park Service will conduct further public scoping for the draft alternatives and environmental impact statement for a period of 30-days beyond publication of this Notice of Intent.

ADDRESSES: You may mail comments to: Superintendent's Office, Amistad National Recreation Area, HCR 3 Box 5J, Hwy 90 West, Del Rio, TX 83012. You may also hand-deliver comments to the Superintendent's Office, Amistad National Recreation Area, Del Rio, TX. (Attn: General Management Plan).

FOR FURTHER INFORMATION CONTACT: Superintendent Alan Cox at 830.775.7491 x201 or Management Assistant M. Mark Morgan at 830.775.7491 x234 e-mail: *amis_superintendent@nps.gov*.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–997 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for Managing Flight Obstructions to Preserve Safety at Andrews Air Force Base

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, U.S. Air Force (USAF) and National Park Service (NPS) guidance and requirements, the USAF Air Mobility Command and the NPS have prepared an environmental assessment (EA), and other environmental documentation evaluating environmental impacts potentially resulting from implementation of vegetation management plans for managing trees which are flight obstructions affecting the safety of flight operations at Andrews Air Force Base (AFB). USAF is the lead agency for this EA, and the NPS intends to adopt this EA. These trees are primarily located on Andrews Air Force Base and within the Suitland Parkway, a park area administered by the NPS—National Capital Region, National Capital Parks—East. The Parkway is located on the National Register of Historic Places. The proposed action occurs in Prince George's County, Maryland.

Copies of these documents are available for public review at the following locations, and by request to the NPS at (202) 690–5185:

The Prince George's County Public Library, 14741 Governor Oden Drive, Upper Marlboro, MD 20772, (301) 952–3904.

Andrews Air Force Base Library, 1642 Brookley & D Street, Andrews AFB, MD 20762.

There is a 30 day public review period for comment on the EA and associated documents. Comments should be received no later than 30 calendar days from the publication date of this notice. The NPS will consider all comments submitted to the address below. Comments should be sent to: Andrews Air Force Base, EA, HQ AMC/CEV, 507 Symington Dr., Scott AFB, IL 62225–5022, Fax: (818) 229–0257, E-mail: *AMC.CEV@scott.af.mil.*

SUPPLEMENTARY INFORMATION: The USAF identified a need to manage trees which adversely affect safe flight operations at Andrews AFB in Prince George's County, Maryland. Andrews AFB is home to the 89th Airlift Wing and

provides worldwide airlift and logistical support of the President of the United States, the Vice President, cabinet members, and other high-ranking United States and foreign officials. Many of the trees requiring management are located on the NPS' Suitland Parkway which is listed on the National Register for Historic Places. Other trees requring management are located on Andrews AFB and on lands within an industrial park immediately north of Suitland Parkway and lands adjoining the southern base perimeter. This EA follows on a 2001 EA which analyzed emergency tree pruning to remove obstructions to the Andrews AFB West Runway.

The EA describes a no-action alternative (Alternative 1), a preferred alternative (Alternative 2) involving vegetation management to manage obstructions without reconfiguring the runways, and a third alternative (Alternative 3) involving reconfiguring the runways to reduce the severity of the required vegetation management. It also contains discussion of those alternatives which were considered but rejected. The USAF and NPS, in consultation with the Maryland Historic Trust, are in the process of complying with Section 106 of the National Historic Preservation Act. This EA, the USAF draft Finding of No Significant Impact/Finding of No Practicable Alternative (FONSI/FONPA), and the NPS draft Statement of Findings (SOF) are all available for review.

Edward F. Duffy, Jr.,

Acting Regional Director, National Capital Region.

[FR Doc. 03–988 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Draft Environmental Impact Statement for Arkansas Post National Memorial

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the draft general management plan/draft environmental impact statement for the Arkansas Post National Memorial, Arkansas.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement and general management plan (DEIS/DGMP) for Arkansas Post National Memorial (ARPO).

DATES: The DEIS/DGMP will remain available for public review on or after March 17, 2003. No public meetings are scheduled at this time.

ADDRESSES: Copies of the DGMP/DEIS are available by request by writing to Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055, by telephoning 870–548–2207, or by e-mail *arpo_superintendent@nps.gov.*

The document is also available to be picked-up in person at the visitor center, 1741 Old Post Road, Gillett, Arkansas. The document can be found on the Internet in the NPS Planning Web site at: *http://planning.den.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: Edward E. Wood, Jr., Superintendent, Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055, telephone 870–548–2207, or John Paige, Job Captain, Denver Service Center, 12795 West Alameda Parkway, PO Box 25287, Denver, CO 80225–0287, telephone 303–969–2356.

SUPPLEMENTARY INFORMATION: ARPO consists of two units, the Memorial unit, and Osotouy unit. Together they commemorate the human settlement near the confluence of the Arkansas and Mississippi Rivers and the events associated with the first European settlement in the lower Mississippi River Valley. This is accomplished by interpreting and fostering an appreciation of the interaction of all cultural groups, their histories, and their significance to the region. The purpose of the general management plan is to set forth the basic management philosophy for ARPO and to provide strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of the proposed action and two action alternatives for the future management direction of ARPO. A no action alternative is also evaluated. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the record a respondent's identify, 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 or organizations or businesses, available for public inspection in their entirety.

Dated: December 10, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 03–999 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for the Fort Davis National Historic Site; Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Fort Davis National Historic Site, Texas.

SUMMARY: Pursuant to § 102(2)(C)of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement, Fort Davis National Historic Site, Texas. On November 5, 2002, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on September 23, 2002. The following course of action will occur under the preferred alternative. The selected alternative provides an overall combination of actions to restore natural processes, preserve cultural resource values, reduce harmful environmental impacts and continue to provide opportunities for high quality visitor experiences based on resource values. With the exceptions described below, the current level of development and interpretation and the pattern of visitor use will be maintained. Alternative C quality will enhance visitor services and provide for the preservation and protection of cultural and natural resources. This alternative provides the balance and flexibility necessary to accomplish both of these objectives in a realistic manner. Change in the fort's outward appearance will be minimal. There will be no further major exterior restoration or modern development. Well-balanced preservation, resource protection, and interpretive programs would complement one another. Existing buildings, ruins, and foundations will undergo stabilization

and conservation measures so as to preserve their historical integrity. Broader interpretive themes highlighting the more complex role of Fort Davis in the history of the American West would complement existing interpretive programs. The interior of the post hospital will be partially restored and refurnished to more fully tell the story of Fort Davis and therefore provide the visitors with a more comprehensive learning experience. This restoration and refurnishing project would be dependent on partnerships resulting in private sector funding. The park will continue to encourage adjacent landowners to use their land in ways that complement park values, thereby promoting the natural and scenic character of the landscape.

This course of action and four alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings

FOR FURTHER INFORMATION CONTACT: Jerry Yarbrough, Fort Davis NHS, 1379, Lieutenant Flipper Dr., Fort Davis, TX 79734; 915–426–3225 (P), *Jerry_Yarbrough@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://planning.nps.gov/parkweb/what.cfm?RecordID=56*.

Dated: November 5, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–996 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Great Sand Dunes National Monument and Preserve, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the general management plan, Great Sand Dunes National Monument and Preserve.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement for the general management plan for Great Sand Dunes National Monument and Preserve. The Environmental Impact Statement will be approved by the Director, Intermountain Region.

Great Sand Dunes National Monument was established by President Herbert Hoover in 1932 ''for the preservation of the great sand dunes and additional features of scenic, scientific, and educational interest.'' The Great Sand Dunes National Park and Preserve Act of 2000 enlarged Great Sand Dunes National Monument from 39,000 acres to almost 150,000 acres to protect the entire Great Sand Dunes natural system. The name will change to Great Sand Dunes National Park and Preserve when sufficient lands are acquired within the new boundary. The legislation expanding the park identifies a variety additional features for long term protection, including ''geological, hydrological, paleontological, scenic, scientific, educational, wildlife, and recreational resources of the area.'' Land in and adjacent to the Great Sand Dunes is recognized for the ''culturally diverse nature of the historic settlement of the area, offering natural ecological, wildlife, cultural, scenic, paleontological, wilderness, and recreational resources.'' The law further notes that the ''preservation of this diversity of resources would ensure the perpetuation of the entire ecosystem for the enjoyment of future generations.'' The legislation directs establishment of the ''Great Sand Dunes National Park Advisory Council'' to ''advise the Secretary of the Interior with respect to the preparation and implementation of a management plan for the national park and preserve.''

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the monument over time. The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of laws and policies directing park management. Management decisions to be made where law, policy, or regulations do not provide clear guidance or limits will be based on the purposes of the monument, the range of public expectations and concerns, resource analysis, an evaluation of the natural, cultural, and social impacts of alternative courses of action, and consideration of long-term economic costs. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the monument in the future. Alternatives will be developed through this planning process and will include, at a minimum, no-action and the preferred alternative. Major issues include protection of natural and cultural resources; the adequacy of interpretive programs; wilderness suitability; potential partnerships with other agencies, organizations, and local interests; and land status within the new boundary.

DATES: The Park Service will accept comments from the public through April 16, 2003.

ADDRESSES: Information will be available for public review and comment in the office of the Superindent, Steve Chaney, Great Sand Dunes National Monument and Preserve, 11500 Hwy. 150, Mosca, CO 81146–9798; Tel: (719) 378–2312; (719) 378–2594; e-mail: *steve_chaney@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Steve Chaney, Great Sand Dunes National Monument and Preserve; Tel: (719) 378–2312; (719) 378–2594.

SUPPLEMENTARY INFORMATION: The National Park Service is planning to begin public scoping in January 2003 via a newsletter to state and federal agencies; associated American Indian tribes; neighboring communities; county commissioners; local organizations, researchers and institutions; the Congressional Delegation; and visitors who signed up to be on the mailing list. In addition, the National Park Service will hold public scoping meetings regarding the general management plan, beginning in January 2003. Specific dates, times, and locations will be announced in the local media and will also be available by contacting the Superintendent of Great Sand Dunes National Monument and Preserve. There will also be opportunities for input at Advisory Council meetings. There will be a web site for the general management plan. The purpose of the newsletter, public meetings, and web site is to explain the planning process and to obtain comments concerning appropriate resource management; desired visitor experience and use, and

facilities; as well as any other issues that need to be addressed. In addition to attending the scoping meetings, people wishing to provide input to this initial phase of developing the general management plan may address comments to the superintendent.

Dated: November 26, 2002.

Michael Snyder,

Deputy Director, Intermountain Region.

[FR Doc. 03–1004 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plans, and Final Environmental Impact Statements, Wupatki and Sunset Crater Volcano National Monuments, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement/ General Management Plans for Wupatki and Sunset Crater Volcano National Monuments.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of Final Environmental Impact Statement/ General Management Plans (FEIS/GMP) for both Wupatki and Sunset Crater Volcano National Monuments, Arizona.

DATES: The FEIS/GMPs were on public review from November 6, 2001 through January 7, 2002. Responses to public comment are addressed in the documents. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the FEIS/GMPs.

ADDRESSES: Copies of the FEIS/GMPs are available from Sam R. Henderson, Superintendent, Wupatki and Sunset Crater Volcano National Monuments, 6400 N. Highway 89, Flagstaff, Arizona, 86004. Public reading copies of the FEIS/GMPs will be available for review at the following locations:

Office of the Superintendent, 6400 N. Highway 89, Flagstaff, Arizona, 86004, Telephone: 928–526–1157.

Planning and Environmental Quality, Intermountain Support Office—Denver (room 20), National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2377.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Sam R. Henderson, Superintendent, Wupatki and Sunset Crater Volcano National Monuments, at the above address and telephone number.

Dated: December 12, 2002.

Michael Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–998 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mountain Lake Fisheries Management Plan North Cascades National Park Service Complex Whatcom, Skagit and Chelan Counties, WA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accord with § 102© of the National Environmental Policy Act of 1969 (42 U.S.C.4321, et seq.), the National Park Service is undertaking a conservation planning and environmental impact analysis process for mountain lake fisheries management in North Cascades National Park Service Complex, Washington. An Environmental Impact Statement will be prepared to provide a framework for a comprehensive Mountain Lake Fisheries Management Plan (MLFMP). The MLFMP will govern all future fisheries management actions, including stocking, for all natural lakes in North Cascades National Park, Lake Chelan National Recreation Area, and Ross Lake National Recreation Area.

Background: The National Park Service (NPS) manages North Cascades National Park, Lake Chelan National Recreation Area, and Ross Lake National Recreation Area collectively as the North Cascades National Park Service Complex (North Cascades). The rugged North Cascades landscape contains 240 natural mountain lakes, most of which were naturally fishless due to impassable topographic barriers. Far from barren, these lakes contained a rich array of native aquatic life including plankton, aquatic insects, frogs and salamanders.

Settlers began stocking Cascade lakes in the late 1800's with various species of exotic trout. By the 20th century, stocking was a routine management practice for the U.S. Forest Service and various counties. Upon its inception in 1933, the Washington Department of Game (WDG; now ''WDFW'') assumed responsibility for stocking mountain lakes throughout the state to create and maintain a recreational fishery. The State=s involvement grew largely out of the need to prevent haphazard stocking by individuals without biological expertise. With particular emphasis on systematic assessment of fish species and stocking rates, the WDG conducted the first high lakes fisheries research and developed many principles central to fisheries management today.

After North Cascades was established in 1968, a conflict over fish stocking gradually emerged between the NPS and WDFW. The conflict was driven by fundamental policy differences: NPS policies prohibited stocking to protect native ecosystems; WDFW policies encouraged stocking to enhance recreation. To reconcile the conflict and foster cooperative management, the NPS and WDFW entered into a Fisheries Management Agreement in 1988 with the purpose of Aestablishing a mutually agreed to list of lakes within the boundaries of North Cascades National Park which the department [would] stock with fish as part of its fish management program.'' The agreement defined 40 specific lakes for stocking and specified that Aresearch results [would] be considered in future decisions'.

Shortly thereafter, the NPS initiated a long-term research effort through Oregon State University to evaluate the effects of fish stocking on native biota in mountain lakes. An independent peer review panel of subject matter experts was established to evaluate research results and to ensure objectivity and scientific merit. The final phase of this research effort was completed in July, 2002. With respect to the subject proposal, key conclusions include: (1) Lakes with reproducing trout populations had significantly fewer salamanders and zooplankton than fishless lakes; (2) There was no significant difference in salamander or zooplankton abundance between fishless lakes and lakes with non reproducing (*i.e.* stocked) fish; (3) Native biota (*e.g.* salamanders, zooplankton) appeared to be at greatest risk in lakes with (a) relatively high nitrogen concentrations, (b) relatively warm water and 8 reproducing trout populations (indicative of relatively high fish densities). These criteria were found in six of the 83 lakes studied. A complete account of the research and results can be viewed on the EIS Web site *www.nps.gov/noca/highlakes.htm*.

Preliminary Information: As noted, the purpose of the EIS effort is to develop a new management plan for natural mountain lakes that conserves native biological integrity and provides a spectrum of recreational opportunities and visitor experiences, including sport

fishing. The EIS\MLFMP is needed because current management strategies and biological conditions are inconsistent with NPS policies. The EIS\MLFMP will also fulfill the adaptive management intent of the 1988 Fisheries Management Agreement, which committed that results of ecological research would be used to guide future management decisions.

Issues identified to date, which should be addressed, in preparing the EIS\MLFMP include:

Predation. Exotic trout have measurably changed the composition and abundance of native aquatic organisms through predation in some lakes.

Low quality-fishing experience. Lakes with reproducing populations are often overpopulated with small fish.

Hybridization. In certain lakes exotic trout are escaping downstream and interbreeding with native trout. This could potentially harm bull trout (federally threatened).

Trampling. Shorelines around lakes are sensitive to trampling, and anglers have been documented to cause up to three times more impacts to vegetation.

Restoration effects. Removing introduced fish using nets, chemicals, or predator controls could impact the environment and the visitor experience.

Impacts to Users. A major reduction in fish stocking could have a negative effect on many anglers; many wilderness advocates strongly oppose stocking in wilderness areas.

Unsanctioned Stocking. In the absence of biologically based stocking, unsanctioned stocking could again become a problem.

The preliminary options identified, so far, which should be considered in developing a reasonable range of alternatives to be addressed in the EIS\MLFMP include:

- No Action (continue existing management);
- Modify stocking cycles by applying the latest research results;
- Restore lakes using physical or chemical methods to eliminate fish;
- Regulate stocking methods (*e.g.* volunteer stocking, aerial stocking, stock sterile fish);
- Establish certain lakes where recreational fishing would be promoted over other uses;
- Allow lakes to become fishless on a cyclical basis to recover native biota.

Scoping and Comment Process: As a key step in this conservation planning and environmental impact analysis process, the NPS is seeking public comments and information to guide the initial preparation of the EIS\MLFMP. The objectives of this effort include: participation from individuals, federal, tribal, state, and local governments, and other interested groups or organizations; develop a reasonable range of management alternatives; identify environmental and socioeconomic issues which warrant detailed environmental impact analysis; and eliminate any issues or topics that do not require detailed analysis. All written comments must be postmarked or transmitted no later than March 1, 2003. Responses should be submitted to North Cascades National Park Service Complex, ATTN: Mountain Lake EIS, 810 State Route 20, Sedro-Woolley, WA 98284 (and copies may also be sent via e-mail to *NOCA_planning@nps.gov;* please include ''Fisheries EIS'' in the subject header). Current information will be maintained on the park's EIS Web site: *http://www.nps.gov/noca/highlakes.htm.* In addition, several public scoping meetings are anticipated to be held early in 2003. These meetings will be announced widely in local and regional news media, via direct park mailings, and posted on the park's website.

All interested parties are encouraged to submit written comments, all of which will become part of the public record. If respondents request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and anonymous comments may not be considered.

Decision: The draft EIS is expected to be available for public review in summer 2003; the final EIS is anticipated to be issued in winter 2004. Formal announcements of availability will be published in the **Federal Register**, along via local and regional news media. The responsibility for approving the EIS has been delegated to the National Park Service, and the official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the MLFMP is the Superintendent, North Cascades National Park Service Complex.

Dated: November 1, 2002.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–1002 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Interagency Regional Trail Management Plan; Santa Monica Mountains National Recreation Area Los Angeles and Ventura Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

Summary: In accord with § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), the National Park Service is initiating the conservation planning and environmental impact analysis process for an interagency regional trail management plan (TMP) for the Santa Monica Mountains National Recreation Area. The TMP will serve as a ''blueprint'' establishing the overall direction of future development and management of the trail network over the next ten to fifteen years. Based on desired conditions to be identified for park natural, cultural and recreational resources, the TMP will prescribe policies to streamline interagency management of the trail network throughout the national recreation area, and will also include a trail policy map depicting the planned trail network. The TMP could potentially result in a program modifying current trail policies, recreational use patterns, and future trail openings and closures.

The National Park Service has invited the California Department of Parks and Recreation and the Santa Monica Mountains Conservancy (SMMC) to be cooperators in the preparation of the TMP. Following publication of this notice to prepare an Environmental Impact Statement (EIS), the state of California will issue a notice of preparation initiating a complementary Environmental Impact Report (EIR). The official responsible for the EIR will be Ruth Coleman, Acting Director, California Department of Parks and Recreation (CDPR).

Background: The Santa Monica Mountains National Recreation Area (NRA) encompasses 150,050 acres, with approximately 71,300 acres of public parkland and the rest in private or other government ownership. Within the NRA there is a 320-mile public trail network made up of trails and dirt service roads. The greater Santa Monica Mountains trail network adjacent to the NRA

features over 80 additional miles of public trails, several of which are linked to the NRA network. Public lands and trails in the NRA are managed by federal, state and local agencies with varying management policies. Additionally, much of the trail network consists of utility and old ranch roads that were inherited with the land and are not necessarily constructed to public trail management standards. After almost 25 years of continuous land acquisition, the public trail network has grown significantly, and several trails now cross-parkland jurisdictional boundaries. There is the need to formulate an interagency regional trail plan to compile trail management policies to facilitate a seamless recreational experience for trail users and to prepare a vision for the final trail network and future development of trail-related facilities, ranging from trail network signs to backcountry trail camps.

Alternatives: In cooperating to prepare a regional trails plan, the NPS, CDPR and SMMC will jointly identify and analyze several alternative trail network designs, consistent with agency policies. At this time, it is anticipated that alternatives to be compared and analyzed will include ''No Action'' (maintaining existing conditions and management), a ''Preferred'' alternative, and several other options for contrasting recreational use patterns. The TMP EIS/EIR will evaluate the potential environmental impacts of the alternatives, and identify suitable mitigation strategies. An ''environmentally preferred'' alternative will be identified, and any potential impairments to national park values will also be disclosed. The alternatives will be based on input from the community, an environmental constraints analysis using current environmental condition information, trail network maintenance costs, and several visitor recreational use surveys conducted in the national recreation area.

Issues: The draft TMP EIS/EIR will address environmental and social impacts associated with the national recreation area's trail network. Environmental issues will include, but not be limited to, trail and/or trailhead adjacency to sensitive plant and animal species' habitats; adjacency to cultural and archaeological resource sites; trail erosion and impacts on water resources; soils and geology impacts from trail presence and new trail construction; back country camp impacts including fire hazard potential. Social impacts will include, but not be limited to, allowable uses and user conflicts on trails; trail network public access; trail network compliance with Americans with Disabilities Act requirements; proposed trail and trailhead construction; trail network management and operation guidelines; and trail network signs.

Public Involvement: The NPS will conduct a conservation planning and environmental impact analysis for the proposed interagency regional TMP. Written comments that identify concerns and issues, provide essential environmental information, and suggest reasonable design alternatives are desired in initiating the TMP EIS/EIR process. All respondents will later have an opportunity to review the draft TMP EIS/EIR and submit additional comments.

Public scoping for a interagency trail plan began with the Santa Monica Mountains Area Recreational Trails (SMMART) project that culminated in the 1997 SMMART Report. The SMMART Report is available for review at *http://www.nps.gov/samo/trails.* The SMMART Report contains the public's recommendations regarding missing links in the trail network, back country camps along the regional Backbone Trail, trail network sign guidelines, multiple use trail guidelines, and trail system design. The report also identified priority coordination issues, including interagency cooperation, volunteer commitment, and multi-agency trail crew and equipment sharing. In addition, all information on trail-related issues previously received during public comment regarding the Santa Monica Mountains National Recreation Area General Management Plan/EIS will also be considered in preparing the draft TMP EIS/EIR.

Any new issues or concerns, or information relevant to TMP process, are requested at this time. All such written comments must be postmarked or transmitted not later than 45 days following the publication of this Notice in the **Federal Register**. As soon as this date has been determined, it will be posted on the project Web site and included in direct mailings. Comments should be addressed to the Superintendent, Santa Monica Mountains National Recreation Area, Attn: *Interagency Regional Trail Management Plan,* 401 W. Hillcrest Drive, Thousand Oaks, CA 91360. Comments may be faxed to (805) 370–1850, or e-mailed to *SMMNRATrails@nps.gov.*

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Future Information: Updated information about this conservation planning and environmental impact analysis process will be distributed via mailings, regional and local news media, and the park's webpage (*http://www.nps.gov/samo/trails*). Responses to this Notice will be used to update the mailing list of people interested in receiving future information as the environmental documents are developed. Please notify the National Park Service by mail, e-mail, or fax at the appropriate number to request placement on the mailing list. For all types of requests please be sure to include your mailing address.

Decision Process: Availability of the draft TMP EIS/EIR for review and written comment will be officially announced by Notice of Availability in the **Federal Register**, as well as through local and regional news media, the above listed Web site, and direct mailing. At this time the draft TMP EIS/EIR is anticipated to be distributed in fall, 2003. After due consideration of all comments on the draft TMP EIS/EIR, a final TMP EIS/EIR would be prepared which at this time is anticipated could be completed by July, 2004. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: December 2, 2002.

Holly Bundock,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–1003 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Boston Harbor Islands Advisory Council will hold its annual meeting on Wednesday,

March 4, 2003. The meeting will convene at 6 p.m. at the Children's Museum, 300 Congress Street, 5th Floor, Boston, MA.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands national park area.

The Agenda for this meeting is as follows:

1. Call to Order, Introductions of Advisory Council members present
2. Review and Approval of Minutes from past meetings
3. Guest Speaker
4. Update on Outreach Program
5. Nomination for Advisory Council Seats
6. Election of Officers
7. Public Comment
8. Next Meeting
9. Adjourn

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Avenue, Boston, MA, 02110, telephone (617) 223–8667.

Dated: November 4, 2002.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 03–1000 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Fortieth Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 24, 2003.

The Commission was reestablished pursuant to Pub. L. 87–126 as amended by Pub. L. 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (November 22, 2002)
3. Reports of Officers
4. Reports of Subcommittees
   Dune Shack Subcommittee
   Nickerson Fellowship Subcommittee
5. Superintendent's Report
   Marconi Event
   Salt Pond Visitor Center
   News from Washington
6. Old Business
   Invasive Species
7. New Business
   Water Supply Issues
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Due to a delay in this notice being delivered to National Park Service staff during the holiday season, the notice could not be published at least 15 days prior to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of committee members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the committee's actions. Since the proposed meeting dates have received widespread publicity in area news media and among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15 days advance notice in the **Federal Register**.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: January 8, 2003.

A. Durand Jones,

Deputy Director, National Park Service.

[FR Doc. 03–994 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chalmette Battlefield Task Force Committee Meeting

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve, Interior.

ACTION: Notice of task force meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, Section 10(a)(2), that a meeting of the Chalmette Battlefield Task Force Committee will be held at 4 p.m. at the following location and date:

DATES: Wednesday, January 29, 2003.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8245 W. Judge Perez Drive in Chalmette, LA 70042.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108.

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, chairperson, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Mr. Michael L. Fraering, Colonel John F. Pugh, Jr., and Geraldine Smith.

The matters to be discussed at this meeting include the purpose of the committee, background and history of the area, appointment of a vice-chairperson and scheduling future meetings. This meeting will be open to the public, however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the

superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection at 419 Decatur Street, New Orleans, Louisiana approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm*.

Dated: December 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–993 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 10 a.m. on Friday, February 7, 2003, a park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland.

The Commission was established by *Pub. L. 91–664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. Terry W. Hepburn
Ms. Elise B. Heinz
Ms. JoAnn M. Spevacek
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mr. Rockwood H. Foster
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Mrs. Sue Ann Sullivan
Brother James Kirkpatrick

Topics that will be presented during the meeting include:

1. Status of the draft Land Protection Plan
2. Major construction/development projects
3. Historic Leasing Program
4. Duke Power Company right-of-way easement application
5. Mecklenburg Warehouse planning project
6. Western Maryland Railroad right-of-way planning study
7. Business Plan

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Douglas D. Faris, Superintendent, C&O Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at park headquarters, Hagerstown, Maryland.

Dated: November 26, 2002.

Douglas Faris,

Superintendent, C&O Canal National Historical Park.

[FR Doc. 03–1001 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836. Written or faxed comments should be submitted by January 31, 2003.

Beth Savage,

Acting Keeper of the National Register of Historic Places.

CONNECTICUT

Fairfield County

Downtown Stamford Historic District (Boundary Increase 2), Roughly along Bedford St., Stamford, 02001744.

GEORGIA

Appling County

Bank Surrency, 80 Hart St., Surrency, 02001742.

NORTH CAROLINA

Halifax County

Scotland Neck Historic District, Roughly bounded by Church, Bryan, Cherry, Roanoke, and Fifth and Eighteenth Sts., Scotland Neck, 02001743.

PENNSYLVANIA

Montgomery County

Globe Knitting Mills, 660 and 694 E. Main St., Norristown, 02001745.

Milmoral

1150 Church Rd., Wyncote, Cheltenham, 02001746.

A request for Removal has been made for the following resources:

ARKANSAS

Ashley County

Wiggins Cabin, City Park, Crossett, 82002093.

Jefferson County

Austin House, (Thompson, Charles L., Design Collection TR), 704 W. 5th Ave., Pine Bluff, 82000842.

Phillips County

Short-Deisch House, 409 Biscoe St., Helena, 74000490.

Pulaski County

Bechle House, 1004 E. 9th St., Little Rock, 79000449.

IOWA

Webster County

Illinois Central Passenger Depot-Fort Dodge, (Advent and Development of Railroads in Iowa MPS), Jct. Of Fourth St., and Fourth Ave., S., Fort Dodge, 90001307.

[FR Doc. 03–989 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 28, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836.

Written or faxed comments should be submitted by January 31, 2003.

Patrick Andrus,

Acting Keeper of the National Register of Historic Places.

CALIFORNIA

San Diego County

Canfield—Wright House, 420 Avenida Primavera, Del Mar, 02001747.

GEORGIA

Muscogee County

Hillcrest—Wildwood Circle Historic District, Roughly bounded by Wildwood Ave., 13th and 17th Sts., and Dixon Dr., Columbus, 02001748.

ILLINOIS

Adams County

Lewis Round Barn, 2007 E 1250th St., Mendon, 02001750.

Champaign County

Women's Gymnasium, University of Illinois at Urbana-Champaign, (University of Illinois Buildings designed by Charles A. Platt MPS), 906 S Goodwin Ave., Urbana, 02001751.

Women's Residence Hall—West Residence Hall, University of Illinois at Urbana-Champaign, (University of Illinois Buildings designed by Charles A. Platt MPS), 1111W Nevada St., Urbana, 02001752.

Clark County

First Congregational Church, 202 N 6th St., Marshall, 02001753.

Henry County

West Water Tower and Ground Storage Tank, 310 11th Ave., Orion, 02001754.

Lake County

Griffith, John, Store Building, 103–113 E Scranton Ave., Lake Bluff, 02001755.

Rock Island County

Deere, John, House, 1217 11th Ave., Moline, 02001756.

Schuyler County

White Oak Hall, SE corner Jct. of White Oak and Lower Beardstown Rds., Rushville, 02001757.

Union County

St. Anne's Episcopal Church, 507 S Main St., Anna, 02001758.

Union Lookout, 3/4 mi. S of Jct. Co. Rd. 13 and Trail of Tears State Forest Rd., Jonesboro, 02001759.

Will County

Scutt, Hiram B., Mansion, 206 N Broadway, Joliet, 02001760.

MASSACHUSETTS

Middlesex County

Middlesex Fells Reservation Parkways, (Metropolitan Park System of Greater Boston MPS), E Border Rd., Fellsway E, Fellsway W, Hillcrest Pky., South St., Pond St., S Border Rd., Ravine Rd., and Woodland Rd., Malden, 02001749.

SOUTH CAROLINA

Berkeley County

Cooper River Historic District, (Cooper River MPS), Along the E and W branches of the Cooper R., Moncks Corner, 02001761.

SOUTH DAKOTA

Charles Mix County

Jacobson School, (Schools in South Dakota MPS), 289th St., Armour, 02001762.

Jerauld County

Will, H.P., House, 214 Alene Ave. N, Wessington Springs, 02001763.

Lawrence County

St. Lawrence O'Toole Catholic Church, 618 Main, Central City, 02001764.

Lincoln County

Anderson, Dr. Andrew, House, 416 E 2nd St., Canton, 02001765.

Minnehaha County

Farley-Loetscher Company Building I, 322 and 324 E 8th St., Sioux Falls, 02001766.

McKennan Park Historic Increase (Boundary Increase), Roughly bounded by 1st Ave. S, Phillips Ave., 24th St. E, and 26th St., Sioux Falls, 02001767.

Pennington County

Burlington and Quincy High Line Hill City to Keystone Branch, Along RR right of way from 222 Railroad Ave to Keystone Depot, Hill City, 02001768.

[FR Doc. 03–990 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 04, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836.

Written or faxed comments should be submitted by January 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Middough Brothers—Insurance Exchange Building, 205 E. Broadway, Long Beach, 03000002.

COLORADO

Denver County

Robinson House, 3435 Albion St., Denver, 03000003.

FLORIDA

Hendry County

Caldwell Home Place, 160 Curry St., LaBelle, 03000009.

Jackson County

St. Luke Baptist Church, 4476 E. Jackson St., Marianna, 03000008.

Nassau County

Amelia Island Lighthouse, (Florida's Historic Lighthouses MPS), 215½ Lighthouse Circle, Fernandina Beach, 03000004.

Pinellas County

Jungle Prada Site, Address Restricted, St. Petersburg, 03000007.

Polk County

Oak Hill Cemetery, (Bartow MPS), West Parker St., Bartow, 03000006.

Volusia County

French, Seth, House, 319 E. French Ave., Orange City, 03000005.

MAINE

Aroostook County

St. John Catholic Church, St. John Rd., St. John Plantation, 03000017.

Hancock County

Agassiz Bedrock Outcrop, 406 State St., Ellsworth, 03000014.

East Blue Hill Post Office, 13 Curtis Cove Rd., East Blue Hill, 03000016.

Nazi Spy Landing Site, West shore of Crabtree Neck at Sunset Ledge Cove, Hancock Point, 03000015.

Waldo County

Frankfort Dam, S of jct. of ME 1A and North Branch of Marsh Stream, Frankfort, 03000018.

MISSOURI

Jackson County

Kansas City, Missouri Western Union Telegraph Building, 100–114 E. 7th St., Kansas City, 03000010.

NEW JERSEY

Cape May County

TBM–3E ''Avenger'' Torpedo Bomber Warplane, 500 Forrestal Rd., Cape May Airport, Lower Township, 03000019.

Whilldin—Miller House, 416 S. Broadway, Borough of West Cape May, 03000012.

Essex County

Weequahic Park Historic District, Roughly bounded by Meeker Ave., Dayton St., the Union County border and Maple Ave., Newark, 03000013.

Morris County

Pruddentown Historic District, Mount Kemble Ave., Morris Township, 03000011.

NEW YORK

Albany County

Mendelson, A., and Son Company Building, 40 Broadway, Albany, 03000021.

Columbia County

Blinn—Pulver Farmhouse, 219 Hudson Ave., Chatham, 03000025.

Dutchess County

Kimlin Cider Mill, Cedar Ave., Poughkeepsie, 03000020.

Greene County

Layman, Frank D., Memorial, Near Kaaterskill Falls, Hunter, 03000022.

Onteora Park Historic District, Onteora Club Property, Hunter, 03000023.

St. Lawrence County

Bayside Cemetery and Gatehouse Complex, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 115 Clarkson Ave., Potsdam, 03000026.

Brown, Luke, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 831 NY 72, Parishville, 03000030.

Clarkson Office Building, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 17 Maple St., Potsdam, 03000031.

St. Lawrence County

Parmeter, Nathaniel, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 498 NY 59, Potsdam, 03000027.

Trinity Episcopal Church, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 38 Maple St., Potsdam, 03000032.

Wallace, Jonathan, House, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 99 Market St., Potsdam, 03000028.

Zion Episcopal Church and Rectory, (Red Potsdam Sandstone Resources Taken from Raquette River Quarries MPS), 91 and 95 Main St., Colton, 03000029.

OREGON

Coos County

Marshfield's South Fifth Street Historic District, Roughly 900, 800, 700 blks of S. Fifth St., also portions of Hall, Ingersoll and Johnson Aves., Coos Bay, 03000034.

PENNSYLVANIA

Butler County

Saxonburg Historic District, Portions of E. and W. Main, N. and S. Rebecca, N. and S. Isabella, Pittsburgh, Butler, and State Sts., Saxonburg, 03000035.

Fayette County

Uniontown Downtown Historic District (Boundary Increase), 18 S. Beeson Blvd. and 9 E. Peter St., Uniontown, 03000036.

[FR Doc. 03–991 Filed 1–15–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–986 and 987 (Final)]

Ferrovanadium From China and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and South Africa for ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 26, 2001, following receipt of a petition filed with the Commission and Commerce by The Ferroalloys Association Vanadium Committee and its following members: Bear Metallurgical Co., Butler, PA; Shieldalloy Metallurgical Corp., Cambridge, OH; Gulf Chemical & Metallurgical Corp., Freeport, TX; U.S. Vanadium Corp., Danbury, CT; and CS Metals of Louisiana, Convent, LA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of ferrovanadium from China and South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673(b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 29, 2002 (67 FR 49035). The hearing was held in Washington, DC, on November 22, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 13, 2003. The views of the Commission are contained in USITC Publication 3570 (January 2003), entitled Ferrovanadium from China and South Africa: Investigations Nos. 731–TA–986 and 987 (Final).

By order of the Commission.

Issued: January 13, 2003.

Marilyn R. Abbott,

Secretary of the Commission.

[FR Doc. 03–946 Filed 1–15–03; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on December 30, 2002, a proposed consent decree in *United States* v. *Joseph DeLuca*, Civil Action No. CA02–546T, was lodged with the United States District Court for the District of Rhode Island.

The consent decree settles claims against Joseph DeLuca as owner of twelve residential apartment buildings in Providence, Rhode Island, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in its complaint that the defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, the defendant has agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States an administrative penalty in the amount of $13,090.00. The defendant owns 12 buildings with 32 residential units.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Joseph DeLuca*, D.J. # 90–5–1–1–07649.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard, Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903; and at U.S. EPA Region 1, One Congress Street, Boston, MA 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044, or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the U.S. Treasury.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–899 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that on January 8, 2003, three proposed consent decrees in the case captioned *Dow Chemical Co., et al.* v. *Acme Wrecking Co., Inc., et al.,* Civil Action Nos. C–1–97–0307, C–1–97–0308, and C–1–01–439–(S.D. Ohio), were lodged with the United States District Court for the Southern District of Ohio. The proposed, *de minimis* consent decrees relate to the Skinner Landfill Superfund Site (''Site'') in West Chester, Ohio. The proposed consent decrees would resolve civil claims of the United States for response actions and for the recovery of response costs at the Site under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9606, 9607(a), against Aeronca, Inc. (''Aeronca''), Martin E. Clarke, Clarke Sanitary Landfill, Clarke Container, Inc., Clarke's Incinerators, Inc. (the ''Martin Clarke Entities''), Richard M. Clarke, Clarke's Complete Collection, Dick Clarke Co., Dick Clarke Trash Removal and Demolition, Clarke's Services, Inc., and Clarke, Inc. (the ''Dick Clarke Entities'') (collectively ''Settling Defendants''). Under the proposed consent decree with Aeronca, Aeronca would pay the United States $232,500 and would pay the parties that are performing the work at the Site (the ''Skinner Landfill Site Group'') $232,500. Under the proposed consent decree with the Martin Clarke Entities, the Martin Clarke Entities would pay the United States $88,000 and would pay the Skinner Landfill Site Group $88,000. Under the proposed consent decree with the Dick Clarke Entities, the Dick Clarke Entities would pay the United States $100,500, and would pay the Skinner Landfill Site Group $25,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *Dow Chemical Co. et al.* v. *Acme Wrecking Co., Inc. et al.,* Civil Action Nos. C–1–97–0307, C–1–97–0308, and C–1–01–439 (S.D. Ohio), and DOJ Reference No. 90–11–3–1620/2.

The proposed consent decrees may be examined at: (1) The Office of the United States Attorney for the Southern District of Ohio, 221 E. Fourth St., Suite 400, Cincinnati, Ohio 45202 and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the proposed consent decrees may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies, please refer to the above-referenced case and DOJ Reference Number and enclose a check for $9.50 (38 pages at 25 cents per page reproduction cost) for the Consent Decree with Aeronca, $9.00 (36 pages) for the Consent Decree with the Martin Clarke Entities, and/or $8.50 (34 pages) for the Consent Decree with the Dick Clarke Entities, made payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–897 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 20, 2002, a proposed Consent Decree (''Decree'') in *United States* v. *Rhode Island Resource Recovery Corporation*, Civil Action No. 02–540ML was lodged with the United States District Court for the District of Rhode Island.

In this action the United States sought injunctive relief and a civil penalty from the defendant, Rhode Island Resource Recovery Corporation (''RIRRC''), for violations of the Clean Air Act at the Central Landfill in Johnston, Rhode Island. The Decree provides that RIRRC shall pay a civil penalty of $321,000. Moreover, the Decree requires the defendant to preform injunctive relief estimated to cost upwards of $3.5 million, and undertake a supplemental environmental project (''SEP'') with a total SEP cost to RIRRC of at least $1.8 million. The SEP includes, *inter alia*, the termination of waste acceptance operations at Phases II and III of the landfill by July 2003, the capping of Phases I, II, and III by 2006, and the accelerated capping of portions of Phases II and III by the end of 2003.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Rhode Island Resource Recovery Corporation*, D.J. Ref. 90–5–2–1–07164.

The Decree may be examined at the Office of the United States Attorney, District of Rhode Island, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903, (401) 528–5477 and at U.S. EPA Region I, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114, (617) 918–2001. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia

Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $65.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–895 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed consent decree in *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less, Located at 10 Brewster Street, Bridgeport, Connecticut,* No. 302–CV–2256–CFD was lodged with the United States District Court for the District of Connecticut on December 19, 2002 (the ''Consent Decree''). The Consent Decree will resolve the liability of the Estate of Joseph Savage (''the Estate'') to the United States, on behalf of the United States Environmental Protection Agency, under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607, for the recovery of costs incurred by the United States in connection with the Black Rock Shipyard Superfund Site (''the Site''), located at 10 Brewster Street, Bridgeport, Connecticut. The Consent Decree requires the Estate to use its best efforts to sell the property comprising the Site, which is property of the Estate, and to pay the proceeds of such EPA-approved sale to reimburse the United States for its past costs incurred at the Site, which are secured by a statutory lien on the Site property pursuant to section 107(*l*) of CERCLA, 42 U.S.C. 9607(*l*).

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and/or, to ensure timely delivery, via overnight delivery to Chief, Environmental Enforcement Section, 1425 New York Av. NW, 13th Fl., Washington, DC 20005. Each communication should refer on its face to *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less,* DOJ Ref. # 90–11–3–07373.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Connecticut, 157 Church St., 23rd Fl., New Haven, Connecticut 06510 (contact Assistant U.S. Attorney John Hughes), and the Region 1 Office of the Environmental Protection Agency, 1 Congress St., Suite 1100, Boston, Massachusetts 02114 (contact Senior Enforcement Counsel Lloyd Selbst). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to *United States* versus *Estate of Joseph Savage and Four Acres of Land, More or Less,* DOJ Ref. # 90–11–3–07373 and enclose a check in the amount of $3.75 (15 pages @ 25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–896 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* c. *Wilcox,* Civil Action No. 4:99CV00806 WRW (E.D. Ark.), was lodged with the United States District Court for the Eastern District of Arkansas on December 18, 2002.

The proposed consent decree would resolve the United States' allegations in the above-referenced enforcement action that Defendants violated sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully discharging pollutants into waters of the United States at four separate sites in Pulaski County, Arkansas.

The proposed consent decree would require Defendants to: (1) Pay a $100,000 civil penalty; (2) restore approximately 50 acres of wetlands; and (3) provide approximately 55 acres of mitigation.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environment Defense Section, PO Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Wilcox,* DJ Reference No. 90–5–1–4–05291.

The proposed consent decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Arkansas, 600 W. Capitol Ave., Suite 402, Littl Rock Arkansas.

Mary F. Edgar

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 03–898 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2643–2003]

Registration of Certain Nonimmigrant Aliens from Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before March 28, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States after March 28, 2003. The specific requirements are set forth in the Notice. This Notice is applicable to certain nationals and citizens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who entered the United States on or before September 30, 2002, and who will remain in the United States after March 28, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service between February 24, 2003, and March 28, 2003, inclusive.

EFFECTIVE DATES: This Notice is effective on February 24, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Section 265(b) of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may ''prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence.''

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System (''NSEERS''). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination. Under this Notice certain nationals or citizens of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait are required to appear at an Immigration and Naturalization Service (''Service'') office to register under NSEERS and provide additional information. Previous notices currently in effect have applied to certain nonimmigrant nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. See 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002); 67 FR 77642 (Dec. 18, 2002).

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Service and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain after March 28, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that an alien who has an application for asylum pending on the date of publication of this Notice has already provided sufficient information in the application for asylum, along with fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within NSEERS by registration under this Notice, an alien described in paragraph (a) of this Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). See 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). See 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before February 24, 1987;

(2) Is a national or citizen of Bangladesh, Egypt, Indonesia, Jordan, or Kuwait who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States after March 28, 2003.

(b) *Dual citizens.* This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, between February 24, 2003, and March 28, 2003, inclusive, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall

appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has an application for asylum pending on January 16, 2003, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: January 9, 2003.

John Ashcroft,

Attorney General.

Appendix

Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of January 16, 2003

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004
Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907
Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
California—Fresno, 865 Fulton Mall, Fresno, California 93721
California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
California—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410
California—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101
California—San Francisco, 444 Washington Street, San Francisco, California 94111
California—San Jose, 1887 Monterey Road, San Jose, California 95112
California—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
Colorado—Denver, 4730 Paris Street, Denver, CO 80239
Connecticut—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
Florida—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
Florida—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
Florida—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827
Florida—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
Florida—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401
Georgia—Atlanta, 77 Forsyth Street, SW, Atlanta, Georgia 30303
Guam—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910
Hawaii—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813
Idaho—Boise, 1185 South Vinnell Way, Boise, Idaho 83709
Illinois—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604
Indiana—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204
Iowa—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309
Kansas—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212
Kentucky—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202
Louisiana—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113
Maine—Portland 176 Gannet Drive, South Portland, Maine 04106
Maryland—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201
Massachusetts—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203
Michigan—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381
Minnesota—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425
Missouri—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153
Missouri—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103
Montana—Helena, 2800 Skyway Drive, Helena, Montana 59601
Nebraska—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144
Nevada—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739
Nevada—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902
New Hampshire—Manchester, 803 Canal Street, Manchester, New Hampshire 03101
New Jersey—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003
New Jersey—Newark, 970 Broad Street, Newark, New Jersey 07102
New Mexico—Albuquerque, 1720 Randolph Road SE, Albuquerque, New Mexico 87106
New York—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110
New York—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202
New York—New York City, 26 Federal Plaza, New York, New York 10278
North Carolina—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217
Ohio—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202
Ohio—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199
Ohio—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215
Oklahoma—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108
Oregon—Portland, 511 Northwest Broadway, Portland, Oregon 97209
Pennsylvania—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130
Pennsylvania-Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222
Puerto Rico, San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968
Rhode Island—Providence, 200 Dyer Street, Providence, Rhode Island 02903
St. Croix—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U. S. Virgin Islands 00820
St. Thomas—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U. S. Virgin Islands 00802
South Carolina—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401
South Carolina—Greer, 142–D West Philips Road, Greer, South Carolina 29650
Tennessee—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134
Texas—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247
Texas—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925
Texas—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667
Texas—Houston, 126 Northpoint Drive, Houston, Texas 77060
Texas—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239
Utah—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123
Vermont—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478
Virginia—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513
Washington, DC, 4420 North Fairfax Drive, Arlington, Virginia 22203
Washington—Seattle, 815 Airport Way, South, Seattle, Washington 98134
Washington—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201
Washington—Yakima, 417 E. Chestnut, Yakima, Washington 98901
West Virginia—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302
Wisconsin—Milwaukee, 310 East Knapp

Street, Milwaukee, Wisconsin 53202

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/.*

[FR Doc. 03–879 Filed 1–15–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2645–2003]

Permission for Certain Nonimmigrant Aliens From Designated Countries To Register in a Timely Fashion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice reopens the registration periods noticed in the **Federal Register** on November 6, 2002, 67 FR 67766, and November 22, 2002, 67 FR 70526, to permit citizens or nationals of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen who were required to register under those notices but did not do so, to appear before, register with, and provide requested information to the Immigration and Naturalization Service between January 27, 2003, and February 7, 2003. Registration during this period shall be considered timely under the original notices.

EFFECTIVE DATES: This notice is effective on January 27, 2003. Aliens described in this notice may register and provide additional information to the Immigration and Naturalization Service on or before February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon 10 days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may ''prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence.''

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System (''NSEERS''). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General required certain nonimmigrant aliens who are nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen to register and provide specific information to the Immigration and Naturalization Service. See 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002) (the ''Groups I and II Notices'').

Subsequent events have indicated that some number of individuals affected by the Groups I and II Notices remained unaware of the requirements of the notices, despite the publication of the notices in the **Federal Register** and the efforts of the Department to publicize the requirements. As an act of grace, and as an act that is entirely within the Attorney General's discretion, the Attorney General has decided to permit those individuals who were required to register under the Groups I and II Notices but who did not do so, an additional opportunity to register and provide information in a timely fashion. This exercise of discretion does not apply to an alien who was not covered by the Groups I and II Notices. Given the publication of multiple notices relating to other countries issued subsequent to the Groups I and II Notices, and the attendant publicity about NSEERS, aliens who are covered by other notices are not being, and should not expect to be, afforded an additional opportunity to comply with the requirements of the relevant notice.

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act (''Act''), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), and as a matter of discretion only, I hereby order that a national or citizen of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, or Yemen, who was required to register and provide information to the Immigration and Naturalization Service pursuant to the notices published in the **Federal Register** at 67 FR 67766 on November 6, 2002, and at 67 FR 70526 on November 22, 2002, and who did not do so, may do so between January 27, 2003, and February 7, 2003, inclusive, and that such registration will be considered to have been made in a timely fashion.

Dated: January 14, 2003.

John Ashcroft,

Attorney General.

Appendix: Immigration and Naturalization Service, Offices for Registration of Certain Nonimmigrants Pursuant to Notice of January 16, 2003

Alaska—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501.
Arizona—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004.
Arizona—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907.
Arkansas—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903.
California—Fresno, 865 Fulton Mall, Fresno, California 93721.
California—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012.
California—Sacramento, 650 Capitol Mall, Sacramento, CA 95814.
California—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410.
California—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101.
California—San Francisco, 444 Washington Street, San Francisco, California 94111.
California—San Jose, 1887 Monterey Road, San Jose, California 95112.
California—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701.
Colorado—Denver, 4730 Paris Street, Denver, CO 80239.
Connecticut—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103.
Florida—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216.
Florida—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138.
Florida—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827.
Florida—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708.
Florida—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401.
Georgia—Atlanta, 77 Forsyth Street, SW., Atlanta, Georgia 30303.
Guam—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910.
Hawaii—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813.
Idaho—Boise, 1185 South Vinnell Way, Boise, Idaho 83709.
Illinois—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604.

Indiana—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204.
Iowa—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309.
Kansas—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212.
Kentucky—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202.
Louisiana—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113.
Maine—Portland, 176 Gannet Drive, South Portland, Maine 04106.
Maryland—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201.
Massachusetts—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203.
Michigan—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381.
Minnesota—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425.
Missouri—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153.
Missouri—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103.
Montana—Helena, 2800 Skyway Drive, Helena, Montana 59601.
Nebraska—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144.
Nevada—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739.
Nevada—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902.
New Hampshire—Manchester, 803 Canal Street, Manchester, New Hampshire 03101.
New Jersey—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003.
New Jersey—Newark, 970 Broad Street, Newark, New Jersey 07102.
New Mexico—Albuquerque, 1720 Randolph Road, SE., Albuquerque, New Mexico 87106.
New York—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110.
New York—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202.
New York—New York City, 26 Federal Plaza, New York, New York 10278.
North Carolina—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217.
Ohio—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202.
Ohio—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199.
Ohio—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215.
Oklahoma—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108.
Oregon—Portland, 511 Northwest Broadway, Portland, Oregon 97209.
Pennsylvania—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130.
Pennsylvania—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222.
Puerto Rico—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968.
Rhode Island—Providence, 200 Dyer Street, Providence, Rhode Island 02903.
St. Croix—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U. S. Virgin Islands 00820.
St. Thomas—Charlotte, Amalie Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U. S. Virgin Islands 00802.
South Carolina—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401.
South Carolina—Greer, 142–D West Philips Road, Greer, South Carolina 29650.
Tennessee—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134.
Texas—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247.
Texas—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925.
Texas—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667.
Texas—Houston, 126 Northpoint Drive, Houston, Texas 77060.
Texas—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239.
Utah—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123.
Vermont—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478.
Virginia—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513.
Washington, DC, 4420 North Fairfax Drive, Arlington, Virginia 22203.
Washington—Seattle, 815 Airport Way, South, Seattle, Washington 98134.
Washington—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201.
Washington—Yakima, 417 E. Chestnut, Yakima, Washington 98901.
West Virginia—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302.
Wisconsin—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202.

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/.*

[FR Doc. 03–1163 Filed 1–15–03; 8:45 am]
BILLING CODE 4410–10–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of two new information collections. The first information collection consists of two forms, NA 14123 and NA 14124, used to register records management conference and training class attendees and to collect and process credit card payments. The second information collection is another form, NA Form 14115, Professional Researcher Listing Application Form, used by professional researchers who are available to perform research in NARA's holdings for the public. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 17, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title*: Records Management Conference Electronic Registration Form and Records Management Training Class Registration Form.

OMB number: 3095–NEW.

Agency form number: NA Forms 14123 and 14124.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, and federal, state and local government agencies.

Estimated number of respondents: 400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 33 hours.

Abstract: Each year NARA conducts a records management conference and a variety of records management training classes. Federal Government employees and interested state and local government and private sector individuals such as contractors and vendors also attend the records management conference and training classes. Attendees are required to pre-register for both the records management conference and for the records management training classes and these forms provide for standardized collection of necessary registration and payment information.

2. *Title*: Professional Researcher Listing Application Form.

OMB number: 3095–NEW.

Agency form number: NA Form 14115.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 100.

Estimated time per response: 9 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 15 hours.

Abstract: NARA is not authorized or funded to undertake, at our customer's requests, in-depth research into the records within our holdings. Some customers, however, are not able to undertake such research themselves, due to a variety of reasons, including geographic distance from our facilities, lack of time, and financial constraints. In the past, NARA has provided these individuals, on request, information about professional researchers who had advised us, on their own initiative, that they were interested in performing freelance research for hire at our facilities. Following a recent review of this process, however, NARA concluded that the information was neither collected, maintained, nor disseminated in the most efficient and effective manner. To better serve all customers, NARA created NA Form 14115, Professional Researcher Listing Application Form. The new form should help NARA to improve (1) program efficiency and effectiveness, as mandated by the Government Performance and Results Act, and (2) service to our customers.

Dated: January 7, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–886 Filed 1–15–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request an extension of an approved information collection used by participants in training courses and workshops that NARA conducts. NARA needs the information to assess customer satisfaction with course content and delivery and to ensure that the training meets the customer's needs. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 17, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301 837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301 837–1694, or fax number 301 837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA'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 information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Class Evaluation Forms.

OMB number: 3095–0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 6,400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 533 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training courses and workshops. NARA distributes the approved form to the course coordinators on diskette for customization of selected elements, shown as shaded areas on the form submitted for clearance.

Dated: January 7, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–900 Filed 1–15–03; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9 a.m.–12 p.m. on Thursday, January 30, 2003.

STATUS: Open.

ADDRESSES: The JW Marriott Hotel, Salon J and K, 1331 Pennsylvania Avenue, NW., Washington, DC, (202) 393–2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Thursday, January 30, 2003 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8536–TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda—86th meeting of the National Museum Services Board in Salon J & K of The JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington DC, on Thursday, January 30, 2003

9 am–12 pm

I. Chairperson's Welcome
II. Approval of Minutes from the 85th NMSB Meeting
III Director's Welcome and Remarks
IV. Overview of the President's Committee on the Arts and Humanities, Henry Moran, Executive Director
V. Staff Updates
VI. 21st Century Learner Dialogue
(a) Presentation, Beverly Sheppard, President of Old Sturbridge Village
(b) Service Organization Response, Ed Able, President and CEO, American Association of Museums, Janet Rice Elman, Executive Director, Association of Children's Museums
(c) Open Discussion
VII. OBE/IMLS Strategic Planning
VIII. Board Discussion
IX. Closing Remarks

Dated: January 13, 2003.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 03–1164 Filed 1–14–03; 2:37 pm]

BILLING CODE 7036–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:30 p.m., Tuesday, January 15, 2003.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices); and (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated in Washington, DC, on January 14, 2003.

By direction of the Board.

Lester A. Heltzer,

Acting Executive Secretary.

[FR Doc. 03–1186 Filed 1–14–03; 3:40 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Notice of Withdrawal of Application for Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Nuclear Management Company, LLC (the licensee), to withdraw its January 14, 2002, application for proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the Technical Specification 3.10.f, ''Inoperable Rod Position Indicator [IRPI] Channels,'' to provide an allowed outage time for the IRPI system of 24 hours with more than one IRPI per group inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 19, 2002 (67 FR 7419). However, by letter dated January 8, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 14, 2002, and the licensee's letter dated January 8, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of January, 2003.

For the Nuclear Regulatory Commission.

John G. Lamb,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–987 Filed 1–15–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–06257]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (KIT Manufacturing Company, Inc., Common Stock, no par value)

January 10, 2003.

KIT Manufacturing Company, a California 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 l8 by complying with all applicable laws in State of California, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on December 16, 2002 to withdraw the Issuer's Security from listing on the Amex. The Board took such action in order to maximize shareholder value with respect to the proposed asset sale transactions and in light of the significant costs associated with continued listing and registration on the Amex. In addition, the Issuer states that over the past several months there have been fewer than 300 shareholders of record in the Security. The Issuer represents that the Security is currently quoted on the Pink Sheets.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before February 3, 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 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. 03–955 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27637]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 10, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 4, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 4, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

TXU US Holdings Company (70–10046)

TXU US Holdings Company (''TXU Holdings''), located at Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201–3411, has filed an application under section 3(a)(1) of the Act, for an order exempting TXU Holdings and its subsidiary companies from regulation under all of the provisions of the Act, except section 9(a)(2).

TXU Holdings is a subsidiary of TXU Corp., an exempt holding company under section 3(a)(1) of the Act.[1] Prior to implementation of the restructuring plan that is described below (''Restructuring''), TXU Holdings (formerly, TXU Electric Company) (''TXU Electric''), was engaged in the generation, transmission, purchase and distribution of electric energy in the north-central, eastern and western parts of Texas. As of December 31, 2000, TXU Electric provided service to approximately 2.6 million customers in 92 counties and 370 incorporated municipalities, including the Dallas-Fort Worth area of Texas.

Prior to the Restructuring, TXU Corp. indirectly owned all of the issued and outstanding common stock of TXU SESCO Company (''TXU SESCO''), an electric utility company. As of December 31, 2000, TXU SESCO served approximately 43,000 customers in parts of ten counties in eastern and central Texas having a population estimated at 127,000. TXU Corp. also owns all of the issued and outstanding common stock of TXU Gas Company, a gas utility company that serves approximately 1,438,024 industrial, commercial, residential and agricultural customers in the north-central, eastern and western parts of Texas.

As part of the Restructuring, all of the electric transmission and distribution facilities previously owned by TXU Electric and TXU SESCO were transferred on January 1, 2002, to a new company, TXU Electric Delivery Company, which was subsequently renamed Oncor Electric Delivery Company (''Oncor'').[2] Oncor is a direct wholly-owned subsidiary of TXU Holdings (formerly TXU Electric) and an indirect wholly-owned subsidiary of TXU Corp. On December 31, 2001, TXU Electric also transferred all of its generating plants to six indirect subsidiaries of TXU Electric, each of which has been determined by the Federal Energy Regulatory Commission to be an exempt wholesale generator (''EWG''). Also as part of the Restructuring, TXU Corp. transferred to TXU Holdings the merchant energy trading operations previously conducted by subsidiaries of TXU Gas Company and other subsidiaries engaged in providing energy services, mining operations, and fuel procurement.

As part of the Restructuring: (1) TXU Electric transferred its electric transmission and distribution assets to Oncor on January 1, 2001, as a capital contribution, and Oncor assumed certain associated liabilities of TXU Electric; (2) TXU Electric transferred its electric generation assets to six new indirect subsidiaries on December 31, 2001, which, as indicated, are EWGs; (3) the electric transmission and distribution assets of TXU SESCO were acquired by Oncor on January 1, 2001, through a statutory merger of a subsidiary of TXU SESCO, to which such assets had been transferred, into Oncor; and (4) TXU Electric transferred other non-utility assets to various new subsidiaries.

As a result of the Restructuring, the record indicates that TXU Holdings no longer conducts any business operations of its own, but is a holding company only, with one direct public-utility subsidiary (Oncor), whose operations are wholly within the State of Texas,

[1] *See TUC Holding Company, et al.* HCAR No. 26749 (Aug. 1, 1997).

[2] Oncor was incorporated (under the name TXU Electric Delivery Company) under Texas law on November 6, 2001 in order to facilitate the structural separation (unbundling) of TXU Electric's electric transmission and distribution assets from its electric generation assets in accordance with the requirements of electric utility restructuring legislation passed in Texas in 1999. *See* Texas Utilities Code, 39.051.

and numerous direct and indirect non-utility subsidiaries, including EWGs. TXU Holdings asserts that the requirements for an exemption under section 3(a)(1) of the Act are met because TXU Holdings and Oncor, its only public-utility subsidiary, are both incorporated in Texas, the state in which Oncor conducts all of its public-utility operations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–912 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14127]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Chicago Stock Exchange, Inc. (United Financial Mortgage Corporation, Common Stock, no par value)

January 10, 2003.

United Financial Mortgage Corporation, an Illinois 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 Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'').

The Issuer states in its application that it has met the complied with the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On October 15, 2002, the Board of Directors of the Issuer approved a resolution to withdraw the Company's Security from listing on the CHX. The Board states that the following reasons factored into its decision to withdraw the Security from listing and registration on the CHX: (i) The Issuer's Security began trading on the American Stock Exchange LLC (''Amex'') on September 9, 2002, and (ii) the Issuer believes that listing on the Amex will provide greater visibility for its Security. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and shall have no effect upon its continued listing and registration on the Amex under section 12(b) of the Act.[3]

Any interested person may, on or before February 3, 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 CHX 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.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–954 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25886; 813–296]

Evergreen Ventures LLC, et al.; Notice of Application

January 10, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Pillsbury Winthrop LLP and its affiliates from certain provisions of the Act. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

APPLICANTS: Evergreen Ventures LLC (the ''Investment Fund'') and Pillsbury Winthrop LLP (together with any entity that results from a reorganization of Pillsbury Winthrop LLP into a different type of business organization or into an entity organized under the laws of another jurisdiction, the ''Firm'').

DATES: The application was filed on September 1, 2000, and amended on January 22, 2001, and January 9, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 4, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 50 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Firm is a law firm organized as a Delaware limited liability partnership. The Firm and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''Pillsbury Group'' and individually as a ''Pillsbury Entity.'' The Firm's equity owners are partners (''Partners'').

2. The Investment Fund is a Delaware limited liability company established pursuant to a limited liability company agreement. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund, other than investment objectives and strategies (the ''Subsequent Funds,'' and together with the Investment Fund, the ''Funds''). The applicants anticipate

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a limited partnership, corporation, trust or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Partners and certain attorney and non-attorney employees of Pillsbury Group to participate in certain investment opportunities that come to the attention of Pillsbury Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. The Firm will serve as the sole manager (the ''Manager'') of the Funds. The Funds will have one or more investment committees (''Investment Committees''), each member of which shall be a current Partner. The Manager will appoint the members of each Investment Committee. The Manager or any person involved in the operation of the Funds will register as investment advisers if required under the Investment Advisers Act of 1940 (the ''Advisers Act''), or the rules under the Advisers Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of ''Eligible Employees,'' ''Qualified Investment Vehicles,'' ''Immediate Family Members,'' each as defined below, and Pillsbury Entities. The term ''Fund Investors'' refers to Eligible Investors who invest in the Funds. Prior to receiving a subscription agreement from an individual, the Manager must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An ''Eligible Employee'' is a person who is, at the time of investment, a current or former Partner or an employee of Pillsbury Group who (a) meets the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer Partners or employees of Pillsbury Group who meets certain salary and other requirements (''Category 2 investors''), or (c) is a lawyer employed by the Firm who purchases Interests pursuant to an offering under rule 701 under the Securities Act (''rule 701'') (''Category 3 investors'').

5. Each Category 2 investor will be a Partner or employee of Pillsbury Group who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a graduate degree, has a minimum of 3 years of business and/or professional experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a ''Covered Company'' for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by the Firm who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Partner will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Firm will make available at no charge to potential Fund Investors the services of an independent third party (''Financial Consultant'') qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker. An Immediate Family Member who purchases Interests must be an accredited investor as defined in rule 501(a)(5) or rule 501(a)(6) of Regulation D.

8. Each Fund may issue its Interests in series (each, a ''Series'' and collectively, the ''Series'') with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a ''Class''), having such terms and conditions as the Manager may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the ''Investment Period''). Following the end of a Series' Investment Period, no new investment commitments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period (and, if necessary, periodically thereafter), the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the ''Regulation D Investors''), and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the ''rule 701 Investors''). The capital contributions and commitments of the rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. No more than approximately 13% (*i.e.*, 15%

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. The Firm or the Manager may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private offering memorandum of the Fund, and each Eligible Investor will receive a private offering memorandum and the Fund's limited liability company agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Fund Investors will be permitted to transfer their Interests only with the express consent of the Manager. Any such transfer must be to another Eligible Investor. No fee of any kind will be charged in connection with the sale of Interests.

12. If any Fund Investor leaves the Firm during the Investment Period for a Series, the Manager may, in its sole discretion, repurchase his or her Interests in that Series as follows:

a. If a Fund Investor leaves the Firm less than one year following the date that Fund Investor's investment is accepted, the Manager will have 90 days to repurchase such Fund Investor's Interests (or cancel indebtedness) at the paid-in investment amount (less distributions) and without interest.

b. If a Fund Investor leaves the Firm one year or more following the date that Fund Investor's investment is accepted, the Manager will repurchase the Fund Investor's Interests (or cancel indebtedness) at fair value determined either (1) as of the Fund Investor's last date of association or employment with the Firm, or (2) as of the next date of valuation of the Series. Payment will be made within 90 days of the date on which the fair value of the Fund Investor's Interests is determined.

13. The Manager may require a Fund Investor to withdraw from a Fund if: (a) A Fund Investor ceases to be an Eligible Investor; (b) a Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; (d) the continued membership of the Fund Investor would violate applicable law or regulations; or (e) the Manager, in its sole discretion, deems such withdrawal in the best interest of the Fund. These withdrawal policies apply (a) during the Investment Period, with respect to Fund Investors who have not left the Firm, and (b) after the Investment Period, with respect to any Fund Investor.

14. The Firm reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time or may be based on certain performance milestones (such as admission of an associate lawyer as a Partner of the Firm). During the Investment Period, vested and unvested Interests will be subject to the provisions discussed above governing Fund Investors who leave the Firm during the Investment Period. Thereafter, a Fund Investor's Interests that are or become vested will not be subject to repurchase except to the extent that the Manager determines to require the withdrawal of that Fund Investor as discussed above. It is anticipated that the Manager rarely will require such withdrawal. Following the Investment Period, any portion of a Fund Investor's Interests that are unvested at the time of termination of a Fund Investor's employment with the Firm (or at the time of that Fund Investor's failure to achieve the relevant performance milestone) are subject to repurchase or cancellation. The decision to repurchase a Fund Investor's Interests will be made on a case-by-case basis by the Manager.

15. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the Manager) and (b) the fair value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the Manager. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

16. The Firm may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Firm's operating expenses to a Fund. In addition, the Firm may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the Manager, and no compensation will be paid by a Fund or by Fund Investors currently employed by Pillsbury Group to the Manager for its services. The Manager may impose a fixed fee or a management fee, in either case not to exceed one percent of the value of the Interests held by any Fund Investor. Such a fee will be charged only to a person who becomes a former employee or Partner of Pillsbury Group and any Qualified Investment Vehicle associated with that Fund Investor.

17. The Funds may borrow from Pillsbury Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse other than to the Pillsbury Group. If a Pillsbury Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

18. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a)

by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Firm or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Firm or any affiliated person thereof; (b) sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; and (d) purchase interests in any company or other investment vehicle (i) in which the Firm owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Firm.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Eligible Investors will be informed in the Fund's private offering memorandum of the possible extent of the Fund's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and the Firm will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Firm or its affiliated person, or another Fund, is a participant, or with respect to which the Firm or an affiliated person of the Firm is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Firm; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, the Firm or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Firm's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Firm, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Firm or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the Firm will be deemed employees of the Funds, (ii) officers of the Manager and the Manager will be deemed to be officers of the Fund, and (iii) the Manager will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the securities held by the Funds are most suitably kept in the Firm's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that investment companies relying on this exemption have a majority of disinterested directors, that those disinterested directors select and nominate any other disinterested directors, and that any legal counsel for those disinterested directors be independent.

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the

extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such actions and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the Manager take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Manager will be an interested person of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Manager will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agrees that all such material will be subject to examination by the Commission and its staff. The Manager will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market for Interests and transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

Fund Operations

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''section 17 Transaction'') will be effected only if the Manager determines that: (a) The terms of the section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Manager will record and preserve a description of such section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Pillsbury Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Manager will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Pillsbury Group; (c) a Partner, lawyer, or employee of the Pillsbury Group; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Pillsbury Entity acts as a general partner, or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment

is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least $1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least $150 million.

5. Each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Manager of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. The Manager of each Fund will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Firm will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. The Firm, however, will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. The Firm will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, the Firm will be the sole manager of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. The Firm will own not less than 5% of the economic Interests issued by each Series of the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, the Firm and its Partners (directly or through Qualified Investment Vehicles) together will own at least 80% of the economic Interests of each Series.

10. The Firm prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, the Firm prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. The Firm, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[3] and will comply with all applicable requirements of rule 701(e).[4]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–911 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] If the Firm relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[4] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25887; 812–12917]

Robertson Stephens Inc., *et al.*; Notice of Application

January 10, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them and other entities of which Robertson Stephens, Inc. (''RS'') is or becomes an affiliated person from section 9(a) of the Act, with respect to a securities-related injunction entered on January 10, 2003, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: RS, Colonial Management Associates, Inc., Columbia Management Co., Crabbe Huson Group, Inc., Fleet Investment Advisors, Inc., Liberty Advisory Services Corp., Liberty Asset Management Company, Liberty Wanger Asset Management, L.P., Newport Fund Management, Inc., and Stein Roe & Farnham Incorporated (together, the ''Adviser Applicants''), and Liberty Funds Distributor, Inc. and Columbia Financial Center, Inc. (together, the ''Underwriter Applicants'').[1]

Filing Date: The application was filed on January 10, 2003. In addition, a letter was submitted on January 10, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 4, 2003, and should be accompanied by proof of service on applicants, in the form of an

[1] Applicants request that any relief granted pursuant to the application also apply to any other entity of which RS is or hereafter becomes an affiliated person (together with the applicants, the ''Covered Persons'').

affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o FleetBoston Financial Corporation, 100 Federal Street, Boston, MA 02210.

FOR FURTHER INFORMATION, CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1.RS, a Delaware corporation, is a full service investment banking firm, and is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and as an investment adviser under the Investment Advisers Act of 1940. The ultimate parent company of RS is FleetBoston Financial Corporation, which is also the ultimate parent company of the Adviser Applicants, who serve as investment advisers to various registered investment companies (the ''Funds''), and of the Underwriter Applicants, who serve as principal underwriters to Funds.

2. On January 10, 2003, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief (''Final Judgment'') in a matter brought by the Commission.[2] The Commission alleged that RS allocated ''hot'' initial public offerings (''IPOs'') to customers willing to pay a portion of their profits from those IPOs to RS and violated section 17(a) of the Exchange Act, and rule 17a–3 thereunder, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. (''NASD''). The Final Judgment, among other things, enjoined RS, directly or through its officers, directors, agents and employees, from violating section 17(a) of the Exchange Act, and rule 17a–3 thereunder, and NASD Conduct Rules 2110 and 3220. Additionally, the Final Judgment ordered RS to pay disgorgement of $23 million and pay a civil penalty of $5 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Because the applicants are all subsidiaries of the same ultimate parent company, applicants state that they are under common control, and as such are ''affiliated persons'' of RS within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Final Judgment, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to Covered Persons would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former officers or employees of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. Applicants also state that no applicant has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants state that the inability of the Adviser Applicants to continue providing advisory services to Funds and the inability of the Underwriter Applicants to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Additionally, applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe.

5. The Adviser Applicants and the Underwriter Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds that they serve regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. The Adviser Applicants and Underwriter Applicants will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Covered

[2] *Securities and Exchange Commission* v. *Robertson Stephens, Inc.*, Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C., Jan. 10, 2003).

Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–956 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 1492, January 10, 2003].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, January 15, 2003.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Open Meeting scheduled for Wednesday, January 15, 2003, but will be considered at a later meeting to be announced: Regulation AC (Analyst Certification)

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1105 Filed 1–14–03; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Federal Register Citation of Previous Announcement: [68 FR 1492, January 10, 2003].

STATUS: Closed Meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, January 7, 2003 at 10 a.m., and Thursday, January 9, 2003 at 9 a.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Tuesday, January 7, 2003 at 10 a.m. was changed to Tuesday, January 7, 2003 at 10:45 a.m., and the Closed Meeting scheduled for Thursday, January 9, 2003 at 9 a.m. was changed to Thursday, January 9, 2003 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1110 Filed 1–14–03; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47153; File No. SR–Amex–2002–117]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

January 10, 2003.

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 30, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[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, the Amex 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on October 9, 2002, and is due to expire on January 7, 2003.[3]

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.[4] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented

[3] The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, extended again in October 2001, January, April, July and October 2002. *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); and 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002).

[4] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any public customer orders, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.[5] However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the two and one-half years since the pilot program was first implemented, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with the Commission[6] concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

In order to allow the pilot program to be extended without significant interruption, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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 the 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–2002–117 and should be submitted by February 6, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In its original approval of the pilot program,[11] the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of sections 6(b)(5) and 6(b)(8) of the Act.[12] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[13] and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2002–117) be, and hereby is, approved on an accelerated basis as a pilot program through April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–949 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Amex trading floor practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000) (File No. SR–Amex–00–30, most recently amended on December 20, 2002).

[6] *See* File No. SR–Amex–00–49, available for inspection at the Commission's Public Reference Room.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 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).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78f(b)(5) and (b)(8).

[13] *See, e.g.,* Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47152; File No. SR–CHX–2001–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by The Chicago Stock Exchange, Inc., Relating to Cancellation of Orders Otherwise Eligible for Automatic Execution

January 10, 2003.

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 26, 2001, The Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 15, 2002, the CHX amended the proposal.[3] On January 9, 2003, the CHX again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, cancellation of market and marketable limit orders that otherwise are eligible for automatic execution. The text of the proposed rule change is below. Additions are in italics.

Article XX

Guaranteed Execution System and Midwest Automated Execution System Rule 37

* * * * *

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)–(3) No change in text.

(4) Cancels. MAX will automatically cancel an unexecuted order in the file in the event an order sending firm inputs the proper cancellation instruction *(and not less than five (5) seconds has expired since receipt of the order),* except for an order on hold, a professional order or an oversized order. These orders must be canceled manually. For purposes of this subsection (4), oversized order means an order greater than the auto-execution threshold.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders that otherwise would be eligible for automatic execution. The proposed rule change is intended to provide CHX specialists and order-sending firms with further clarity regarding cancellation of orders.[5]

Under the current rule, if an order-sending firm does not receive an immediate execution, the order-sending firm may cancel the order, even though the order is not erroneous in any respect. In the interim between receipt and cancellation, however, the specialist may be actively managing the order and seeking liquidity to fill the order. This can lead to unintended (and unfair) results, including the possibility that the CHX specialist has made an ITS commitment to procure liquidity, which the order-sending firm no longer wants.

By implementing the proposed rule change, which would require that an order reside at the CHX for 5 seconds before a cancellation request will become effective (unless the specialist manually intervenes to cancel the order sooner), CHX specialists would be protected from the foregoing scenario. Significantly, order-sending firms that have entered an order that is truly erroneous may still cancel and resend such orders, using the ''cancel/error'' function. Accordingly, order-sending firms remain protected from adverse consequences in the case of truly erroneous orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act.[6] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 13, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, and attachments (''Amendment No. 1''). In Amendment No. 1, the CHX reduced the proposed minimum order life from 15 seconds to five seconds. Amendment No. 1 completely replaces and supersedes the original filing.

[4] *See* January 8, 2003 letter from to Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments (''Amendment No. 2''). In Amendment No. 2, the CHX provided a new Exhibit A to the proposed rule change that properly underscores language that is being added.

[5] The CHX initially filed this proposed rule change on December 26, 2001. After discussions with Commission staff, the CHX submitted Amendment No. 1, which replaces the original submission in its entirety. The only change is a reduction of the proposed minimum order life from 15 seconds to five seconds. The submission also further details (a) the protections still afforded order-sending firms with legitimate cancellation needs, and (b) the initiatives by other exchanges to deter abuses of the order cancellation process, which have been approved by the Commission in recent months.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or 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 CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–33 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–951 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–U

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47150; File No. SR–NFA–2002–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Concerning Delivery of the Risk Disclosure Statement for Security Futures Contracts by Commodity Trading Advisors

January 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on November 29, 2002, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

On November 27, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on December 9, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[4] Where security futures accounts are solicited by commodity trading advisors (CTAs), the proposed rule changes shift responsibility for providing the risk disclosure for those products from the CTA to the firms carrying the account, which could be a broker-dealer registered under Section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Managed Funds Association (MFA) recently raised an issue regarding the security futures risk disclosure statement. The Commodity Futures Modernization Act of 2000 provides that, with respect to security futures products, CTAs, as well as other registrants, must be subject to suitability rules comparable to those that apply to NASD members. The ''Know Your Customer'' requirements in NFA Compliance Rule 2–30 include the requirement to provide appropriate risk disclosure, so when that rule was amended to include suitability requirements for security futures products, CTAs were included in the provisions of that rule relating to the disclosure statement. As Compliance Rule 2–30 and the related Interpretive Notice currently read, a CTA is required to provide the disclosure statement to the customer in the relatively rare instance where the CTA is the Member soliciting the account.

MFA has questioned this requirement for CTAs, pointing out that investment advisers have no similar requirement. Although someone must provide the disclosure statement to the customer, the Board agrees that the CTA does not have to be the source of that document. In fact, if the account is carried by an NASD member that is itself required by NASD rules to provide the document, NFA's current rule could result in both the CTA and the Futures Commission Merchant (FCM) delivering the document. Therefore, the Board amended NFA Compliance Rule 2–30 and the related Interpretive Notice to remove CTAs from the special risk disclosure requirements for security futures products and to place the obligation to provide the statement on the Member carrying an account solicited by the CTA. The CTA must still, of course, consider how well a customer understands the risks when determining if it is appropriate for the customer to trade security futures products or to use the CTA's trading program for that purpose.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act. In fact, the rule change will level the playing field for CTAs and investment advisers with little, if any, competitive impact on carrying firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[6] the proposed rule change became effective on December 9, 2002.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings also will be available for inspection and copying at the principal office of NFA.

Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–06 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–913 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(7)(B).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47158; File No. SR–NASD–2002–178]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Interest Reporting

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''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'') 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. NASD has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule'' under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to amend NASD Rule 3360 to clarify member firms' reporting requirements of short positions held on behalf of other broker/dealers. Below is the text of the proposed rule change. The proposed new language is in italics; the proposed deletions are in brackets.

* * * * *

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total ''short'' positions in all customer and proprietary firm accounts in securities included in The Nasdaq Stock Market and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to [the Association] *NASD* in such a manner as may be prescribed by [the Association] *NASD. For the purposes of this rule, the term ''customer'' includes a broker/dealer.* Reports shall be made as of the close of the settlement date designated by [the Association] *NASD.* Reports shall be received by [the Association] *NASD* no later than the second business day after the reporting settlement date designated by [the Association] *NASD.*

(b) 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify members' short interest reporting requirements for short positions held on behalf of other broker/dealers. NASD Rule 3360(a) requires members to maintain a record of total short positions in all customer and proprietary firm accounts in Nasdaq securities (and listed securities if not reported to another self-regulatory organization (''SRO'')) and requires members to report such information to NASD on a monthly basis. Rule 3360(b) provides that short positions required to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

be reported under the Rule are those resulting from short sales as the term is defined in Rule 3b–3 under the Act,[4] with limited exceptions.

NASD staff has received inquiries from members concerning the application of Rule 3360 in light of the definition of ''customer'' in NASD Rule 0120(g). Specifically, Rule 0120(g) provides that the term ''customer'' does not include a broker or dealer, unless the context otherwise provides. As a result, members have inquired whether short sale positions in accounts held for other broker/dealers are required to be reported under Rule 3360.

In response to such inquiries, the staff has advised members that short sale positions held for other broker/dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to an SRO. This long-standing position is consistent with that taken by other SROs with respect to their short interest reporting requirements.[5] Non-self-clearing broker/dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. In addition, because non-member broker/dealers are not subject to NASD rules and, therefore, are not required to comply with Rule 3360, it is particularly important that members understand that they must report such positions under the Rule, unless these positions are otherwise reported to an SRO. Accordingly, to eliminate all ambiguity, NASD proposes to amend Rule 3360(a) to clarify that short sale positions in accounts held for other broker/dealers must be reported, unless the position is otherwise reported to an SRO.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[6], which requires, among other things, that the NASD's rules 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. NASD believes that the proposed rule change is necessary to ensure that members' short interest reporting is accurate and complete.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule'' under Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 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 file number SR–NASD–2002–178 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–950 Filed 1–15–03; 8:45 am]

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[4] Rule 3b–3 under the Exchange Act provides, in part, the following: ''The term 'short sale' means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.''

[5] *See* Securities Exchange Act Release No. 35287 (January 27, 1995), 60 FR 6743 (February 3, 1995), approving amendments to short interest reporting rules of NASD, New York Stock Exchange, Philadelphia Stock Exchange, Pacific Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, and Chicago Board Options Exchange, to ensure uniform short position reporting across each of the SROs.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR § 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47147; File No. SR–NFA–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2–9 Concerning Enhanced Supervisory Procedures

January 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 2, 2002, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

On November 27, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on December 9, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

Act.[4] Some of the firms that are affected by this rule change could be broker-dealers registered under Section 15(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1993, NFA's Board adopted an Interpretive Notice to NFA Compliance Rule 2–9 that requires firms that employ a significant number of Associated Persons (''APs'') who have previously worked at a Disciplined Firm to adopt enhanced supervisory procedures, including tape recording all conversations between APs and customers. Since 1993, the Interpretive Notice has defined a Disciplined Firm as one that meets the following three criteria:

1. The firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;
2. Those charges have been resolved; and
3. The firm has been closed down and permanently barred from the industry as a result of those charges.

Last month, the question was raised as to the proper interpretation of the phrase ''closed down and permanently barred,'' as used in the third criterion. This issue arose in the context of a settlement of an NFA Business Conduct Committee (''BCC'') sales practice complaint alleging telemarketing fraud against a south Florida firm.

The firm went out of business in February 2001 and withdrew its NFA membership and CFTC registration in April 2001. Although NFA had informed the firm that it was under investigation in the spring of 2001, the BCC issued the sales practice Complaint against the firm in October 2001 and the Complaint was settled in October 2002. Under the terms of the settlement, the firm agreed to be permanently barred from NFA membership.

The firm maintains that it should not be considered a ''Disciplined Firm,'' under the Interpretive Notice, because it does not meet the third criterion listed above. Specifically, the firm argues that it was not ''closed down'' as a result of the charges in the recent BCC Complaint since it had already gone out of business and withdrawn its CFTC registration and NFA membership when the Complaint was issued.

NFA staff does not agree with the firm's position. NFA has always taken the view that ''closed down'' and ''permanently barred'' describe the same thing, namely, a *final* resolution in a sales practice case which results in a permanent bar and closure of a firm. Although it is true that, in this case, the firm ceased operations and withdrew its NFA membership prior to the issuance of the Complaint, there was nothing to prevent the firm from reapplying for NFA membership and resuming business. It was not until the firm agreed to be permanently barred from NFA membership in settlement of the BCC Complaint that the firm was finally and irreversibly ''closed down and permanently barred'' as contemplated by the Interpretive Notice.

If the firm's interpretation were to prevail, any firm that is the subject of a sales practice investigation could merely cease operations, prior to the issuance of a Complaint, reopen under a different name and, thereby, avoid being designated as a ''Disciplined Firm.'' Such a result would neutralize the Interpretive Notice and render it useless. Therefore, NFA's Board determined to clarify the interpretive notice by deleting the phrase ''closed down'' from the third criterion.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.[6]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[7] the proposed rule change became effective on December 9, 2002.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–07 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–914 Filed 1–15–03; 8:45 am]

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[4] 15 U.S.C. 78o(b)(11).

[5] 15 U.S.C. 78o–3(k).

[6] 7 U.S.C. 1.

[7] 15 U.S.C. 78s(b)(7)(B).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47151; File No. SR–OC–2002–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Customer Risk Disclosure Statements

January 9, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 18, 2002, OneChicago, LLC (''OneChicago'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III, below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with a written certification under section 5c(c) of the Commodity Exchange Act (''CEA''),[3] on December 18, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its Rule 510 relating to customer risk disclosure statements to clarify that clearing members and, if applicable, exchange members or access persons, will provide customers with a written risk disclosure statement, in accordance with applicable requirements of the National Futures Association (''NFA'') (in the case of any clearing member, exchange member or access person that is registered with the NFA) or the National Association of Securities Dealers, Inc. (the ''NASD'') (in the case of any clearing member, exchange member or access person that is registered with the NASD).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is designed to clarify that clearing members and, if applicable, exchange members or access persons will provide customers with a written risk disclosure statement in accordance with applicable requirements of the NFA (in the case of any clearing member, exchange member or access person that is registered with the NFA) or the NASD (in the case of any clearing member, exchange member or access person that is registered with the NASD). The revised language reflects accepted industry practice and takes account of the fact that the intermediaries referenced in OneChicago Rule 510 are already subject to the pertinent NFA and NASD requirements.

2. Statutory Basis

The proposed rule change is authorized by, and consistent with, section 6(b)(5) of the Act[4] because it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change will not impose or relieve any burden on, or promote, competition.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[5] the proposed rule change, as filed with the Commission on December 18, 2002, became effective on December 19, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2002–05 and should be submitted by February 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–952 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] 15 U.S.C. 78f(g).

[5] 15 U.S.C. 78s(b)(7)(B).

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47146; File No. SR–OCC–2002–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Money Market Funds as Margin Collateral

January 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would expand the acceptable forms of margin collateral to include shares of money market funds meeting specified criteria.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is to expand the permissible forms of margin collateral to include shares in money market funds. The proposed amendment to OCC's Rule 604 would also reorganize the rule and make certain nonsubstantive format changes.

Rule 604 specifies the forms of collateral that may be deposited as margin. Permitted forms include cash, government securities, letters of credit, and certain equity and debt securities.[3] OCC regularly reviews these forms of collateral for suitability with the intent of addressing clearing members' desire to use a diverse combination of readily available and cost-effective forms of collateral while ensuring that collateral is limited to instruments that are relatively stable in value and are easily converted to cash. OCC believes that shares in certain money market funds meet these criteria and that it is appropriate for OCC to expand its categories of acceptable collateral to include such instruments.

OCC believes that the professional asset management, liquidity, and stable principal value typically associated with money market funds make shares in such funds an attractive collateral alternative for all OCC clearing accounts. As a result of recent amendments to the regulations of the Commodity Futures Trading Commission (''CFTC''), clearing members that are registered as futures commission merchants are now permitted to invest customer funds of their futures customers in money market fund shares.[4] Accordingly, clearing members want to be able to hypothecate shares in such funds as margin for their ''non-proprietary'' cross-margining accounts. OCC believes that such deposits are appropriate collateral not only for cross-margining accounts but for all accounts.

Requirements for Eligibility of Funds

OCC proposes to define acceptable money market funds as those meeting the criteria of SEC Rule 2a–7,[5] ''Money Market Funds,'' under the Investment Company Act of 1940 (''ICA''),[6] subject to certain additional criteria. The ICA sets the standards by which mutual funds and other investment vehicles operate, and Rule 2a–7 thereunder requires a qualifying money market fund to meet certain portfolio maturity, quality, and diversification criteria. Instruments which may qualify as permitted investments for money market funds typically include U.S. Treasury securities, repurchase agreements, Federal agency securities, commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, and municipal securities. To minimize credit risk, OCC will accept only money market funds that limit their investments to ''first tier securities'' as defined in Rule 2a-7 under the ICA.[7] Although certain types of instruments that qualify as first tier securities would not qualify to be pledged directly as margin collateral under Rule 604,[8] OCC believes that the rating requirements and maturity prerequisites combined with inherent diversification of the funds provides sufficient protection to warrant acceptance of shares of money market funds containing such instruments.

To ensure a diverse group of fund investors so that the actions of any one shareholder (*e.g.*, redeeming a large interest in a fund) do not materially disrupt the ability of the fund to redeem shares in an orderly manner, Rule 604(b)(3) would prohibit a clearing member from depositing as margin collateral any money market fund where a registered holder of the money market fund has an interest of 10% or more in the money market fund.

In order for a fund's shares to be acceptable as margin deposits, the fund (and/or its sponsor, transfer agent, or other agents as appropriate) will be required to represent to OCC that it meets the foregoing requirements and to agree that it will continue to do so. In addition, OCC will require the fund to make certain other agreements intended to further ensure OCC's ability to convert fund shares promptly to cash if necessary.

Redemption

While the ICA generally prohibits mutual funds from suspending the right of redemption, the ICA does allow funds to postpone the payment of redemption proceeds for up to seven days after tender of fund shares to the fund or its agent. The ICA also allows for the suspension or postponement of redemption in certain emergency situations. In addition, while the intent of a money market fund is to redeem shares in cash, most issuers retain the right to redeem their shares in kind where the redeeming shareholder would receive portfolio securities rather than cash. Any such action would introduce a liquidation risk as well as additional costs associated with the sale of such securities.

Rule 604(b)(3)(i)(H) would require each fund to waive its rights under the ICA to delay redemption or to redeem in kind. The fund will instead have to agree to redeem fund shares in cash no later than the business day following a redemption request by OCC with limited exceptions for unscheduled

[2] The Commission has modified parts of these statements.

[3] Pursuant to a rule filing recently approved by the Commission, OCC clearing members are allowed to deposit as margin debt securities issued by Congressionally chartered corporations that the OCC's membership/margin committee has approved. Securities Exchange Act Release No. 45745 (April 12, 2002), 67 FR 19467 [File No. SR–OCC–2001–04].

[4] In December 2000, the CFTC amended its Regulation 1.25 to expand the range of instruments in which FCMs and clearing organizations may invest customer segregated funds to include highly liquid instruments such as money market mutual funds. Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (December 13, 2000).

[5] 17 CFR 270.17a–7.

[6] 15 U.S.C. 80a *et. seq.*

[7] In general, a first tier security is a security with a remaining maturity of 397 calendar days or less that: (i) Has received a short-term rating from at least two nationally recognized statistical rating organizations in the highest short-term rating category for debt obligations; (ii) is unrated but is deemed to be of comparable quality to securities identified in (i) as determined by the fund's board of directors; (iii) is issued by a registered investment company that is itself a money market fund; or (iv) is a government security. 17 CFR 270.2a–7(a)(12).

[8] For example, OCC does not currently accept commercial paper, certificates of deposit, time deposits, corporate notes, asset-backed securities, or municipal securities.

closings of Federal Reserve Banks or the New York Stock Exchange. These waivers of redemption restrictions along with the next day payment requirement have been established to maintain adequate liquidity of margin collateral and are also intended to be consistent with the redemption conditions contained in CFTC Rule 1.25.[9]

Valuation

OCC will require funds to perform a net asset value computation at least once per day with the dissemination of such computation to be made available to OCC no later than 9:00AM central time the following day. Given the diversified nature of eligible fund investments as well as the investment duration limitations, a daily computation of net asset value appears reasonable. OCC nevertheless proposes, under proposed Rule 604(b)(4), a 2% haircut on the current market value of fund shares. The 2% haircut was selected for consistency with the treatment of similar assets under the net capital rule.[10]

OCC's Security Interest

As in the case of other securities held as collateral, OCC will require that clearing members give OCC a first priority perfected security interest in deposited fund shares. Because shares in money market funds are typically not issued in certificated form, ownership is established by registration of the securities on the books of the fund or its transfer agent. OCC can ordinarily obtain a perfected security interest in fund shares registered in the name of a clearing member by execution of the fund's standard three-party agreement among OCC, the clearing member, and the fund or its transfer agent.

In addition, to preclude a situation whereby a clearing member secures its obligations to OCC with collateral managed and within the control of that clearing member or a related party, an association restriction is proposed in Rule 604(b)(3)(iii). This restriction is consistent with current OCC rules regarding the deposit of government securities, debt or equity issues, or letters of credit as margin collateral.[11] This standard may be waived if the issuing institution can demonstrate that an acceptable arrangement has been made for the control of underlying portfolio investments and for the processing of OCC redemption requests by a third party.

One additional point is worth noting even though it is not related specifically to money market fund shares. The provisions formerly in Rule 604(d)(2), which require compliance with the Commission's Rule 15c3–3 when applicable, have been moved so that they apply not only to equity and debt securities but to all securities deposited as margin under Rule 604(b). A sentence has been added to require compliance with the CFTC's customer protection regime when securities are deposited with respect to futures accounts.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it enhances the efficiency of the clearing system while safeguarding funds and securities by permitting clearing members to collateralize their obligations to OCC with an additional form of highly liquid assets of stable value.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC–2002–04 and should be submitted by February 6, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–915 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

[9] CFTC Regulation 1.25(c)(5), 65 FR 77993, 78010, 78011 (Dec.13, 2000); see also, 65 FR 82270 (Dec. 28, 2000). CFTC Interpretive Letter No. 01–31 (April 2, 2001) (Funds will be deemed in compliance with Regulation 1.25(c)(5) even though they provide for delayed redemption in specified emergency situations).

[10] 17 CFR 240.15c3–1(c)(2)(vi)(D)(*1*).

[11] OCC Rule 604, Interpretation and Policies .07 and .10.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–00905]

Self-Regulatory Organizations; Notice of Application To Strike From Listing and Registration; The Philadelphia Stock Exchange, Inc. (PPL Electric Utilities, $3.35%, $4.40%, $4.50% and $4.60% Series Preferred Stock, no par value)

January 10, 2003.

PPL Electric Utilities, a Pennsylvania 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 the $3.35%, $4.40%, $4.50% and $4.60% Series Preferred Stock, no par value (''Securities''), from listing and registration on the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'').

[1] 15 U.S.C. 78*L*(d).

[2] 17 CFR 240.12d2–2(c).

The Issuer stated in its application that it has complied with the rules of the PHLX that govern the removal of securities from listing and registration on the Exchange.

In making the decision to withdraw its Security from listing on the Exchange, the Issuer states that the Securities no longer meet the PHLX's minimum listing criteria of 250,000 shares. In addition, the Issuer states that its 4.50% and 4.40% Securities are currently listed on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the PHLX and shall have no effect upon its continued listing and registration on the NYSE under section 12(b).[3]

Any interested person may, on or before February 3, 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 PHLX 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. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–953 Filed 1–15–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0229]

Walker Investment Fund II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Walker Investment Fund II SBIC, L.P., 3060 Washington Road, Glenwood, MD 21738, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). Walker Investment Fund II SBIC, L.P. proposes to provide preferred equity security financing to Secure Methods, Inc., 224 West King Street, Martinsburg, WV 25443. The financing is contemplated to provide the company with the necessary working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Walker Investment Fund I, LLC and Steve Walker & Associates, all Associates of Walker Investment Fund II SBIC, L.P., have owned, within the last 6 months, a collective interest in Secure Methods, Inc., greater than 5 percent. Therefore, this financing is considered a financing with Associates requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 9, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–887 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Connecticut District Advisory Council; Public Meeting

The U.S. Small Business Administration Connecticut District Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 9 a.m., on Wednesday, February 5, 2003, Connecticut District Office, 330 Main Street, Hartford, Connecticut 06106, to discuss such matters as may be presented. For further information, write or call Marie Record, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(860) 240–4700.

Anyone wishing to attend and make an oral presentation to the Board must contact Marie A. Record, no later than Friday, January 31, 2003 via e-mail or fax. Marie A. Record, District Director, U.S. Small Business Administration, Connecticut District Office 330 Main Street, Hartford, CT 06106 (860) 240–4670 phone or (860) 240–4714 fax or e-mail *marie.record@sba.gov.*

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–891 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Minnesota District Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Minnesota District Advisory Council, located in the geographical area of Minneapolis, Minnesota, will be holding a public meeting at 11:30 a.m. central time on Wednesday, February 5, 2003, at the Business Information Center, 2324 University Avenue, Suite 112, St. Paul, MN 55114, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Edward A. Daum, District Director, in writing by letter or fax no later than January 29, 2003, in order to be put on the agenda. Edward A. Daum, District Director, U.S. Small Business Administration, 100 N. 6th Street, Suite 210–C, Minneapolis, MN 55403, (612) 370–2306 phone, (613) 370–2303 fax.

Candace Stoltz,

Director of Advisory Councils.

[FR Doc. 03–892 Filed 1–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4249]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to support mutually beneficial partnerships which contribute to the development of instruction in comparative religion, cultural studies/history, and English at specific eligible educational institutions in Uzbekistan. The means for achieving these objectives may include the exchange of university and college faculty and research scholars, administrators, and advanced students from Uzbekistan with appropriate U.S. counterpart colleges and universities.

In a separate solicitation, the Bureau anticipates announcing a program

[3] 15 U.S.C. 78*L*(b).

[4] 17 CFR 200.30–3(a)(1).

focused on Religious and Cultural Pluralism in Uzbekistan and the United States. That program will support community exchanges between the United States and Uzbekistan and will support visits by U.S. specialists to Uzbekistan. The Uzbekistani institutions identified for participation in the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies may be appropriate venues for experts sponsored by the program for Religious and Cultural Pluralism in Uzbekistan and the United States. Therefore the grantees in the two programs for Uzbekistan will be expected to coordinate activities closely with one another to make sure that the activities of the two programs are complementary.

Program Information

Overview: The Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies will fund a three-year project to permit U.S. institutions to work with specified counterpart universities and educational institutions in Uzbekistan. Applicants should propose a creative model for exchange that includes both a strategy for identifying U.S. instructors and scholars to visit the partner institutions in Uzbekistan and a strategy for identifying academic institutions to host exchange participants from Uzbekistan. Pending availability of funds, approximately $1,000,000 is expected to be available under the FREEDOM Support Act for the Uzbekistan Educational Partnerships Program in Cultural and Comparative Religious Studies in FY 2003.

Objectives: The most competitive proposal should benefit all participants and partner institutions although the benefits do not need to be identical for each partner. The proposal should outline a plan to cooperate with Uzbekistani institutions to: (1) Develop courses and curricula in eligible fields; (2) improve teaching methods; (3) develop educational materials which support new courses and curricula; (4) train teachers or other practitioners in the effective use of these materials; (5) engage in collaborative research and (6) foster self-sustaining relationships with U.S. academic institutions and educators.

The program should equip participating Uzbekistani institutions and educators to provide accurate and balanced information about religions, including Islam, and Uzbekistani cultural history framed within a contemporary understanding of human rights and the role of cultural and religious pluralism in a democratic society. At the conclusion of the program, teachers at the participating Uzbekistani institutions should be capable of teaching newly introduced or revised courses and should be able to participate more fully in international dialogue with U.S. and other educators. Students graduating from the participating Uzbekistani institutions should have a better understanding of the relationships between religion, politics, and society in modern democracies and should be better prepared to apply this understanding in public service, education, and the private sector, and to contribute to building a democratic society.

The Bureau anticipates that participating U.S. institutions and individuals will benefit by developing or strengthening regional expertise, or by gaining access to new opportunities for archival or library research. Participating U.S. faculty may utilize this experience to develop new courses or incorporate comparative content into existing courses. Students at participating U.S. institutions will gain a better understanding of Central Asia through interaction with visiting scholars and U.S. faculty who have incorporated international content into their courses.

Pending availability of funds, the grant should begin on or about June 15, 2003.

Applicants should propose a multi-institutional plan that includes all of the partners listed below as primary partners:

The Tashkent Islamic University;
The Al-Bukhari Islamic Institute;
The Institute of History of the Academy of Sciences;
The Al-Beruni Institute of Oriental Studies of the Academy of Sciences;
The Tashkent State University of Oriental Studies.

Additional institutions may be included as secondary partners. The U.S. Embassy in Tashkent must approve any additional partner institutions.

In order to successfully coordinate the multiple components of this project it will be necessary for the grantee organization to have a field office in Uzbekistan, or to establish one by the time grant activities begin. The grantee will be expected to closely coordinate activities with the U.S. Embassy in Tashkent.

Participant eligibility: All participants traveling to Uzbekistan funded under the grant must be U.S. citizens. Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: The Bureau anticipates awarding one grant not to exceed $1,000,000. Applicants may submit a budget not to exceed this amount. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–03–13.

FOR FURTHER INFORMATION CONTACT: To request a solicitation package, contact the Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 Fourth Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Applicants desiring more information may contact Program Officer Jonathan Cebra at 202–205–8379 or *jcebra@pd.state.gov*.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Tuesday, April 1, 2003. Faxed documents will not be accepted at any time. Documents

postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–03–13, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Proposal Title Sheet, Executive Summary, and Proposal Narrative sections of the proposal as e-mail attachments in Microsoft Word (preferred), WordPerfect, or as ASCII text files to the following e-mail address: *partnerships@pd.state.gov.* In the e-mail message subject line, include the following: ECA/A/S/U–03–13. To reduce the time needed to obtain advisory comments from the Public Affairs Section of the U.S. Embassy in Tashkent, the Bureau will transmit these files electronically to this office.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other elements of the Department or the United States Government. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Broad and Enduring Significance of Institutional Objectives:* Program objectives should have significant and ongoing benefits for the participating institutions and for their surrounding societies or communities.

(2) *Creativity and Feasibility of Strategy to Achieve Objectives:* Strategies to achieve program objectives should be feasible and realistic within the budget and timeframe. These strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

(3) *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

(4) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during program implementation. In addition, program participants and administrators should reflect the diversity within the societies which they represent (*see* the section of this document on ''Diversity, Freedom, and Democracy Guidelines''). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

(5) *Institution's Capacity and Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(6) *Evaluation:* Proposals should outline a methodology for determining the degree to which the project meets its objectives, both while it is underway and at its conclusion. The final program evaluation should include an external component and should provide observations about the program's influence within the participating institutions as well as their surrounding communities or societies.

(7) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. Cost-sharing is viewed as a reflection of institutional commitment to the program.

(8) *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic bureau and overseas officers.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (FREEDOM Support Act).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 9, 2003.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–980 Filed 1–15–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14246]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of receipt of application of New Orleans Lakefront Airport, New Orleans, Louisiana; commencement of 60 day public review and comment period.

SUMMARY: The Federal Aviation Administration (FAA) is seeking information and comments from interested parties on the final application by the Orleans Levee District for participation of New Orleans Lakefront Airport (NEW) in the airport privatization pilot program. The final application is accepted for review.

Title 49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice of receipt of the final application in **Federal Register** and accept public comment on the final application for a period of 60 days.

DATES: Comments must be received by March 12, 2003. Comments that are received after that date will be considered only to the extent possible.

ADDRESSES: The final application is available for public review in the Dockets Office, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The documents have been filed under FAA Docket Number FAA–2003–14246. The Dockets Office is open between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

The Orleans Levee District has also made a copy of the application available at the following locations:

Circulation Desk at the Earl K. Long Library, University of New Orleans, 2000 Lakeshore Drive, New Orleans, Louisiana 70148. The documents are available for review: Monday through Thursday, 7:45 a.m. and 11 p.m. Friday, 7:45 a.m. and 8 p.m. Saturday, 10:00 a.m. and 6 pm. Sundays, 12 noon and 8 p.m. The Library is closed on all legal holidays. Library personnel will require presentation of picture identification.

Administration Building, New Orleans Lakefront Airport, 6001 Stars and Stripes Boulevard, New Orleans, Louisiana 70126.

The Administration Building is open weekdays from 9 a.m. and 4 p.m. with the exception of legal holidays. The contact person is Max L. Hearn who may be reached at (504) 243–4000.

Comments on the final application must be delivered or mailed, in duplicate, 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 Docket FAA–2003–14246'' at the beginning of your comments. Commentors wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–14246.'' The postcard will be date stamped and mailed to the commenter. You may also submit comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave SW., Washington, DC 20591. Telephone: 202–267–8741.

SUPPLEMENTARY INFORMATION: Title 49 of the U.S. Code 47134(b) authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes (upon approval of 65 percent of the air carriers serving the airport and have 65 percent of the landed weight), to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to

exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport. (No air carrier approval is necessary for the latter exemption.)

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR 48693). The notice of procedures and its public comments are available for review in FAA Rules Docket No. 28895.

On March 2, 2000, the Orleans Levee District submitted a preliminary application for participation of the New Orleans Lakefront Airport in the Airport Privatization Pilot Program. On May 17, 2000, the FAA informed the Orleans Levee District that additional information was needed in order for the FAA to accept the application for further review. The Orleans Levee District submitted all information, previously requested by the FAA. The filing date of the Orleans Levee District preliminary application was January 19, 2001, the date the FAA received a completed preliminary application.

On March 8, 2001, the FAA informed the Orleans Levee District that it had accepted New Orleans Lakefront Airport's preliminary application for further review. This action permitted the Orleans Levee District to select a private operator, negotiate an agreement and submit a final application to the FAA for exemption. On April 23, 2002, the Orleans Levee District filed a final application.

In its final application, the Orleans Levee District requested an exemption under 49 U.S.C. 47134(b)(1) from 49 U.S.C. 47107(b) and 47133, to permit the Orleans Levee District to use revenue from the lease of airport property for non-airport purposes; under 49 U.S.C. 47134(b)(2) to forgo the repayment of Federal grants; 49 U.S.C. 47134(b)(1); and under 49 U.S.C. 47134(b)(3) and to allow American Airports Lakefront, LLC to earn compensation from the operation of the airport.

In accordance with the final application, American Airports Lakefront, LLC will operate the airport under a 50-year lease and pay the Orleans Levee District $300,000 in annual rental payments for the first three years. In the fourth year, American Airports Lakefront, LLC will pay $300,000 in annual rental payments or 11 percent of the airport's gross income not to exceed $3,000,000 plus 30 percent of the airport's gross income over $3,000,000.

On July 2, 2002, in an effort to clarify certain parts of the application, FAA staff requested responses to 26 questions. Three of the questions posed to the American Airports Lakefront, LLC required it to utilize confidential business or financial information in its response. In accordance with the airport privatization pilot program application procedures, 62 FR 48693, 48706 (September 16, 1997), the private operator has requested confidential treatment of this information. As a result, the responses to those three questions have been withheld and will not be available for public comment. Copies of the 26 questions and the 23 responses available for public view and comment are included in the sponsor's application for public review.

On November 7, 2002, the FAA requested responses to four additional questions. The questions and the responses are included in the docket for public review.

The FAA has determined that the application is substantially complete. As part of its review of the final application, the FAA will consider all comments and information submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on January 13, 2003.

David L. Bennett,

Director, Airport Safety and Standards.

[FR Doc. 03–1013 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 5, 2003.

ADDRESSES: Send comments on the petition 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–2001–9080 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins (202 267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on January 9, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9080.

Petitioner: BNJ Company LLC (BNJ), doing business as Boeing NetJets .

Section of 14 CFR Affected: 14 CFR 43.3(a) and (f), 43.7(a) and (e), and 121.379.

Description of Relief Sought: To allow BNJ to use qualified part 121 air carrier certificate holders to perform maintenance, inspections, and return-to-service approvals on all Boeing 737–700 IGW Boeing Business Jet aircraft included in the BNJ-managed fractional ownership program.

[FR Doc. 03–920 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 17, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130—New. Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number or collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR § 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Work Schedules and Sleep Patterns of Railroad Signalmen.

OMB Control Number: 2130-New.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed both to operate and to maintain the nation's railroads, other crafts—besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on signalmen, one of the non-operating railroad crafts. FRA seeks to develop an understanding of the work schedule-related fatigue issues that affect signalmen. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the signalmen; and (2) It intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for signalmen.

Form Number(s): FRA F 6180.107; FRA F 6180.108.

Affected Public: Rail Workers.

Respondent Universe: 329 Railroad Signalmen.

Frequency of Submission: On occasion.

Estimated Annual Burden: 850 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 10, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–1005 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–14088]

Notice of Receipt of Petition for Decision That Nonconforming European Market 1994 Jeep Grand Cherokee Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming European Market 1994 Jeep Grand Cherokee multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that LHD 1994 Jeep Grand Cherokee MPVs manufactured for sale in Europe that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1994 Jeep Grand Cherokee MPVs originally manufactured for sale in Europe are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1994 Jeep Grand Cherokee MPVs that were manufactured for sale in the United States and certified by their manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified European Market 1994 Jeep Grand Cherokee MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 114 *Theft Protection* (noting that the vehicle has an audible anti-theft system that sounds when the key is left in the ignition lock and the driver's door is opened), 116 *Motor Vehicle Brake Fluids,* 118 *Power Window Systems* (noting that the window transport mechanism is inoperative when the ignition is switched off and the door is opened), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection* (noting that the vehicle is equipped with a safety belt warning system that includes an audible gong and illuminated dash light, with Type II seat belts in the front and rear outboard designated seating positions, and with a U.S.-model air bag and knee bolster in the driver's seating position), 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity* (noting that a rollover valve is integrated into the fuel module assembly, and is identical to that equipped on the vehicle's U.S. certified counterpart) and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified LHD Japanese Market 1994 Jeep Grand Cherokee MPVs comply with the Bumper Standard found in 49 CFR part 581, and with the Vehicle Identification Number (VIN) plate requirement of 49 CFR part 565.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 101 Controls and Displays: addition of the brake symbol.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: replacement of the headlight assemblies, which include sidemarker lights, and taillamp assemblies with U.S. model components.

Standard No. 111 Rearview Mirrors: inscription of the required warning statement on the passenger side rearview mirror.

The petitioner states that all vehicles must be inspected prior to importation

for compliance with the Theft Prevention Standard found in 49 CFR part 541, and that U.S.-model anti-theft devices must be installed on all vehicles lacking that equipment.

The petitioner also states that a certification label must be affixed to the left front door jamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–916 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14211]

Decision that Certain Nonconforming Motor Vehicles are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are either (1) substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards, or (2) they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

Annex A—Nonconforming Motor Vehicles Decided to Be Eligible for Importation

1. Docket No. NHTSA–2002–13533

Nonconforming Vehicle: 1995–2002 Harley Davidson Buell. Motorcycles (All Models).

Substantially similar U.S.-certified vehicle: 1995–2002 Harley Davidson Buell. Motorcycles (All Models).

Notice of Petition Published at: 67 FR 65833 (October 28, 2002).

Vehicle Eligibility Number: VSP–399.

2. Docket No. NHTSA–2002–13534

Nonconforming Vehicles: 1989–1993 Honda VFR 400 and RVF 400 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 1989–1993 Honda VFR 400 and RVF 400, the petition sought import

eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 67 FR 65835 (October 28, 2002).

Vehicle Eligibility Number: VCP–24.

3. Docket No. NHTSA–2002–13539

Nonconforming Vehicle: 1989–1994 Honda CBR 250 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 1989–1994 Honda CBR 250, the petition sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 67 FR 65836 (October 28, 2002).

Vehicle Eligibility Number: VCP–22.

4. Docket No. NHTSA–2002–13538

Nonconforming Vehicles: 2002 Yamaha FJR 1300 Motorcycles.

Because there are no substantially similar U.S.-certified versions of the 2002 Yamaha FJR 1300 Motorcycles, the petition sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 67 FR 65834 (October 28, 2002).

Vehicle Eligibility Number: VCP–23.

[FR Doc. 03–917 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–14087]

Notice of Receipt of Petition for Decision that Nonconforming 2002 Moto Guzzi California EV Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, (DOT).

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Moto Guzzi California EV motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Moto Guzzi California EV motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 18, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 am to 5 pm. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'')(Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 2002 Moto Guzzi California EV motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 2002 Moto Guzzi California EV motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Moto Guzzi S.p.A., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Moto Guzzi California EV motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Moto Guzzi California EV motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Moto Guzzi California EV motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 123 *Motorcycle Controls and Displays*.

The petitioner also states that non-U.S. certified 2002 Moto Guzzi California EV motorcycles are identical to their U.S. certified counterparts with respect to compliance with the vehicle identification number requirements of 49 CFR Part 565.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the existing headlamp lens with a U.S.-model component and installation of front amber and rear red reflectors.

WETL submitted with the petition a letter from Moto Guzzi North America, Inc., the manufacturer's U.S. representative, which stated that the differences between the non-U.S. certified 2002 Moto Guzzi California EV motorcycle that is the subject of the petition and the U.S.-certified version of the vehicle ''are minimal,'' and ''include the headlight and side reflectors.'' The letter identified no other differences between the two vehicles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 10, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–918 Filed 1–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34243]

N&T Railway Company LLC—Acquisition and Operation Exemption—Rail Lines in Stark County, OH

N&T Railway Company LLC (N&T), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31, to acquire and operate two nonconnecting rail lines located in Stark, County, OH.[1] One line, known as the Massillion line, consists of approximately 15 miles of track that is located in the Township of Perry, OH. The second line, known as the Canton line, consists of approximately 21 miles of track that is located between the Township of Canton and the City of Canton, OH.

The rail lines had been owned by Republic Technologies International, LLC (RTI), which is bankrupt, and had been operated by RTI's carrier subsidiary, the Nimishillen & Tuscarawas, LCC, which is not bankrupt. N&T's parent, Republic Engineered Products LLC (REP), acquired the lines from RTI, with the approval of RTI's bankruptcy court. REP then transferred ownership of the lines to N&T.

N&T certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and that such revenues would not exceed $5 million.

Operations under the transaction were scheduled to begin on or after December 25, 2002, the effective date of the exemption (7 days after the supplement was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34243, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on: Scott E. Ross, Akin Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–864 Filed 1–15–03; 8:45 am]

BILLING CODE 4915–00–P

[1] N&T's notice of exemption was filed on August 14, 2002, and supplemented on December 18, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 402X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in King County, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over a 0.17-mile line of railroad between Station 258 + 07 and Station 267 + 00, in Seattle, King County, WA. The line traverses United States Postal Service Zip Code 98119.[1]

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an OFA has been received, this exemption will be effective on February 15, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 27, 2003.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

[1] By petition for exemption filed December 26, 2002, the City of Seattle (City) is seeking an exemption from the requirements of 49 U.S.C. 10904 (offers of financial assistance) (OFAs). The merits of the petition will be addressed in a separate decision.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

[4] On December 26, 2002, the City on behalf of the Seattle Department of Transportation filed a request for issuance of a notice of interim trail use (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The City's trail use request, and any others that may be filed, will be addressed in a separate decision.

SEA will issue an environmental assessment (EA) by January 21, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by January 16, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–972 Filed 1–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network, Customs Service

Agency Information Collection Activities; Proposed Collection; Comment Request; Report of International Transportation of Currency or Monetary Instruments

AGENCY: Financial Crimes Enforcement Network (FinCEN) and Customs Service (Customs).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN and Customs invite the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be received on or before March 17, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to:

FinCEN: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183–0039, Attention: PRA Comments—Report of International Transportation of Currency or Monetary Instruments. Comments also may be submitted by electronic mail to the following Internet address: *''regcomments@fincen.treas.gov''* with the caption in the body of the text, *''Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments.''

Customs: U.S. Customs Service, Attn.: Walter Wilkowski, Financial Investigations, 1300 Pennsylvania Ave., NW., Room 7.2C, Washington, DC 20229. Telephone (202) 927–1469.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to:

FinCEN: Russell Stephenson, Office of Regulatory Programs, FinCEN, at (202) 354–6400 (This is not a toll free number).

Customs: U.S. Customs Service, Attn.: Walter Wilkowski, 1300 Pennsylvania Ave., NW., Room 7.2C, Washington, DC 20229. Tel. (202) 927–1469.

SUPPLEMENTARY INFORMATION:

Title: Report of International Transportation of Currency or Monetary Instruments.

OMB Number: 1506–0014.

Form Number: Customs form 4790.

Abstract: The Bank Secrecy Act, titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically states that ''a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) from a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States.'' 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the Report of International Transportation of Currency or Monetary Instruments (CMIR), U.S. Customs Service form 4790.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

Current Actions: The CMIR is being revised to increase the reliability of the data for investigative purposes and to clarify data fields on the form. Most data fields have been modified to include lines or boxes. A section has been designated for those transporting currency or monetary instruments (part II). The section required for mailing or shipping has been ''shaded'' and separated into its own section (part IV) to distinguish it from the rest of the form. The ''Other monetary instruments'' field has been expanded to include specific types of monetary instruments so that filers can easily select the appropriate type(s) they are transporting.

Type of Review: Revision of currently approved collection.

Affected Public: Individuals, business or other for-profit institutions, not-for-profit institutions.

Estimated Number of Respondents: 250,000.

Estimated Time Per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 45,834 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 6, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

BILLING CODE 4810–02–P

U.S. CUSTOMS ONLY
CONTROL NO.

OMB NO. 1506-0014

REPORT OF INTERNATIONAL TRANSPORATION OF CURRENCY OR MONETARY INSTRUMENTS

31 U.S.C. 5316; 31 CFR 103.23 , 103.27

COMPLETED FORM IS TO BE FILED WITH THE U.S. CUSTOMS SERVICE SEE INSTRUCTIONS ON BACK OF FORM

PART I — PERSON DEPARTING FROM OR ENTERING INTO THE UNITED STATES

1. NAME — LAST OR FAMILY | FIRST | MIDDLE
2. IDENTIFICATION NO. (SEE INSTRUCTIONS)
3. DATE OF BIRTH — MONTH | DAY | YEAR
4. PERMANENT HOME ADDRESS IN UNITED STATES OR ABROAD — STREET | APT. | CITY | STATE | ZIP CODE | COUNTRY
5. OCCUPATION
6. DESTINATION ADDRESS — STREET | APT. | CITY | STATE | ZIP CODE | COUNTRY
7. COUNTRY(IES) OF CITIZENSHIP
8. PASSPORT NO. & COUNTRY
9. U.S. VISA ISSUANCE DATE — MONTH | DAY | YEAR
10. PLACE VISA ISSUED
11. IMMIGRATION ALIEN NO. (If applicable)
12. COMPLETE THIS ITEM IF CURRENCY OR MONETARY INSTRUMENT IS ACCOMPANIED BY A PERSON
- ☐ EXPORTED CURRENCY OR MONETARY INSTRUMENT FROM THE UNITED STATES
- ☐ IMPORTED CURRENCY OR MONETARY INSTRUMENT INTO THE UNITED STATES

TRAVELER ORIGINATED FROM: CITY: STATE: COUNTRY:

PART II — COMPLETE THIS SECTION ONLY IF YOU ARE TRANSPORTING CURRENCY ON BEHALF OF SOMEONE ELSE. PROVIDE INFORMATION ABOUT PERSON(S) OR BUSINESS ON WHOSE BEHALF IMPORTATION/EXPORTATION WAS CONDUCTED.

13. NAME: LAST OR FAMILY OR BUSINESS | FIRST | MIDDLE
14. PHONE NUMBER (INCLUDE AREA CODE)
15. TYPE OF BUSINESS ACTIVITY, OCCUPATION OR PROFESSION — IS THIS BUSINESS A BANKING INSTITUTION? ☐ YES ☐ NO
16. EMPLOYER IDENTIFICATION NO. (EIN)
17. PASSPORT NO. & COUNTRY
18. PERMANENT ADDRESS IN UNITED STATES OR ABROAD — STREET | APT. | CITY | STATE | ZIP CODE | COUNTRY
19. PHONE NO. (INCLUDE AREA CODE)

PART III — CURRENCY AND MONETARY INSTRUMENTS (COMPLETION OF FIELDS BELOW IS MANDATORY)

20. TYPE AND AMOUNT OF CURRENCY/MONETARY INSTRUMENTS: — IN U.S. DOLLARS
- COINS ☐ YES ☐ NO → $
- CURRENCY ☐ YES ☐ NO → $
- OTHER MONETARY INSTRUMENTS (CHECK ALL THAT APPLY) → $
  - ☐ TRAVELERS CHECKS
  - ☐ CHECKS
  - ☐ MONEY ORDERS
  - ☐ BANK DRAFTS
  - ☐ BONDS
  - ☐ OTHER (SPECIFY TYPE, ISSUING ENTITY AND DATE, AND SERIAL OR OTHER IDENTIFYING NUMBER.)

TOTAL $

21. IF OTHER THAN U.S. CURRENCY IS INVOLVED, PLEASE COMPLETE BLOCKS BELOW:
- A. CURRENCY NAME
- B. COUNTRY

COMPLETE THIS SECTION ONLY IF YOU ARE MAILING OR SHIPPING CURRENCY OR MONETARY INSTRUMENT S

22A. DATE SHIPPED:
22B. DATE RECEIVED
22C. METHOD OF SHIPMENT (U.S. MAIL, PUBLIC CARRIER, ETC.)
22D. NAME OF CARRIER
22E. NAME SHIPPED TO: LAST OR FAMILY OR BUSINESS | FIRST | MIDDLE
22F. ADDRESS SHIPPED TO: STREET | CITY | STATE | ZIP CODE | COUNTRY
22G. NAME RECEIVED FROM: LAST OR FAMILY | FIRST | MIDDLE
22H. ADDRESS RECEIVED FROM: CITY | STATE | ZIP CODE | COUNTRY

PART V — SIGNATURE OF PERSON COMPLETING THIS REPORT

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

23. NAME — TITLE
SIGNATURE **X** — DATE OF REPORT

U.S. CUSTOMS USE ONLY ☐ INBOUND ☐ OUTBOUND COUNT VERIFIED ☐ YES ☐ NO VOLUNTARY REPORT ☐ YES ☐ NO

DATE	AIRLINE/FLIGHT/VESSEL	LICENSE PLATE		INSPECTOR BADGE NO.
		STATE/COUNTRY	NUMBER	

Customs Form 4790 (03/03)

DRAFT

ERAL INSTRUCTIONS

eport is required by 31 U.S.C. 5316 and Treasury Department regulations (31 CFR 103).

Must File: (1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped currency or other monetary instruments in an aggregate amount exceeding 00 at one time from the United States to any place outside the United States or into the United States from any place outside the United States, and (2) Each person who receives in the United States currency or monetary instruments In an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to the person from any place outside the United States.

RANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES, WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF RENCY OR MONETARY INSTRUMENTS, IS NOT REQUIRED TO BE REPORTED.

tions: Reports are not required to be filed by: (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped h the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary ments shipped to or received from an. established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the nary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or d from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the ssion of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to nsportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, (8) a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process he traveler's check has been negotiated, nor by (9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of ncy or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

EN AND WHERE TO FILE:

ecipients—Each person who receives currency or other monetary instruments in the United States shall file Form 4790, within 15 days after receipt of the currency or monetary uments, with the Customs officer in charge at any port of entry or departure or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington 0229.

nippers or Mailers—If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or e the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 20229.

avelers—Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or at the time of departure from the d States with the Customs officer in charge at any Customs port of entry or departure.

ditional report of a particular transportation, mailing, or shipping of currency or other monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise ed to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any United States Customs Service office.

ALTIES: Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years, are provided ailure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary ument may be subject to seizure and forfeiture. See 31 U.S.C. 5321 and 31 CFR 103.57; 31 U.S.C. 5322 and 31 CFR 103.59; 31 U.S.C. 5317 and 31 CFR 103.58, and U.S.C.

INITIONS:

:—Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company nized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, and building and loan association organized r the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift ution; (6) a credit union organized under the laws of any State or of the United States; and (7) any other organization chartered under the banking laws of any State and subject to the rvision of the bank supervisory authorities of a State other than a money service business; (8) a bank organized under foreign law; and (9) any national banking association or ration acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections 611-632).

ign Bank—A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or within the United States of a bank organized under foreign law.

er or Dealer in Securities—A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act 34.

ification Number—Individuals must enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien tration number. All others should enter their employer identification number.

tary Instruments— (1) Coin or currency of the United States or of any other country, (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer endorsed without restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery, (4) incomplete instruments (including checks, promissory notes, and money orders) e signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include (i) s or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements, (ii) warehouse receipts, or (iii) bills of lading.

n--An individual, a corporation, a partnership, a trust or estate, a joint stock company, and association, a syndicate, joint venture or other unincorporated organization or group, an Indian Tribe (as that term is d in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

CIAL INSTRUCTIONS:

hould complete each line that applies to you. **PART II.** -Block 13; provide the complete name of the shipper or recipient on whose behalf the exportation or importation was conducted. **PART III.** -- Specify type of nent, issuing entity, and date, serial or other identifying number, and payee (if any). **PART IV.** -- Block 22A and 22B; enter the exact date you shipped or received currency or monetary instrument(s). Block 21, if ncy or monetary instruments of more than one country is involved, attach a list showing each type, country or origin and amount.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE:

ant to the requirements of Public law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on Form 4790 in accordance with 5 U.S.C. 552a(e)(3) is Public law 91-508; 31 . 5316; 5 U.S.C. 301; Reorganization Plan No.1 of 1950; Treasury Department No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

rincipal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory Investigations or edings. The Information collected may be provided to those officers and employees of the Customs Service and any other constituent unit of the Department of the Treasury who have a need for the records in the mance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also vided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

sure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Part 103. Failure to provide all or any part of the requested Information may subject the currency or monetary Instruments to seizure rfeiture, as well as subject the individual to civil and criminal liabilities.

sure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 103.27(d). The social security number will be used as a means to identify the individual who e record.

ency 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 collection of this information is mandatory ant to 31 U.S.C. 5316, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FINCEN).

nent required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden associated with this collection of information is 11 minutes per respondent or record keeper depending on individual circumstances. ents concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39 Vienna, a 22183. **DO NOT send completed forms to this office—See When and Where To File above.**

Customs 4790 (03/03)

DRAFT

[FR Doc. 03–909 Filed 1–15–03; 8:45 am]

BILLING CODE 4810–02–C

Corrections

Federal Register
Vol. 68, No. 11
Thursday, January 16, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 112]

RIN 3090–AH77

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

Correction

In rule document 03–136 beginning on page 493 in the issue of January 6, 2003, make the following correction:

§ 301–10.303 [Corrected]

On page 494, in §301–10.303, the table should read as follows:

For use of a	Your reimbursement is
Privately owned aircraft (*e.g.*, helicopter, except an airplane)	Actual cost of operation (*i.e.*, fuel, oil, plus the additional expenses listed in § 301–10.304).
Privately owned airplane	95.5.[1]
Privately owned automobile	36.0.[1]
Privately owned motorcycle	27.5.[1]

[1] Cents per mile.

[FR Doc. C3–136 Filed 1–15–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–24 & 91–275]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

Correction

In the issue of Friday, January 10, 2003, appearing on page 1512, in the correction of rule document 02–15835, there was an additional error. The correction appears as follows:

§ 36.6 [Corrected]

On page 1512, in the third column, in correction 1., in the first and second lines, ''On the same page, in the same column, in the same section'' should read, ''On page 45212, in the first column, in § 36.6''.

[FR Doc. C2–15835 Filed 1–15–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 16, 2003

Part II

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice of Final Priority and Notice Inviting Applications for Fiscal Year (FY) 2003; Notices

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects (DRRP) Program; Notice of Final Priority

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority on Capacity Building, Coordination, and Collaboration projects under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year 2003 (FY) and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

EFFECTIVE DATE: This priority is effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

Section 21

Section 21(b)(2)(A) of the Act authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under title II of the Act. A minority entity is defined as a historically black college or university (a Part B institution, as defined in section 322(2) of the Higher Education Act of 1965, as amended), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent. Consistent with section 21(b)(2)(A), eligibility is limited to minority entities and Indian tribes.

New Freedom Initiative and the NIDRR Long-Range Plan

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Analysis of Comments and Changes

There are no differences between the notice of proposed priority (NPP) and this notice of final priority (NFP).

In response to our invitation in the NPP, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

Comment: One commenter suggested that issues of minority-focused capacity building and rehabilitation research should be a shared responsibility across all NIDRR funded projects and activities. The commenter communicated that a more equitable sharing of this responsibility will improve research outcomes and provide greater educational opportunities for qualified minority students. It was further suggested that a collaborative model proposed under the priority for addressing underserved populations might be more effective if research area four of the priority was made mandatory or the wording in the first bullet following the proposed priorities was revised to identify non-minority institutions specifically.

Discussion: NIDRR continues to encourage collaboration between minority and non-minority entities across the NIDRR research agenda. The suggested activities specified in the published priority emphasize the need for applicants to propose and establish collaborative efforts with minority and non-minority entities, especially partnerships among minority entities and Indian Tribes for the purpose of capacity building, and particularly with a focus on establishing partnerships with non-minority entities. An applicant is required to demonstrate in its application for funding how it will address the requirement to collaborate. The peer review process will evaluate the merits of the proposed approach in establishing such collaborative efforts.

Change: None.

Comment: One commenter welcomed approaches that would improve the public rehabilitation system by increasing its capacity to address the needs of all individuals with disabilities. The commenter suggested that the availability of such approaches could assist in identifying staff training needs and strategies for use in responding to these needs.

Discussion: NIDRR intends that the proposed priority recognizes the need for research focused on achieving improved understanding of the needs of all individuals with disabilities, including individuals from diverse racial and ethnic groups, cultures, and backgrounds. This DRRP is being established for the purpose of fostering activities that will improve service delivery, the availability of appropriate support systems, training and dissemination of research information, and facilitating collaborative partnerships that can ensure and enhance capacity to address the needs of all individuals with disabilities.

Changes: None.

Comment: One commenter noted that drug and alcohol abuse, as well as mental health issues, affect the Native American population disproportionately in comparison to the non-Native population. It was also suggested that when this factor is compounded with the special issues of disability and the unavailability of local services, the problem becomes severe. The commenter noted that increased assistance is needed by way of services, input from the individual and tribe, discussions by all parties involved, communication, and oversight.

Discussion: The published priority does not preclude applicants from investigating, evaluating, and demonstrating strategies that are consistent with the suggestions of the commenter. The peer review process will enable the merits of strategies proposed in an application to be evaluated.

Change: None.

The background for the priority was published in the NPP.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

This priority is intended to improve the quality and utility of research related to individuals with disabilities from traditionally underserved racial and ethnic populations and to enhance knowledge and awareness of issues related to these populations. The priority will achieve this goal by (1) building the capacity of researchers, especially individuals from traditionally underserved racial and ethnic populations, and (2) conducting disability research that examines the unique needs and factors that influence rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

Applicants must choose a minimum of three and up to a maximum of five research areas below. Due to the need to focus research and capacity-building activities on specific groups or topics, applicants may target those populations appropriate to the activities that they propose.

The DRRP research and capacity-building areas are:

(1) To investigate and evaluate disability and rehabilitation outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations in State vocational rehabilitation systems (VR), and assess between State and within State differences in outcomes.

(2) To investigate and evaluate access to and acceptance rates for VR services, types of services provided, and costs of rehabilitation services for individuals with disabilities from traditionally underserved racial and ethnic populations compared to non-minority individuals.

(3) To investigate, evaluate, and develop, as needed, indices and measures to assess the capacity of the disability and VR personnel workforce to provide quality services to individuals with disabilities from traditionally underserved racial and ethnic populations.

(4) To investigate, evaluate, and report activities that strengthen disability-related research collaboration between minority entities and non-minority entities, particularly collaboration to improve rehabilitation services and outcomes for traditionally underserved racial and ethnic populations.

(5) To investigate, develop as needed, and evaluate strategies for strengthening resources and research capacity of minority entities and Indian tribes, particularly the expertise and infrastructure requirements that are needed to ensure the optimal participation of minority entities and Indian tribes in disability and rehabilitation research.

(6) To investigate, develop, and evaluate strategies, such as cultural competency training, targeted recruitment efforts, and incentives, to include and enhance retention of students and investigators from traditionally underserved racial and ethnic populations as rehabilitation researchers, administrators, and educators.

(7) To investigate and evaluate the effect of persons from traditionally underserved racial and ethnic populations participating in disability and rehabilitation research activities, direct service delivery, and training programs, and determine to what extent participation assists to improve VR outcomes for underserved populations.

The DRRP project will provide information leading to better understanding of: (1) Factors that contribute to different VR outcomes for traditionally underserved racial and ethnic populations compared to non-minorities, (2) training needs and effective training strategies, (3) effective approaches for improving collaboration between minority entities and Indian tribes and other institutions, and (4) strategies that strengthen the research infrastructure and capacity-building for minority entities and Indian tribes.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities, including minority entities and Indian tribes;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and research methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Develop, implement, and evaluate dissemination strategies for research and capacity-building products developed by the project;
- Demonstrate appropriate multidisciplinary linkages;
- Develop and regularly update an online information dissemination system and make materials readily available in alternate formats;
- Conduct an annual evaluation of all activities undertaken in support of capacity-building using formal measures and indicators;
- Provide expertise, consultation, and technical assistance on capacity-building and cultural competence to individuals and organizations seeking information; and
- Ensure an interdisciplinary outreach effort in conducting research and capacity-building activities.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: January 13, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–1016 Filed 1–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–17]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year 2003

AGENCY: Department of Education.

ACTION: Notice inviting applications for fiscal year (FY) 2003.

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended. For FY 2003 the competition for new awards focuses on projects designed to meet the priority we describe in the **Priority** section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

Eligible Applicants: Parties eligible to apply for grants under this program are limited to minority entities and Indian tribes.

Application Available: January 16, 2003.

Deadline for Transmittal of Applications: March 17, 2003.

Maximum Award Amount: $350,000.

Note: We will reject any application without consideration that proposes a budget exceeding the stated maximum award amount in any given year (34 CFR 75.104(b)).

Estimated Number of Awards: 3.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) The program regulations 34 CFR part 350.

Priority

This competition focuses on a project designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Selection Criteria

The selection criteria to evaluate applications under this program are found in the application package.

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.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects (DRRP) Program—CFDA #84.133A is one of the programs included in the pilot project. If you are an applicant under the DRRP, 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 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 may 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 after 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 the DRRP 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 by 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 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 person 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 the DRRP 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 package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *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 this competition as follows: CFDA number 84.133A–17.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), may call the TDD number at (202) 205–4475.

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Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: January 13, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–1017 Filed 1–15–03; 8:45 am]

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H.R. 11/P.L. 108–3

National Flood Insurance Program Reauthorization Act of 2003 (Jan. 13, 2003; 117 Stat. 7)

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