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Federal Register

4–22–03 Tuesday
Vol. 68 No. 77 Apr. 22, 2003
Pages 19707–19928

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AJ62

Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on behalf of the President's Pay Agent to tie the metropolitan area portion of locality pay area boundaries to the geographic scope of Metropolitan Statistical Area and Consolidated Metropolitan Statistical Area definitions that are contained in the attachments to Office of Management and Budget Bulletin 99–04.

EFFECTIVE DATE: These regulations will become effective on May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *payleave@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine appropriate pay localities. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, who submit annual recommendations to the President's Pay Agent about the locality pay program for General Schedule employees. The establishment or modification of locality pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area (MSA) and Consolidated Metropolitan Statistical Area (CMSA) definitions as the basis for defining locality pay areas. OMB defines MSAs and CMSAs based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding adjoining areas to locality pay areas that are not already part of the MSA or CMSA as defined by OMB. Under our current regulations, the metropolitan area portion of locality pay areas changes automatically when OMB revises its metropolitan area definitions.

In October 2000, the Federal Salary Council recommended that the Pay Agent revise the regulations to hold the current MSA or CMSA portion of locality pay areas constant until the Pay Agent and the Federal Salary Council have had an opportunity to review new metropolitan area definitions and new commuting patterns and other data from the 2000 census. OMB plans to revise its metropolitan area definitions substantially in 2003 based on new census data and new criteria. The Council also recommended that the Pay Agent continue to monitor counties adjacent to locality pay areas during this period and make minor adjustments in locality pay area boundaries if a particularly egregious situation justifies such action.

Under the final rule, locality pay areas will no longer change automatically if OMB changes metropolitan area definitions. The new reference to the ''geographic scope'' of an MSA or CMSA is designed to make certain that locality pay area boundaries are not affected by county name changes or changes in the geographic boundaries of counties within the original geographic scope of the MSA. Dade County, FL, changed its name to Miami-Dade County, and the County of Broomfield, CO, recently was created out of portions of Adams, Boulder, Jefferson, and Weld Counties. All of these areas were already within the geographic scope of the Miami or Denver CMSA, as listed in attachments to OMB Bulletin 99–04, and remain covered by the existing locality pay areas.

A full listing of locality pay areas is at *http://opm.gov/oca/02tables/locdef.asp.* The change to hold constant the metropolitan area portion of locality pay areas will have no effect on current locality pay area boundaries or locality rates.

We received two comments on the proposal. One comment from a Federal agency concurred with the proposed rule and the other comment from a Federal employee was outside the scope of the proposal.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for Part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub.

L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, the definitions of *CMSA* and *MSA* are revised to read as follows:

§ 531.602 Definitions.

* * * * *

CMSA means the geographic scope of a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List II of the attachments to OMB Bulletin 99–04.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List I of the attachments to OMB Bulletin 99–04.

* * * * *

■ 3. In § 531.606, paragraph (g) is revised to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(g) In the event of a change in the geographic coverage of a locality pay area, the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage becomes effective.

* * * * *

[FR Doc. 03–9831 Filed 4–21–03; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ64

Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area; Correction

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management inadvertently omitted a county from the area of application for the State of Pennsylvania in the Scranton-Wilkes-Barre Federal Wage System wage area. Columbia County should have been listed immediately following Carbon County. This document corrects this error.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *maallen@opm.gov.*

SUPPLEMENTARY INFORMATION: In rule FR Doc. 03–215 published on January 6, 2003 (68 FR 459) make the following corrections. On page 460, in the first column, correct appendix C to subpart B of part 532 by adding ''Columbia'' in between ''Carbon'' and ''Lycoming'' under the area of application for the State of Pennsylvania.

Office of Personnel Management.

Jacquline Carter,

Federal Regulations Liaison Officer.

[FR Doc. 03–9830 Filed 4–21–03; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV03–925–2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Establishment of Safeguards and Procedures for Suspension of Packing Holidays

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes safeguards and procedures for the suspension of packing holidays prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). The procedures and safeguards will be used by the Committee when considering and making decisions on packing holiday suspension requests. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in the regulatory text regarding references to the California Code of Regulations (CCR).

DATES: *Effective date:* April 23, 2003; *Comment period:* comments received by June 23, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with

the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The explicitly stated procedures and safeguards will be used for all requests received to suspend packing holidays. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in the regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.52(a)(5) of the grape order provides authority to establish holidays by prohibiting the packing of all varieties of grapes during a specified period or periods.

Section 925.304(e) of the order's rules and regulations provides that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the Committee.

A decision by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures for the suspension of packing holidays to § 925.304(e) of the order's rules and regulations: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend the Committee meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person; (3) the Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision on whether or not to suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures are intended to address the concerns expressed in the administrative action. The specific safeguards and procedures will be added to § 925.304(e) of the order's administrative rules and regulations. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. These revisions do not impact the grape import regulation.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a)(2) of the grape order's administrative rules and regulations provides that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the CCR. These provisions do not, but should, specify that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, this rule adds language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule removes these references from § 925.304(b)(4) and adds references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

Eight of the 20 handlers subject to regulation have annual grape sales of $5,000,000. In addition, 10 of the 50 producers have annual sales of at least $750,000. Therefore, a majority of handlers and producers are classified as small entities.

This rule establishes safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The specification of procedures and safeguards for suspending packing holidays are expected to facilitate the Committee's discussions and decision-making on such requests received from handlers. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.304(e) of the order's rules and regulations provides that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, or Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the Committee.

A decision issued by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures for suspension of packing holidays to § 925.304(e) of the order's rules and regulations to the handling of such requests: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend via speakerphone or in person, and all votes of the Committee members on whether or not to approve the request shall be cast in person; (3) the Committee members shall consider marketing conditions (*i.e.,* supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend or not suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the requested prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures are intended to address the concerns expressed in the administrative action. The specific safeguards and procedures will be specified in § 925.304(e) of the order's administrative rules and regulations.

The Committee discussed alternatives to this change, including not making any changes, but determined that safeguards and procedures were needed to address the concerns expressed in the administrative action and to facilitate the handling of packing holiday suspension requests. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. Imported grapes will not be affected by this action.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a)(2) of the grape order's administrative rules and regulations provides that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in §§ 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the title 3: California Code of Regulations (CCR). These provisions do not, but should, specify that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, this rule adds language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule removes these references from § 925.304(b)(4) and adds references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

This rule is in the interest of handlers, producers and consumers. These revisions do not impact the grape import regulation.

The information collection requirements for the safeguards and procedures for the suspension of packing holidays have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rules invites comments on the addition of safeguards and procedures for suspensions of packing holidays, and clarification/removal of section numbers currently prescribed under the California grape order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action explicitly states safeguards and procedures to facilitate Committee discussions on packing holiday suspension requests; (2) the Committee unanimously recommended the safeguards and procedures at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments begin approximately April 20, 2003, and this rule should be in effect as soon as possible; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 925.304, paragraphs (a)(2), (b)(3), (b)(4), and (e) are revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) * * *

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

(b) * * *

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper, as provided in §§ 1436.30 and 1359 of Title 3: California Code of Regulations.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by 3 box pallet configuration: *Provided,* That pallets of reusable plastic containers shall have the lot stamp number stamped on two USDA-approved pallet tags, each affixed to opposite sides of the pallet of containers, in addition to other required information on the cards of the individual containers.

* * * * *

(e) *Suspension of packing holidays.* Upon recommendation of the committee and approval of the Secretary, the prohibition against packing or repacking grapes on any Saturday, Sunday or on Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee as follows:

(1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date;

(2) Upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to the Secretary that an assembled Committee meeting will be held to discuss the request(s). The representative of the Secretary shall attend the meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person;

(3) The Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities to include quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend packing holidays;

(4) Once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the Secretary's representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the committee; and

(5) The Secretary's representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers accordingly.

* * * * *

Dated: April 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9843 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 20, and 50

RIN 3150–AG56

Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to standardize the process for allowing a power reactor licensee to release part of its facility or site for unrestricted use before the NRC

approves the license termination plan (LTP). This type of release is termed a ''partial site release.'' The final rule identifies the criteria and regulatory framework that a licensee will use to request NRC approval for a partial site release and provides additional assurance that residual radioactivity will meet the radiological criteria for license termination, even if parts of the site were released before license termination. The final rule also clarifies that the radiological criteria for unrestricted use apply to a partial site release.

EFFECTIVE DATE: November 18, 2003, for § 50.75(g)(4). All remaining sections will be effective on May 22, 2003.

ADDRESSES: The final rule is available on the NRC's rulemaking Web site *(http://ruleforum.llnl.gov/).* For information about the interactive rulemaking Web site, contact Carol Gallagher, 301–415–5905 (electronic mail: *cag@nrc.gov*). Copies of certain documents related to this rulemaking may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet *(http://www.nrc.gov/reading-rm.html).* From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS) that provides text and image files of the NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or toll-free at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3092; or by e-mail to *hst@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Compliance with the decommissioning and license termination rules of 10 CFR parts 20 and 50 ensures adequate protection of the public and the environment from any radioactivity remaining in the facility and site when the reactor license is terminated. The NRC staff makes its determination that the licensee has met the license termination criteria using information submitted by the licensee in its license termination plan (LTP) and final radiation survey. The LTP is required no later than 2 years before the anticipated date of license termination. The license termination radiation survey is required after the licensee completes its decontamination activities. These requirements were based on the NRC's anticipation that reactor licensees would permanently cease operations and then perform the decommissioning and license termination of the site as one project. However, in 1999, a licensee informed the NRC staff that it intended to sell parts of its facility and site before it permanently ceased operations. As a result, the staff was faced with the need to evaluate the adequacy of the licensee's proposed action before the licensee was required to submit the information required by the license termination rule (LTR) and the final radiation survey.

In evaluating the NRC staff's response to the proposed sale of parts of the licensee's facility and site, a number of actions specific to the case were taken to ensure that the property would meet the radiological release criteria for unrestricted use in 10 CFR part 20, subpart E.

However, the NRC recognized that the current regulations in 10 CFR part 50 do not specifically address the release of part of a reactor facility or site for unrestricted use. Thus, there is no specific guidance as to the release criteria under 10 CFR part 20, subpart E, for a partial site release.

The purpose of the License Termination Rule (LTR) (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) and 10 CFR 50.82 is to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, this rule provides that the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the licensed site, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This approach is consistent with the intent of the LTR to consider the whole site for application of the release criteria. The rule clarifies this intent and does not establish new policies or standards. Although no further surveys of previously released areas are anticipated, the dose assessment in the LTP must account for possible dose contributions associated with previously released areas in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, (0.25 mSv/yr (25 mrem/yr) reduced to as low as reasonably achievable (ALARA)) at the time the license is terminated. The requirement that licensees maintain records of property line changes and the radiological conditions of partial site releases ensures that these potential dose contributions can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Draft NUREG–1757, Volume II, ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria,'' was published for public comment on September 26, 2002. When finalized, this document will provide guidance that may assist licensees in identifying and accounting for these potential dose contributions.

Therefore, the rule provides adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources.

Discussion

This rulemaking is applicable to power reactor licensees in order to be responsive to current industry needs, while also protecting the health and safety of the public. A separate rulemaking would be needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release. The rule requires NRC approval for a partial site release for unrestricted use at a reactor site before NRC approval of the licensee's LTP. Partial releases for restricted use are not permitted prior to LTP approval. Partial releases following LTP approval would be governed by the LTP or changes thereto.

The approval process by which the property is released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee would be allowed to submit a letter request for approval of the release containing specific information for NRC approval. In this case, because there is no reasonable potential for residual radioactivity, the NRC would approve the release of the property by letter upon determining that the licensee has otherwise met the criteria of the rule, provided that a change to a license or technical specifications description of the site is not necessary. Guidance for demonstrating that a proposed release area is non-impacted is contained in

NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).'' However, the NRC would generally not perform radiological surveys and sampling of a non-impacted area. The NRC will determine whether the licensee's classification of any release areas as non-impacted is adequately justified. If the NRC should determine that confirmatory surveys and sampling are needed, such surveys and sampling would be performed as part of the NRC's inspection process.

Second, for areas classified as impacted and, therefore, having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The license amendment application will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. In both cases, public participation requirements and additional recordkeeping are addressed.

In contrast to the license termination process, the rule does not require a license amendment to release property for unrestricted use in all cases. The NRC believes this difference is justified for the following reasons. First, the license termination process was created to deal with the facility or site as a whole, which inevitably involves handling residual radioactivity, such as that found in plant systems. The rule preserves the license amendment approach for those cases when the potential exists for residual radioactivity and requires that the area meets the radiological criteria for unrestricted use. Second, for cases when the change does not adversely affect reactor safety and it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required to adequately protect the public health and safety. The rule with its clearly defined criteria would be sufficient for the NRC to confirm a licensee's compliance with the partial site release rule. The NRC's oversight role in these cases is to ensure that the licensee meets the relevant criteria.

The rule amends 10 CFR part 2 to provide an opportunity for a Subpart L hearing if the release involves an amendment. The hearing, if conducted, must be completed before the property is released for use. However, for cases where it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required by the rule. A review of a licensee's proposed partial site release in such cases is essentially a compliance review to determine if the release would otherwise meet the defined criteria of the regulation. Assuming the partial site release does not result in a change to an existing license, the approval of the partial site release under these circumstances does not require a license amendment (*see* Cleveland Electric Illuminating, *et al.* (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315, 328 (1996)). In these cases, the opportunity to comment on the licensee's proposal for a partial site release and the required public meeting held before the release approval is granted will serve as forums for public comment on the proposed release.

In some cases, a reactor or site-specific Independent Spent Fuel Storage Installation (ISFSI) license may contain license conditions or technical specifications that define the licensed site in detail, such as a site map. In these cases, if the partial site release would change the licensed site as described, a reactor licensee would be required to submit a license amendment application for the release regardless of the potential for residual radioactivity in the area to be released. However, under current regulations, a licensee could amend its license to remove the licensed site definition without reference to a partial site release and then proceed to perform the release, without obtaining NRC approval. The rule requires NRC approval for a partial release from the licensed site regardless of the amount of detail defining the site in the operating license.

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release regardless of the potential for residual radioactivity and make it available for public comment. Notwithstanding the opportunity for a hearing if a license amendment is involved, the NRC also will hold a public meeting in the vicinity of the site to discuss the licensee's request for letter approval or license amendment application, as applicable, and obtain comments before approving the release. The NRC has issued a policy statement, ''Policy on Enhancing Public Participation in NRC Meetings'' (67 FR 36920; May 28, 2002). This policy statement provides a revised policy that the NRC will follow in opening meetings to public observation and participation. The revised policy is discussed in the Comments on the Proposed Rule.

Some commenters have expressed concern that a licensee could use a series of partial site releases to avoid applying the criteria of the license termination rule. Members of the public are concerned that the lack of a specific regulation for partial site releases could result in inconsistent application of safety standards and insufficient regulatory oversight of licensee actions. They also note that the public participation requirements of the license termination rule do not specifically apply to a partial site release. The rule addresses these concerns.

The rule does not permit a partial site release under restricted conditions prior to NRC approval of the LTP, nor has any reactor licensee expressed interest in releasing property for restricted use. Any partial release for restricted use would be handled on a case-by-case basis through application of an exemption process.

The partial site release rule makes the following changes to 10 CFR part 50:

1. Adds a new section, separate from the license termination process of § 50.82, to address the release of part of a reactor facility or site for unrestricted use before the LTP is approved.
2. Prohibits release for restricted use prior to LTP approval.
3. Specifies criteria for the licensee to fulfill to obtain NRC approval of a partial site release.
4. Allows a written request for release approval and does not require a license amendment for releases of property if the licensee demonstrates that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity in the area to be released. The release would be approved upon NRC determination that the licensee has met the criteria of the rule.
5. Requires a license amendment that contains the licensee's demonstration of compliance with the radiological criteria for unrestricted use (0.25 mSv/yr (25 mrem/yr) and ALARA) for releases of property when the area is classified as impacted and, therefore, some reasonable potential for residual radioactivity in the area to be released exists.
6. Revises the LTP requirements to account for previously released property in demonstrating compliance with the radiological release criteria.
7. Requires the NRC to hold a public meeting to inform the public of the partial site release request and receive public comments before acting on the request.
8. Incorporates into the recordkeeping important to decommissioning the records of property subject to the release criteria.
9. Adds supporting definitions of key terms.

The partial site release rule makes the following changes to 10 CFR part 20:

1. Includes releasing part of a facility or site within the scope of the radiological criteria for license termination.

2. Includes releasing part of a facility or site for unrestricted use within the scope of the criteria by which the NRC may require additional cleanup on receiving new information following the release.

The partial site release rule makes the following change to 10 CFR part 2:

1. Provides for informal hearings in accordance with subpart L for amendments associated with partial site releases.

Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received 11 comment letters. Three were from States (Connecticut, Illinois, and Washington), seven from the industry including six power reactor licensees and the Nuclear Energy Institute (NEI), and one from the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup.

The Commission sought input from stakeholders on seven specific issues associated with partial site release. The stakeholder input and the NRC responses to these issues follow.

1. Support for the Proposed Rule

Comment: None of the commenters were opposed to the idea of a process for releasing part of a site or facility. Six of the 11 commenters provided specific comments in general support of the concept of the proposed rule. The NEI, representing the industry, stated that recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to use property that does not directly support plant operations. Industry supports this needed regulatory action.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the general support for this rulemaking.

2. Partial Releases Following NRC Approval of the LTP

Comment: One reactor licensee and the NEI disagreed with the statement in the proposed rule that, once an LTP has been approved, there is no longer any need for a separate regulatory mechanism for partial releases. They noted that a significant length of time may pass between approval of the LTP and license termination, and that licensees should retain the opportunity to pursue a partial site release, even after the LTP has been approved, without having to revise the LTP by amendment with its potential for a hearing process.

Response: The purpose of the statement in the proposed rule that there is no longer any need for a separate regulatory mechanism for partial site releases once the LTP is approved was to clarify the difference between the partial site release process and the LTP change process. This rule only applies to partial site releases that take place prior to approval of a licensee's LTP. After the LTP has been approved, partial site releases (as subsequent revisions to the LTP), would require NRC approval by license amendment unless the LTP itself contained a sufficient change process or described staged releases of the property prior to license termination. Therefore, no changes to the final rule have been made in response to this comment.

3. Site Boundary Definition

Comment: Two reactor licensees and the NEI commented that the definition of Site Boundary in 10 CFR 20.1003 must be changed and clarifications added to the Statements of Consideration on the uses of ''site'' and ''site boundary.'' The definition of site boundary in § 20.1003 is ''that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.'' In general, the commenters stated that licensees may own, lease or control property, including property contiguous with their existing site, which is not associated with licensed activities and which should not be subject to the radiological release criteria of Part 20. The NEI commented that, in practical terms, the LTR should apply to all properties directly associated with the use of licensed materials.

Additionally, one reactor licensee commented that, in such cases when the licensee owns, leases, or controls property that is contiguous to the facility but is not for the purpose of receiving, possessing, or using licensed materials, the rule should permit the licensee to make changes to the site boundary under 10 CFR 50.59. Also, when such property is acquired, it should not be required to be incorporated into the site boundary.

Response: The Commission disagrees with the commenter's suggestion that the definition of ''site boundary'' in 10 CFR 20.1003 must be changed but agrees that clarification of this issue is needed. ''Site boundary,'' as defined in 10 CFR 20.1003 is not the area to be considered in demonstrating compliance with the radiological release criteria for all licensees. As one commenter accurately pointed out, the definition of site boundary was incorporated into 10 CFR part 20 to support the concept of a controlled area. The terms ''site'' and ''site boundary'' are used in a number of contexts by licensees and in the Commission's regulations. In the context of 10 CFR part 50, the term site boundary is typically applied for emergency planning purposes to define the point when offsite dose consequences are to be estimated for purposes of defining emergency action classes and making protective action measure recommendations. The site boundary is also often referred to in reactor plant technical specifications for the purpose of defining the point when effluents must meet the dose and concentration limits of part 20.

Because the radiological release criteria provided in 10 CFR part 20, subpart E, does not use the term ''site boundary'', the NRC does not believe the ''site boundary'' definition in § 20.1003 requires amending in order to describe the site area which must be considered in demonstrating compliance with the release criteria. Rather, for the purpose of partial site release, the focus is on the current and historic licensed site, meaning the site area as described in the original NRC license application, plus any acquisition of property outside the originally licensed site boundary added for the purpose of receiving, possessing, or using licensed material at any time during the term of the license.

This clarification will apply to the majority of release situations, including those at multi-unit sites. One commenter pointed out, however, that the clarification may complicate terminating the license in the case in which a part of the originally licensed site became part of the licensed site for another licensee at some time in the past, and the originally licensed site is no longer clearly delineated. The partial site release rule is not amended to address these unique license termination issues. A determination of what property must be considered in demonstrating compliance with the release criteria in these circumstances will necessarily be addressed on a case-by-case basis.

Sales or other dispositions of property from within the licensed site area by a power reactor licensee prior to NRC approval of the LTP requires NRC

preapproval under the partial site release rule. Acquisitions, as well as subsequent dispositions, of property located outside of the licensed site area can be made pursuant to 10 CFR 50.59 and NRC pre-approval of these transactions is not required as long as a licensing action is not otherwise required as a result of any regulations impacted as a result of the acquisition or disposition. Depending on the specific site circumstances, acquired property may become part of the several site boundaries established by licensees such as the exclusion area, emergency planning zone, effluent release compliance boundary, restricted area, controlled area, etc., and are therefore subject to applicable regulatory requirements.

In clarifying the area subject to the radiological release criteria, the recordkeeping requirements in 10 CFR 50.75(g) have been revised to require that licensees maintain records of the current and historic licensed site area as well as records associated with partial releases from the licensed site made prior to license termination. By maintaining these records, potential dose contributions from residual radioactivity in the entire area, including any areas previously released, can be assessed in demonstrating compliance with the radiological release criteria when performing a partial site release and when terminating the license. In order to prevent confusion with the site boundary definition in § 20.1003, the term ''site boundary'' has been changed to ''licensed site'' in the recordkeeping requirements added to 10 CFR 50.75(g) in the final rule.

4. Dose Contribution of Residual Material to the Environmental Protection Agency's (EPA) Environmental Radiation Standard

Comment: One reactor licensee and the NEI commented that the language in the section-by-section analysis of the proposed rule clarifying the relationship between radiation exposure limits associated with 10 CFR part 20 subpart D, subpart E, and the EPA's limits specified in 40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations,'' establishes a new policy position as written and constitutes a backfit if incorporated into the final rule. The commenters believe that the exposures due to residual radioactivity associated with a terminated 10 CFR part 50 license are outside the scope of EPA's limits under 40 CFR part 190 and that it is not necessary to reduce the 10 CFR part 20, subpart E, standard to account for additional exposures that originate from the operation of nearby uranium fuel cycle facilities. The commenters stated that if this interpretation were to hold it would have significant impact not only on licensees considering partial site release but also on licensees currently proceeding to terminate their part 50 licenses with an onsite ISFSI.

Additionally, a commenter stated that the existence of other sources of exposure to the critical group is already accounted for in the construction of the 0.25 mSv/yr (25 mrem/yr) radiological release criteria for unrestricted use in 10 CFR part 20, subpart E. The commenter also stated that, after a portion of the site is released, it no longer meets the definition of ''uranium fuel cycle operation,'' and therefore takes exception to the statements in the proposed rule that the dose caused by residual material associated with a partial site release is to be considered in combination with the other public doses from fuel cycle facilities.

Response: The NRC disagrees with the commenters' assertion that the section-by-section discussion clarifying the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 constitutes a new policy position and, therefore, requires a backfit analysis. As discussed in the Background section of these Statements of Consideration, the purpose of the LTR was to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the license, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This partial site release rule is consistent with the intent of the LTR and establishes no new policies or standards. The dose contributions associated with previously released areas meet the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Draft NUREG–1757, Volume II, ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria,'' when finalized, will provide guidance to licensees on how to identify and account for these potential dose contributors. The discussion in the section-by-section analysis represents the NRC's views on the application of existing requirements in 10 CFR part 20 to the new circumstance of partial site releases. However, power reactor licensees should appreciate that they are subject to 40 CFR part 190 requirements and that site boundaries may need to be reconsidered as a result of a partial site release for purposes of compliance with 40 CFR part 190. In addition, the NRC is reminding licensees that for the purposes of 40 CFR part 190, they must consider all doses from the operating uranium fuel cycle and that doses from portions of sites released may have come from radioactive material released time from an operating uranium fuel cycle facility. This partial site release rule does not amend or reinterpret 40 CFR part 190 or 10 CFR 20.1301(d), which requires certain licensees, including power reactor licensees, to comply with 40 CFR part 190. The NRC staff is developing guidance to implement 10 CFR 20.1301(d) for partial site releases, which will be incorporated into NUREG–1757, Volume II. Except for the information collection requirements in 10 CFR 50.75(g), which are not backfits, the requirements in this final rulemaking arise from the voluntary action of the licensee to seek partial site release and thus do not impose a backfit as defined in 10 CFR 50.109(a). Therefore, the NRC finds that the proposed rule discussion of the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 does not constitute a backfit, and that a backfit analysis is not required.

Additionally, the NRC believes that its interpretation of the applicability of EPA's regulations in 40 CFR part 190 is correct and consistent with past NRC regulatory concepts. Neither commenter demonstrated that the NRC's discussion was inconsistent with NRC regulatory concepts as articulated in the past, or inconsistent with past NRC practice with respect to license terminations in general. A review of the Statements of Consideration for the final 40 CFR part 190 rule did not disclose any discussion that supports the commenters' contention (*see* 42 FR 2850, January 13, 1977). On the contrary, the NRC believes that its discussion is entirely consistent with the underlying objective of the EPA requirements in 40 CFR part 190, viz., that the dose to the relevant receptor be based upon the contribution of all radioactive materials/sources attributable to the nuclear fuel cycle operations, regardless of the licensing status of the radioactive materials or the land on which they are located.

The NRC also disagrees that a partially released area no longer meets the definition for ''uranium fuel cycle operation,'' and therefore, the dose contribution attributable to residual

material on the partially released site is not required to be considered in determining compliance with the standards of 40 CFR part 190. It is true that, once a portion of the site is released, it is no longer an active part of a uranium fuel cycle operation. However, as noted above, it is residual material resulting from previous operation of the facility, introduced into the general environment as a result of the licensee's action to release the property for unrestricted use, that contributes to the public exposures within the scope of EPA's regulations at 40 CFR part 190. With respect to the definition of ''uranium fuel cycle,'' the Commission notes that neither the LTR, nor this rulemaking, redefine or limit the definition of uranium fuel cycle. Residual radioactivity does not lose its original pedigree by the NRC's action to terminate a license. The dose from this residual material must be considered in combination with other uranium fuel cycle exposures under 40 CFR part 190. The commenters' position would be true only if the EPA regulation had a temporal component, *i.e.*, they were intended to cover only current and/or future operations at the site. The regulations contain no temporal limitation and simply state that the dose equivalent must consider exposures ''from uranium fuel cycle operations.'' Moreover, the definition of ''uranium fuel cycle'' in 40 CFR 190.02 covers activities which are sequential in time (*i.e.*, for any given site they may not occur simultaneously). Nonetheless, under 40 CFR 190.10(a) the total contribution must be considered in determining compliance with the 40 CFR part 190 dose standards when releasing radiologically impacted property for unrestricted use. Assuming that the criterion is intended to integrate the instantaneous dose attributable to radioactive materials whose genesis is directly attributable to uranium fuel cycle operations, it is irrelevant that the radioactive materials happen to be located on a site that is no longer used for uranium fuel cycle operations. For these reasons, the NRC continues to believe that its discussion of the applicability of 40 CFR part 190 in the section-by-section analysis is correct.

Comment: Section 50.83(a)(1)(i) requires that licensees seeking NRC approval of a partial site release evaluate the effect of releasing the property to ensure that the dose to individual members of the public from the portion of the facility or site remaining under the license does not exceed the limits of 10 CFR part 20, subpart D. One reactor licensee and the NEI commented that the term ''portion of the facility or site remaining under the license'' be changed to ''portion of the facility or site that has not been released for unrestricted use.''

Response: As described above, when evaluating compliance with the public dose limits and standards, the dose from a proposed partial site release must be combined with the dose from other fuel cycle sources, which would include the portion of a site or facility remaining under the license as well as residual material from previously released impacted property. However, the proposed rule inappropriately limited the dose to be considered to that associated with the portion of the site remaining under the license. Section 50.83(a)(1)(i) has been changed in the final rule to require licensees to evaluate the effect of releasing the property to ensure all applicable doses are considered with regard to the limits and standards of 10 CFR part 20, subpart D. The evaluation would include consideration of all applicable exposure sources, including relevant fuel cycle sources pursuant to compliance with the EPA's environmental radiation standards incorporated at 10 CFR 20.1301(d). Consequently, rather than adopting the commenter's suggested language, the Commission has adopted broader, more accurate language in the final rule.

5. Use of Distinguishability From Background as a Release Criterion for Impacted Areas

Comment: The partial site release rule, as originally envisioned, proposed that radiologically impacted but remediated areas could be released using the same approval process as a non-impacted area if it could be demonstrated that the radioactivity is not distinguishable from the background radioactivity. Prior to publishing the proposed rule, however, the NRC staff concluded that a technical basis for such a criterion has not been established, and the criterion was not incorporated.

One reactor licensee stated that the rule should preserve, as an alternative, the ability to release an impacted area if it can be demonstrated that there is no residual radioactivity distinguishable from the background present. The release process should then follow the same process as that for a non-impacted area, approval by letter as opposed to a license amendment. Additionally, the commenter stated that the burden in this alternative is to develop and present strong reference background radiation data to support and defend the validity of its use, that the appropriate criterion for indistinguishability from background does exist, and that a potential criterion corresponding to the current free release criterion could be used by licensees.

Additionally, a State commenter suggested that the rule incorporate the MARSSIM approach to include a comparison of statistical distributions (survey *vs.* background) used to determine if radiation levels in the area surveyed are indistinguishable from background.

Response: A distinguishability-from-background release criterion cannot be incorporated into the regulations even as an alternative. In order to demonstrate that a given level of radiation is distinguishable from background, the statistical process for determining the radiation dose or concentration would require the specification of exactly ''how hard to look'' in order to ''see'' a difference from the background dose or concentration. Specifying how hard to look would, in effect, be the same as specifying an allowable difference from background that is not statistically important to detect. This would amount to specifying an allowable increment above background. As stated in the proposed rule, because no such increment has been endorsed, the criterion cannot be incorporated into the Commission's regulations.

Comment: A State commenter disagreed with the NRC's reasoning for deletion of distinguishability-from-background as a release criterion because for an unrestricted release, the ALARA requirements of 10 CFR 20.1402 may dictate clean up to levels indistinguishable from natural background.

The commenter also stated that, although it is recognized that proper definition of background is problematic because it is not a single value but rather a statistical distribution of values that varies widely with geographic location and other factors, it is a statistical entity (mean +/− (sd × n)) that can be empirically determined on a case-by-case basis. As a result, the ''minimum value above mean background against which to compare survey results,'' which the NRC has stated is a value which is not endorsed, can be established by setting a reasonable value for ''n'' in the foregoing expression.

Response: The Commission disagrees with this comment. There is no connection between ALARA requirements associated with the cleanup of an impacted area and the Commission's decision to delete distinguishability-from-background as a

release criterion. The ALARA requirements dictate clean up to levels which are as low as reasonably achievable. There are no requirements to cleanup an area to ''levels indistinguishable from natural background.''

Although measurement of background radioactivity is related to the statistical entity referred to by the commenter, the process of setting a reasonable value for ''n'' would present the same issue as choosing an increment above background for use in establishing a distinguishability criterion. Such a ''reasonable value'' would have to be established and has no current endorsement as a release criterion.

6. Recordkeeping

Comment: The NEI recommended that the rule be clarified to acknowledge that reactor licensees may maintain the records associated with acquisition and disposition of property along with the other records required under 10 CFR 50.75(g) in a distributed fashion. Records would not necessarily reside in a specific file folder, but would be maintained within the overall record management system.

Response: The NRC recognizes that licensees may maintain these records in a distributed fashion within the overall record management system. As stated in 10 CFR 50.75(g), if records of relevant information are kept for other purposes, references to these records and their location may be used.

Comment: One reactor licensee commented that, for property added over time, it would make sense to place the current site boundary in the decommissioning records at the time of rule implementation, rather than research and separately locate each record of acquisition in the past. Since the goal is to ensure the site boundary is known, and that any dispositions or release of property are known, there is no real benefit in locating and placing records of past individual acquisitions into the decommissioning records.

The commenter also stated that records of licensed activities on property acquired since original licensing should not need to be maintained as separate decommissioning records if the acquired property is assimilated into the licensed site. Acquired property should be treated no differently than originally owned property from a decommissioning record perspective. The existing requirements for decommissioning records should apply to the site equally, regardless of whether the portion of the site was purchased after original licensing or before.

In addition, the commenter stated that the cost portion of the regulatory analysis should also include the costs of researching site history and property additions, and use of the portion of the property that was added, if the requirement for this data to be maintained as separate decommissioning records is retained.

Response: It is not the intent of the recordkeeping requirements added at 10 CFR 50.75(g) to require licensees to research and separately locate each record of acquisition made in the past. The recordkeeping in the proposed rule listed the records of the originally licensed site and those of subsequent acquisitions separately in order to clarify that the entire licensed site area (past and present) is subject to the release criteria and must be accounted for in the recordkeeping.

However, because recordkeeping associated with the current licensed site area may not account for releases of property from the licensed site made prior to the partial site release rulemaking, and may not account for all relevant additions to the licensed site, licensees are cautioned that simply placing the information associated with the current licensed site into the decommissioning records may result in a record inventory which, in aggregate, does not meet the intent of the recordkeeping for records which must be assessed at the time of partial site releases and at the time of license termination.

The listing of records of the originally licensed site and those of subsequent acquisitions added to the recordkeeping requirements at 10 CFR 50.75(g) have been combined in the final rule to avoid the implication that these records must be researched and maintained separately. The cost portion of the regulatory analysis associated with the rule did not assume the maintenance of separate records and, therefore, does not require a revision as a result of this clarification.

Comment: One reactor licensee commented that because establishing the records added to 10 CFR 50.75(g) may be time consuming, depending on the site's history, the final rule needs to allow implementation time.

Response: Although, as stated by the NEI, licensees are already maintaining these property records in order to be able to comply with the LTR at the time of license termination, the NRC agrees that some period for implementation may be needed by some licensees. Therefore, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified to provide a 6-month implementation period.

7. Lack of Clearance Standards

Comment: One reactor licensee commented that, for either partial site release without a license termination plan or license termination for the entire site under existing rules, residual radioactivity may remain as long as the exposure criterion of 10 CFR part 20, subpart E, is satisfied. However, prior to license termination, this same residual radioactivity is treated as licensed material—regardless of how little the amount, concentration, or dose significance—and can only be disposed of by transport to a licensed radwaste disposal facility. The commenter stated that this double standard poses an incentive to retain radioactive material onsite to be later abandoned in order to avoid potentially excessive costs for radwaste disposal, while creating a longer term risk for additional site cleanup required by other regulatory authority or a court of law. The commenter further noted that the NRC is seeking to resolve this discrepancy through a study by the National Academy of Sciences and further agency deliberation, a process that may take several years. Prolonged delay contributes to the erosion in public understanding and confidence in government policy as well as the lack of finality for licensees. Public policy is needed to define the quantitative dose and radionuclide characteristics that have no discernible public health consequences.

The commenter stated that the NRC should recognize that post-license termination requirements imposed by other Federal, State or local agencies can prevent the actual release of a site for unrestricted use—in contravention to the purposes of the LTR. Therefore, the NRC should act to assert its authority in matters of radiation protection and management of radioactive materials. This will require definitive clearance standards that establish allowable quantities and concentrations of radionuclides for materials. Such standards, which are fully protective of public health and safety and are in the public interest, can be created.

Response: Although the comments are not directly related to the partial site release rulemaking, the NRC is appreciative of the issues raised. The Commission has approved the development of a proposed rule to address the control of solid materials, including whether it is appropriate to set a standard in this area that would apply to all licensees. The points raised

in the comments will be considered as part of the Commission's review of alternative approaches.

8. Finality of Releases

Comment: A reactor licensee commented that, after the Commission has released the property, its jurisdiction should end. The commenter recommended that in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

Response: The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in § 20.1401(c) by stating these provisions are important in providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) point out that, under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the dose criterion. Because of the surveys performed by the licensee and confirmatory surveys routinely performed by NRC, the chances of discovering previously unidentified contamination exceeding the dose criteria would be very small.

9. State Regulatory Agency Participation

Comment: A State commenter noted that the proposed rule is silent with regard to participation by State regulatory agencies. Although there are general provisions for stakeholder input and public participation, notification, meetings and hearings, there is no explicit provision for ''hands-on'' involvement by State regulators. The commenter suggested the rule be amended to include explicit provisions for State participation. The commenter also stated that, in their experience, the role of the State in Federally regulated site clearance processes has historically been that of ''independent verification.'' This role assures that the site release process is in compliance with applicable State regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the State is also important in the event that portions of the property to be released would be transferred to State ownership and/or control. For these reasons, amending the rule to provide for independent verification by State regulators makes good sense.

Response: The Commission has published the policy statement ''Cooperation With States at Commercial Nuclear Production or Utilization Facilities'' (54 FR 7530; February 22, 1989, as amended at 57 FR 6462; February 25, 1992) which the NRC believes provides an adequate mechanism for State regulatory agencies to participate in the release process. The policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials of host and adjacent States to accompany the NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which could allow States to directly participate in the NRC inspection activities at operating facilities as well as at those undergoing decommissioning.

The interest of the States with regard to the scope of the partial site release rule is expected to be primarily concerned with licensee demonstrations of compliance with the radiological release criteria for unrestricted use. In addition to any direct or independent participation agreed to between the State and the NRC, or between the State and the licensee, it is anticipated that the States will continue to participate in the public meetings held prior to NRC approval of partial site releases, and will continue to coordinate with licensees and the NRC in evaluating proposed partial site releases with regard to the release criteria. Therefore, explicit provisions for direct State participation are not being incorporated into the partial site release rule.

10. Radiological Surveys of Non-Impacted Sites

Comment: A State commenter stated that, rather than require the performance of radiological surveys for non-impacted areas, the rule defers to the guidance contained in MARSSIM for demonstrating that a proposed release area is non-impacted. The MARSSIM guidance calls for the performance of a historical site assessment (HSA). The HSA is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information. The assessment results in a classification of areas according to their potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas, and no surveys are required. The commenter feels that relying on a historical site assessment without the benefit of an up-to-date-radiation survey leads to results which are less reliable and more difficult to defend, and is contrary to the rule's stated purposes related to the assurance of meeting the radiological release criteria and of increasing public confidence.

Additionally, the commenter stated that the NRC supports its position that the rule should not require surveys for non-impacted areas by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. The commenter also states that the NRC has further supported this position in the Statements of Consideration by stating that, because it has not established a minimum value above mean background to compare survey results, surveying these areas is not feasible.

Response: The NRC believes that the rule should not specifically require the performance of radiological surveys for non-impacted areas. However, the rule does not preclude the collection and use of such surveys by the licensee. The MARSSIM provides adequate guidance acceptable to the NRC for determining when additional surveys are appropriate, and for demonstrating that a proposed release area is non-impacted. The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions

which may have led to residual contamination be used in combination with historical analytical information such as survey data. MARSSIM section 3.6, ''Evaluation of Historical Site Assessment Data'' states that if process knowledge suggests that no residual contamination should be present and the historical analytical data also suggests that no residual contamination is present, the process knowledge provides an additional level of confidence and supports classifying the area as non-impacted. MARSSIM specifically cautions however, that existing radiation data must be examined carefully because previous survey and sampling efforts may not be compatible with the objectives of the HSA, may not be extensive enough to sufficiently characterize the facility or site, and because conditions may have changed since the site was last sampled.

NRC Regulatory Issue Summary 2002–02, ''Lessons Learned Related to Recently Submitted Decommissioning Plans And License Termination Plans,'' states that old records may be inadequate or inaccurate for the purpose of developing either the HSA or site characterization, and suggests that these records not be relied on as the sole source of information for the HSA or site characterization. Interviews with current and former staff and contractors play an essential role in formulating the HSA, but may yield information as inadequate or inaccurate as old records. Experience has shown that old records and results of operational surveys and post-shutdown scoping surveys have been submitted as substitutes for characterization surveys. For example, the results of operational surveys may represent radiological status, describing conditions over a limited time span, or may have been conducted to address specific events (*i.e.*, post-spill cleanup assessment). In a few instances, the results of personnel interviews and information, which can only be considered as anecdotal, have been presented in the HSA. It could not be determined whether this information, in fact, was part of an unbroken chronological history of the site or contained time gaps when operational milestones or occurrences were missing. Although the NRC encourages licensees to review old records and conduct personnel interviews (past and current employees and key contractors), there is a need to present the information obtained in its proper context and qualify its usefulness and how it might be supplemented by additional data searches or characterization surveys.

Paragraphs 50.83(c)(2) and 50.83(d)(2) of the proposed rule stated that, after receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine if the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas. However, licensees may choose to survey these areas on their own initiative. The question of whether surveys of non-impacted areas should be performed is solely concerned with whether the HSAs and the site characterization process are adequate bases to conclude that there is no reasonable potential for residual radioactivity.

11. Final Radiation Survey and Associated Documentation

Comment: Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and the NEI commented that adding the phrase ''including any parts released for use before approval of the license termination plan'' as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase ''released for use'' should be changed to ''released for unrestricted use.'' Additionally, a commenter stated that the phrase ''are suitable for release'' with regard to the property being released should more appropriately be changed to indicate that the release meets the applicable release criteria.

Response: As stated in the proposed rule, the NRC does not anticipate further surveys of a previously released area, but rather is seeking to account for, in the radiation survey and associated documentation demonstrating compliance with the release criteria, potential dose contributions associated with previously released areas. The language at 10 CFR 50.82(a)(11)(ii) in the final rule has therefore been modified to indicate that the final radiation survey and associated documentation is to include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria. The term ''released for use'' is retained because the intent is that the documentation assess dose contributions from previously released parts of the facility or site whether they were released for restricted or unrestricted use. Additionally, the phrase ''are suitable for release'' is changed to ''have met the applicable criteria.''

12. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Are There Rulemaking Alternatives to This Proposed Rule That Were Not Considered in the Regulatory Analysis for This Proposed Rule?

Comment: The NEI and one reactor licensee commented that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners, and that this option should be included in the proposed rule.

Response: The Commission disagrees with this comment. There is no need to provide this option because the staff has determined that this approval is not an amendment to a license pursuant to the analysis in *Cleveland Electric Illuminating, et al.* (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315, 328 (1996). The NRC's oversight role in these cases is essentially a confirmation to ensure that the licensee complies with the clearly defined criteria found in the rule. This is in contrast to an impacted area where the staff must analyze and evaluate the information and survey documentation provided by the licensee in order to determine if release of the impacted area poses a threat to public health and safety. For these cases, the license amendment process is appropriate. Allowing a licensee to seek a license amendment for release of non-impacted areas would also decrease the efficiency and effectiveness of the staff's review process. The staff believes that a letter approval of a release will be sufficient to provide future property owners with assurance that the land poses no risk to public health and safety. Moreover, the rule established a process for the NRC to obtain public comments before making a decision to approve a release.

13. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Are the Proposed Definitions in § 50.2 Clear?

Comment: The MARSSIM Workgroup commented that the definitions of impacted and non-impacted areas proposed for incorporation into 10 CFR 50.2 are inconsistent with MARSSIM. The workgroup recommends that the definitions be taken verbatim from the MARSSIM glossary as follows:

Impacted Area—Any area that is not classified as non-impacted. Areas with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

Non-Impacted Area—Areas where there is no reasonable possibility (extremely low probability) of residual contamination. Non-impacted areas are typically located off-site and may be used as background reference areas.

Response: The definitions of impacted and non-impacted areas being added to 10 CFR 50.2 will remain as presented in the proposed rule. These definitions were not taken from the MARSSIM glossary but were, for the most part, taken from the definitions provided in section 2.2 of the MARSSIM text, titled ''Understanding Key MARSSIM Technology.'' The text in section 2.2 states that areas that have no reasonable potential for residual contamination are classified as non-impacted areas, and that areas with some potential for residual contamination are classified as impacted areas.

In the definitions of impacted and non-impacted areas incorporated into the rule, the term ''residual contamination'' found in the MARSSIM text was replaced with the term ''residual radioactivity'' for consistency with the definition of residual radioactivity found in 10 CFR 20.1003. For clarity, the definitions also specify that the radioactivity referred to is that which is in excess of natural background or fallout levels.

In addition, the word ''reasonable'' was added to the definition of impacted areas in order for the definitions of impacted and non-impacted areas to be mutually exclusive. Without the opposition between the two definitions, an area could conceivably meet both definitions. The MARSSIM glossary definition of impacted area states that it is an area not classified as non-impacted. Therefore, this change is consistent with the MARSSIM intent that the definitions be mutually exclusive. Also, non-impacted areas are defined in the MARSSIM glossary as those areas with no reasonable possibility of residual contamination. Impacted areas are defined as those areas with a possibility for residual radioactivity—meaning no matter how slight a possibility, because the word ''reasonable'' is omitted. Because the word ''reasonable'' is omitted from the MARSSIM glossary definition of impacted areas, the two glossary definitions are not mutually exclusive as intended.

Finally, the statement in the MARSSIM glossary definition that non-impacted areas are typically located off-site and may be used as background reference areas is irrelevant to the determination of whether an area is non-impacted and is therefore inappropriate for incorporation into the definition.

Comment: One reactor licensee and the NEI recommended that the definitions for Historical Site Assessment, Impacted areas, and Non-impacted areas be incorporated into 10 CFR 50.2 and be changed to specify that the residual material or radioactivity is that from licensed activities.

Response: The radioactivity referred to in the definition of Historical Site Assessment cannot be limited to that resulting from licensed activities and the definition is not revised. Residual radioactivity is a defined term in 10 CFR 20.1003 referring to radioactivity at a site resulting from any activities under the licensee's control, and includes radioactivity from both licensed and unlicensed sources.

14. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Is Public Involvement Adequately Considered?

Comment: The NEI commented that the rule adequately considers public involvement. A State commenter stated, however, that there is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the ''non-impacted designation'' by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to inform stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? The NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

Response: The Commission disagrees with this comment and believes that the public will have ample opportunity to be involved with partial site release issues. The partial site release rule provides for public participation through review and comment on a licensee's proposed release plans and through participation in a public meeting whether or not an amendment is involved. This process enables the public to collect information, to comment on and question the actions at the site with regard to the proposed release, and to discuss relevant issues among stakeholders. The NRC will consider any information or concerns brought forward by members of the public during the public review and comment period or during the public meeting.

The NRC has issued a policy statement, ''Policy on Enhancing Public Participation in NRC Meetings'' (67 FR 36920, May 28, 2002). This policy statement articulates the NRC's revised policy concerning opening meetings to public observation and participation. It defines three categories of public meeting, each with an increasing level of public participation. The public meeting required by the partial site release rule will be classified as a Category 3 meeting with the highest level of public participation. In these meetings, public participation is actively sought. The meetings are specifically tailored for the public to discuss relevant issues with the NRC and other stakeholders, to make comments, and ask questions throughout the meeting. Questions or concerns that cannot be resolved at the meeting will be assigned to a designated NRC staff person for action.

Although there is no mandatory public hearing provided for in this rule, there are ways in which the public may participate in hearings on partial site release issues. First, in the event that a license amendment associated with a partial site release is challenged, there will be the opportunity for a hearing on the license amendment. Second, NRC regulations in 10 CFR 2.206, ''Requests for Action under this Subpart,'' allow any member of the public to raise potential health and safety concerns and petition the NRC to take specific actions to resolve a dispute identified in the petition. The NRC believes that a mandatory hearing is not warranted in light of the many opportunities for public participation. Consequently, no change has been made to the final rule in response to this comment.

15. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Should the License Amendment Process Be Required for All Partial Site Release Approvals, Regardless of Whether the Site Has Been Classified as Non-Impacted?

Comment: The NEI commented that requiring the license amendment process for NRC approval of partial site releases of non-impacted lands is not justified. The comment states, however, that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands and recommends that this approach be offered as an option.

Response: The NRC agrees that requiring its approval for the release of a non-impacted area should not require a license amendment when an amendment is not otherwise required as a result of any regulations, license conditions, or technical specifications impacted as a result of the change.

16. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Does the Proposed Rule Make it Adequately Clear That When Performing Partial Site Releases and When Releasing the Entire Site at License Termination, Licensees Must Consider Potential Dose Contributions From Previous Partial Releases in Demonstrating Compliance With the Radiological Release Criteria?

Comment: The NEI stated that the rule makes this issue adequately clear and also stated that the guidance promised in the proposed rule for assessing potential dose contributions will help identify how consideration of potential dose contributions can best be accomplished. The comment further stated that the guidance is needed before the final rule is issued to ensure that the partial site release process and the ultimate license termination can be accomplished practically as envisioned.

Response: The NRC agrees that the rule makes this issue adequately clear. The NRC recognizes that licensees seeking partial site releases will require guidance as to how to account for dose contributions from previous releases. In order to provide this guidance, on September 26, 2002, the NRC published a notice of availability of draft NUREG–1757, Volume II, ''Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria,'' in the **Federal Register** for public comment and expects to publish it as a final document upon resolution of the public comments.

Comment: A State commenter questioned how the partial site release rule addresses issues when, following release, contamination is found in an area classified and released as non-impacted, or where contamination is found to be in excess of the criteria established in the LTP, or, in the above conditions, when the property was transferred to another entity. Additionally, the commenter questioned what rights a potential purchaser would have against the licensee if contamination is found following the release.

Response: Although the partial release removes the property from the license and activities conducted on the property are no longer under NRC jurisdiction, the rule amends 10 CFR 20.1401(c) to bring partial site releases within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release. As stated in 10 CFR 20.1401(c), additional cleanup would only be required if the new information reveals that the radiological release requirements of 10 CFR part 20, subpart E, were not met and there continues to be a significant threat to public health and safety from residual radioactivity. The rule does not address any other matters of a commercial nature which may be associated with released property, including issues related to contamination found on released property, the magnitude of which falls short of the additional cleanup criteria in 10 CFR 20.1401(c).

17. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Is There a Reason To Limit the Size or Number of Partial Site Releases?

Comment: The NEI and a reactor licensee stated that there is no reason to limit the size or number of partial site releases. They stated that as long as the final license termination addresses the entire site, the intent of the license termination rule is met.

Response: The NRC agrees that there is no reason to limit the size or number of partial site releases. Partial releases performed prior to license termination require a demonstration of compliance with the radiological release criteria at 10 CFR part 20, subpart E, as well as a demonstration of compliance with other regulatory requirements that may be impacted as a result of changing site boundaries. Additionally, the dose contributions from residual radioactivity in previously released impacted areas are considered with respect to the release criteria when performing subsequent partial releases and when releasing the entire site at license termination.

18. Question From the ''Issues for Public Comment'' Section of the Proposed Rule: Are There Other Potential Impacts on Continued Operation or Decommissioning Activities as a Result of Partial Site Releases That Should Specifically Be Considered in the Rule?

Comment: A State commenter stated that the impact of future operation or use of the area released under a partial site release must be considered with regard to potential threats to the storage of spent nuclear fuel or operation of the nuclear power plant prior to allowing control of the released area to be transferred to a non-licensee. The commenter referred to a situation in which a licensee proposes a partial site release with the intent to sell the released property for development of a gas fired electrical generating plant in close proximity to spent fuel stored on the remainder of the site. If no safety analysis is performed in advance of the release, future threats to the nuclear fuel will not be addressed. The commenter states that placing requirements on an existing licensee only after threats are identified as a result of future activities on a released area is not an acceptable mechanism for protecting public health and safety.

Response: The NRC believes that consideration of the potential hazards associated with the future or end use of property proposed for partial site release should not be incorporated into the partial site release rule. Future use of property as an approval criteria based on expectations existing at the time of the release request holds little practical value because the actual future use of property released for unrestricted use cannot be anticipated and could, in any event, change following the release.

As part of its application for a construction permit and operating license for a power reactor facility, the licensee is required to perform an analysis of the effects the reactor facility will have on the environment, including the effects from nearby industrial facilities and transportation under the siting criteria at 10 CFR part 100. The partial site release rulemaking specifically requires licensees requesting a partial site release to evaluate their continued compliance with these siting criteria.

Additionally, the licensee must continue to ensure that its bases and conclusions as presented in the Final Safety Analysis Report which form part of the basis for its operating license remain valid under 10 CFR 50.71. Therefore, the licensee must ensure that

the licensed facility is adequately protected and that operations can be conducted with an acceptable degree of safety with respect to offsite activities as they are identified. The NRC would review any necessary changes to the nuclear plant license or changes to the plant licensing basis that evolve from the licensee's evaluation. To the extent that the future use of the property to be released is known, these reviews and evaluations would be performed as part of the licensee's overall assessment of the viability of obtaining NRC approval for a partial site release.

The NRC recognizes that a non-licensed third party may elect to locate potentially hazardous facilities, or engage in hazardous activities, on property adjacent to a licensed site, including property released for unrestricted use. Although the NRC has no authority to regulate activities that are outside the scope of the NRC's jurisdiction of non-licensed third parties or to prevent third parties from constructing facilities or engaging in such activities which present a potential hazard to the licensee's plant, the NRC does have authority to take action against the licensee. Assuming that the potential hazard is such that the NRC would not have allowed the siting of the plant if the conditions were known, then under section 186 of the Atomic Energy Act, the NRC could revoke the license to prevent the hazard. Since the license can be revoked, lesser actions can be taken as well—such as suspending the license, issuing an order, or issuing a demand for information, depending on the circumstances.

19. Rule Language Comments

Comment: One reactor licensee and the NEI commented that the language contained in § 50.75(g)(4) is not consistent with existing § 50.75(g) which states ''Information the Commission considers important to decommissioning consist of * * * (4) Licensees shall maintain property records containing the following information: * * *'' The term ''Licensees shall maintain'' should be deleted.

Response: The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

Comment: One reactor licensee and the NEI commented on the wording in § 50.75(g)(4)(iv) of the proposed rule, stating that the word ''disposition'' should be changed to ''release and final disposition'' the first time it appears, and change ''disposition'' to ''release'' the second time it appears.

Response: The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

Comment: One reactor licensee and the NEI commented on the wording in § 50.82(a)(9)(ii)(H) of the proposed rule, stating that the term ''released for use'' should be changed to ''released for unrestricted use.''

Response: The comment is not incorporated. The intent of the wording in § 50.82(a)(9)(ii)(H) is that the LTP identify previously released parts of the facility or site whether they were released for restricted or unrestricted use.

Comment: One reactor licensee and the NEI commented that §§ 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements specified in § 50.83(f).

Response: The NRC believes that including references to the public meeting requirement in §§ 50.83(c) and 50.83(e) is redundant and unnecessary. The requirement to hold a public meeting described in § 50.83(f) applies, as stated, to either an approval request for a partial site release or a license amendment application and, therefore applies to the submittals described in §§ 50.83(c) and 50.83(e).

Comment: One reactor licensee and the NEI commented that for a release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply because a license amendment would be required. Therefore, the wording in § 50.83 should be modified to delete the reference to complete a 10 CFR 50.59 evaluation for these release requests.

Response: The NRC agrees with the commenters. § 50.83(b) has been modified in the final rule to only require a § 50.59 evaluation for the case when a written release request is submitted.

Section-by-Section Analysis

This final rule amends the NRC's requirements in 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' 10 CFR part 20, ''Standards for Radiation Protection,'' and 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' as follows:

1. 10 CFR 2.1201

This final rule amends 10 CFR 2.1201 by adding a new paragraph (a)(4) which permits the use of informal hearing procedures for amendments associated with partial site releases at nuclear power reactors. This change is needed in order to provide an opportunity for a hearing on a license amendment request for a partial site release. The staff believes that informal hearings are appropriate in this situation since the issues would be similar to the materials licensing issues that are currently subject to subpart L under § 2.1201(a)(1). It should be noted that the rule does not provide for license amendments to authorize partial site releases when there is no reasonable potential for residual radioactivity in the area to be released. Because there are no license amendments in these cases, there are no corresponding opportunities for hearings. However, the NRC will notice receipt of a licensee's proposal for a partial site release and make it available for public comment. The NRC will also hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

2. 10 CFR 20.1401

Paragraphs 20.1401(a) and (c) have been revised to expand the scope of radiological criteria for license termination to include the release of part of a facility or site for unrestricted use in accordance with § 50.83. In 10 CFR part 20, the NRC provides standards for protection against radiation. These modifications are necessary because the NRC's regulations did not address cases when part of a facility or site is to be released for unrestricted use. The expansion in scope pursuant to §§ 20.1401 is related to the radiation dose limits to individual members of the public and to radiological criteria for license termination which are specified in 10 CFR part 20, subparts D and E, respectively.

With respect to 10 CFR part 20, subpart D, the requirements specified set the annual dose limit for an individual member of the public at 1.0 mSv/yr (100 mrem/yr). However, there are a number of more stringent dose standards applicable to power reactor licensees that must also be considered. These standards include the EPA environmental radiation standards incorporated in § 20.1301(d), the subpart D compliance standards in § 20.1302(b), the radiological effluent release objectives to maintain effluents ALARA in Appendix I to 10 CFR part 50, and any dose standards that may be established by special license conditions.

A licensee performing a partial site release must continue to comply with the public dose limits and standards as they pertain to the area remaining under the license. In addition, the licensee must comply with the public dose limits for effluents entering the released

portion of the site. A licensee must demonstrate that moving its site boundary closer to the operating facility would not result in a dose to a member of the public that exceeds these criteria. If residual radioactivity exists in the area to be released for unrestricted use, the dose caused by the release must be considered along with that from the licensee's facility, as well as, in the case of the EPA's environmental radiation standard (40 CFR part 190) incorporated in § 20.1301(d), that from any other uranium fuel cycle operation in the area, for example, a facility licensed under 10 CFR part 72, to determine compliance with the above standards. As a consequence, a partial site release for unrestricted use that contains residual radioactivity may have to meet a standard less stringent than the radiological criteria of 10 CFR part 20, subpart E, because the combined dose from the partial site release and the dose from these other sources must meet the public dose limits and standards described above.

With respect to 10 CFR part 20, subpart E, the scope applies to decommissioning reactor facilities. However, as currently written, it does not specifically apply to operating reactors. The reactor remains ''operating'' until a licensee submits the certifications of permanent cessation of operations specified in § 50.82(a)(1), when its status changes to ''decommissioning.''

Radiological criteria for license termination at 10 CFR part 20, subpart E, limit radiation exposure to the ''average member of the critical group.'' The limit applicable to release for unrestricted use is 0.25 mSv/yr (25 mrem/yr) total effective dose equivalent (TEDE), with additional reductions consistent with the ALARA principle. The determination of ALARA in these cases explicitly requires balancing reduction in radiation risk with the increase from other health and safety risks resulting from decontamination activities, such as adverse health impacts from transportation accidents that might occur if larger amounts of waste soil are shipped for disposal. The standard applies to doses resulting from ''residual radioactivity distinguishable from background radiation'' and includes doses from ground water sources of drinking water. The standard for unrestricted use at 10 CFR part 20, subpart E, does not include doses from effluents or direct radiation from continuing operations. However, as noted in the above section on public dose limits, the dose from these sources must be considered when demonstrating compliance with the radiological release criteria.

Section 20.1401(c) limits additional cleanup following the NRC's termination of the license. Additional cleanup would only be required if new information reveals that the requirements of subpart E were not met and a significant threat to public health and safety remains from residual radioactivity. Similarly, the rule applies to portions of the site released for use within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release.

The rule is intended to apply subpart E to power reactor licensees, both operating and decommissioning, that have not received approval of the LTP. Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the ''unrestricted use'' option would be available to licensees for a partial site release before they receive approval of the LTP.

Section 20.1402 specifies the radiological criteria to be used to determine that a site is acceptable for unrestricted use. This final rule does not require an analysis to demonstrate that the area to be released meets the criteria of § 20.1402 for cases when the licensee is able to demonstrate that there is no reasonable potential for residual radioactivity in the area to be released. In these cases, compliance with § 20.1402 is demonstrated by providing documentation of an evaluation of the site to identify areas of potential or known sources of radioactive material. The evaluation must conclude that the area is non-impacted and there is no reasonable potential for residual radioactivity. Acceptable guidance describing the performance of this demonstration is contained in draft NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).''

For areas classified as impacted, the rule requires a license amendment that includes a demonstration of compliance with § 20.1402 for the area that is released for unrestricted use.

This amendment to part 20, subpart E, revises §§ 20.1401(a) and (c) and adds the release of part of a facility or site for unrestricted use to the provisions and scope of 10 CFR part 20, subpart E.

3. 10 CFR 50.2

Paragraph § 50.2 is amended to add definitions of ''Historical Site Assessment,'' ''Impacted Areas,'' and ''Non-impacted Areas.'' Clear definitions of these terms, which are also defined in draft NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM),'' are critical to implementing the amended regulations.

In order for a licensee to adequately demonstrate compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, the licensee must evaluate its site to identify areas of potential or known sources of radioactive material and classify those areas according to the potential for radioactive contamination. The evaluation is known as a historical site assessment. The historical site assessment is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information.

The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions that may have led to residual contamination be used in combination with analytical information such as survey data. This approach is discussed in the ''Comments on the Proposed Rule'' section of this notice. The HSA assessment process results in classifying areas according to the potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas. Areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as impacted areas. Further discussion regarding the meaning and use of these terms is contained in NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).''

4. 10 CFR 50.75

This final rule amends § 50.75 to add a new paragraph (g)(4). The recordkeeping requirements in § 50.75(g)(4) are necessary to ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Records to be retained include the licensed site area (including property acquired or used for the purpose of receiving, possessing, or using licensed materials), licensed activities carried out on the property acquired or used, and information demonstrating licensee compliance with the radiological release

criteria at the time of the partial site release.

In § 50.75(c), the NRC defines the amount of financial assurance required for decommissioning power reactors. There is no provision to adjust the amount to account for the costs of a partial site release. While a partial site release may reduce the cost of decommissioning for the remainder of the site, the NRC is not reducing the required amount for the following reasons. Costs incurred for purposes other than reduction of residual radioactivity to permit release of the property and termination of the license are not included in the amount required for decommissioning financial assurance. A partial site release may incur costs that do not fit the definition of decommissioning. Therefore, an evaluation of the costs would be necessary to determine what adjustment, if any, is appropriate. In addition, the cost of a partial site release is expected to be a small fraction of the cost of decommissioning. Such a small adjustment can be considered within the uncertainty of the amount specified in § 50.75(c) and does not provide a compelling reason to undertake the technical justification of adding a generically applicable adjustment factor to the requirement.

In § 50.75(g), the NRC requires keeping records of information important to decommissioning. Currently, there are three categories of information required: (1) Spills resulting in significant contamination after cleanup; (2) as-built drawings of structures and equipment in restricted areas; and (3) cost estimates and funding methods. Information on structures and land that were included as part of the site is also important to decommissioning in order to ensure that the dose effects from partial releases are adequately accounted for when the license is terminated.

Records relevant to decommissioning must be retained until the license is terminated. The rule requires a licensee to identify its licensed facility and site, as defined in the original license application, to include a map, and to record any additions to or deletions from the licensed site after original licensing, along with records of the radiological conditions of any partial site releases. As previously noted, these records will ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. As a result of comments received on the proposed rule, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified in the final rule to provide a 6-month implementation period.

The purpose of the License Termination Rule (LTR) (61 FR 39301, July 29, 1996, as amended at 62 FR 39091, July 21, 1997) and 10 CFR 50.82 is to ensure that any residual radioactivity associated with licensed activity is within the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Although not previously codified, the requirement to maintain records of the entire licensed site as defined in the original license, along with subsequent modifications to the licensed site, clarifies the intent of the LTR and is necessary to ensure that potential dose contributions from the entire area can be adequately considered in demonstrating compliance with the release criteria. The recordkeeping applies to all licensees, including those who modify the licensed site by releasing a part of their site prior to license termination. It is expected that licensees are maintaining property records in order to comply with the LTR at the time of license termination and, therefore, these recordkeeping requirements do not establish new policies, standards, or requirements not already inherent to compliance with the radiological release criteria of the LTR.

5. 10 CFR 50.82

With respect to section 50.82(a)(9)(ii) a new subparagraph (H) is added to include the identification of parts of the site previously released for use with the information listed in the LTP. Section 50.82(a)(9) requires the submittal of an application for license termination that includes an LTP. Section 50.82(a)(11) requires that the NRC make a determination that the final survey and associated documentation provided by a licensee demonstrates that the site is suitable for release at the time the license is terminated. These sections codify the NRC's views that certain information is required to evaluate the adequacy of a licensee's compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, and the license termination criteria are applicable to the entire site. However, because the LTP is not required until 2 years before the anticipated date of license termination, a licensee may perform a partial site release before it submits the necessary information. The information required when the LTP is submitted refers to the ''site.'' It is not clear that a licensee could be required to include the areas released because they no longer are part of the ''site.'' The NRC is concerned that a licensee could adopt partial site releases as a piecemeal approach to relinquish responsibility for a part of its site without going through the license termination process and without ensuring that the release criteria of 10 CFR part 20, subpart E, are met.

With respect to section 50.82(a)(11)(ii), this final rule clarifies that the final radiation survey shall include an assessment of the dose contribution associated with portions of the site that have been released before approval of the license termination plan. The objective is to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr(25 mrem/yr) reduced to ALARA) at the time the license is terminated. This amendment to § 50.82(a)(11)(ii) requires that the final radiation survey and associated documentation include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria in accordance with 10 CFR part 20, subpart E. Although no further surveys of previously released areas are anticipated, the dose assessment must account for possible dose contributions associated with previous releases in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr (25 mrem/yr) reduced to ALARA) at the time the license is terminated.

6. 10 CFR 50.83

This rule adds a new section § 50.83, separate from the current decommissioning and license termination rules, that identifies the criteria and regulatory framework for power reactor licensees that seek to release part of a facility or site for unrestricted use at any time before NRC approval of its LTP. This section is also required because NRC regulations do not address cases in which the NRC may release portions of the site or facility before the approval of the license termination plan.

The rule requires NRC approval for a partial site release. The approval process under which the property will be released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee will be allowed to submit a letter containing specific information

and requesting approval of the release. Because there is no reasonable potential for residual radioactivity in these cases, the NRC will approve the release of the property by letter after determining that the licensee has met the criteria of the rule. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).'' The NRC would generally not perform radiological surveys and sampling of a non-impacted area. However, if the NRC determines that surveys and sampling are needed to verify that a proposed release area is properly classified as ''non-impacted,'' they would be performed as part of NRC's inspection process. Second, for areas classified as impacted and having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The proposed amendment will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.

Licensees may find it beneficial to review their survey plans and design with the NRC staff before performing the surveys. As warranted, the NRC will conduct parallel and/or confirmatory radiation surveys and sampling to ensure that the licensee's conclusions are adequate.

Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the ''unrestricted use'' option is available to licensees for a partial site release prior to LTP approval.

The rule also requires a licensee to evaluate the effect of releasing the property to ensure that the licensee will continue to comply with all other applicable statutory and regulatory requirements that may be impacted by the release of property and changes to the site boundary. This includes, for example, regulations in 10 CFR parts 20, 50, 72, and 100. In those instances involving license amendments, licensees are also required to provide a supplement to the existing environmental report to address the planned release. This requirement is similar to the requirement of 10 CFR 50.82(a)(9)(ii)(G).

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release, regardless of the amount of residual radioactivity involved, and make it available for public comment. The NRC also will hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

Referenced Documents

Copies of NUREG–1575 and NUREG–1757 may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also accessible on the NRC Web site (*http://www.nrc.gov*).

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC standardizes the process for allowing a licensee to release part of its reactor facility or site for unrestricted use before the NRC approves the LTP. This action does not constitute the establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

There are no significant radiological environmental impacts associated with this action. This action does not involve non-radiological plant effluents and has no other environmental impact. Therefore, the NRC expects that no significant environmental impact will result from this rule.

The Environmental Assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment and the finding of no significant impact are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092.

Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The burden to the public for these information collections is estimated to average 582 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by e-mail to *INFOCOLLECTS@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington DC, 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Regulatory Analysis are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in 10 CFR 2.810.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Section 50.75(g) of the final rule, which specifies new information collection and reporting requirements is not subject to the backfit rule, 10 CFR 50.109, inasmuch as information collection and reporting requirements are not within the purview of the backfit rule. The remaining requirements in this rule are voluntary and pertain only to licensees choosing to request a partial site release prior to approval of their license termination plan and are also not subject to the provisions of the backfit rule.

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear material, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

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

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 20, and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.1201, paragraph (a)(4) is added to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(4) The amendment of a Part 50 license to release part of a power reactor facility or site for unrestricted use in accordance with § 50.83. Subpart L hearings for the partial site release plan, if conducted, must be complete before the property is released for use.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

■ 4. In § 20.1401, paragraphs (a) and (c) are revised to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under Parts 30, 40, 50, 60, 61, 63, 70, and 72 of this chapter, and release of part of a facility or site for unrestricted use in accordance with § 50.83 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR Parts 60, 61, 63), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to Appendix A to 10 CFR Part 40 or to uranium solution extraction facilities.

* * * * *

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, or after part of a facility or site has been released for unrestricted use in accordance with § 50.83 of this chapter and in accordance with the criteria in this subpart, the Commission will require additional cleanup only, if based on new information, it determines that the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83

Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 6. Section 50.2 is amended by adding ''Historical site assessment,'' ''Impacted areas,'' and ''Non-impacted areas'' in alphabetical order to read as follows:

§ 50.2 Definitions.

* * * * *

Historical site assessment means the identification of potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information for the purpose of classifying a facility or site, or parts thereof, as impacted or non-impacted.

Impacted areas mean the areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels.

* * * * *

Non-impacted areas mean the areas with no reasonable potential for residual radioactivity in excess of natural background or fallout levels.

* * * * *

■ 7. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.83, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

* * * * *

■ 8. In § 50.75, paragraph (g)(4) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(g) * * *

(4) Records of:

(i) The licensed site area, as originally licensed, which must include a site map and any acquisition or use of property outside the originally licensed site area for the purpose of receiving, possessing, or using licensed materials;

(ii) The licensed activities carried out on the acquired or used property; and

(iii) The release and final disposition of any property recorded in paragraph (g)(4)(i) of this section, the historical site assessment performed for the release, radiation surveys performed to support release of the property, submittals to the NRC made in accordance with § 50.83, and the methods employed to ensure that the property met the radiological criteria of 10 CFR Part 20, Subpart E, at the time the property was released.

■ 9. In § 50.82, paragraph (a)(9)(ii)(H) is added and paragraph (a)(11)(ii) is revised to read as follows:

§ 50.82 Termination of license.

* * * * *

(a) * * *

(9) * * *

(ii) * * *

(H) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

* * * * *

(11) * * *

(ii) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

■ 10. A new § 50.83 is added to read as follows:

§ 50.83 Release of part of a power reactor facility or site for unrestricted use.

(a) Prior written NRC approval is required to release part of a facility or site for unrestricted use at any time before receiving approval of a license termination plan. Section 50.75 specifies recordkeeping requirements associated with partial release. Nuclear power reactor licensees seeking NRC approval shall—

(1) Evaluate the effect of releasing the property to ensure that—

(i) The dose to individual members of the public does not exceed the limits and standards of 10 CFR Part 20, Subpart D;

(ii) There is no reduction in the effectiveness of emergency planning or physical security;

(iii) Effluent releases remain within license conditions;

(iv) The environmental monitoring program and offsite dose calculation manual are revised to account for the changes;

(v) The siting criteria of 10 CFR Part 100 continue to be met; and

(vi) All other applicable statutory and regulatory requirements continue to be met.

(2) Perform a historical site assessment of the part of the facility or site to be released; and

(3) Perform surveys adequate to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402 for impacted areas.

(b) For release of non-impacted areas, the licensee may submit a written request for NRC approval of the release if a license amendment is not otherwise required. The request submittal must include—

(1) The results of the evaluations performed in accordance with paragraphs (a)(1) and (a)(2) of this section;

(2) A description of the part of the facility or site to be released;

(3) The schedule for release of the property;

(4) The results of the evaluations performed in accordance with § 50.59; and

(5) A discussion that provides the reasons for concluding that the environmental impacts associated with the licensee's proposed release of the property will be bounded by appropriate previously issued environmental impact statements.

(c) After receiving an approval request from the licensee for the release of a non-impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified; and

(3) Upon determining that the licensee's submittal is adequate, inform the licensee in writing that the release is approved.

(d) For release of impacted areas, the licensee shall submit an application for amendment of its license for the release of the property. The application must include—

(1) The information specified in paragraphs (b)(1) through (b)(3) of this section;

(2) The methods used for and results obtained from the radiation surveys required to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402; and

(3) A supplement to the environmental report, under § 51.53, describing any new information or significant environmental change associated with the licensee's proposed release of the property.

(e) After receiving a license amendment application from the licensee for the release of an impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified;

(3) Determine whether the licensee's radiation survey for an impacted area is adequate; and

(4) Upon determining that the licensee's submittal is adequate, approve the licensee's amendment application.

(f) The NRC shall notice receipt of the release approval request or license amendment application and make the approval request or license amendment application available for public comment. Before acting on an approval request or license amendment application submitted in accordance with this section, the NRC shall conduct a public meeting in the vicinity of the licensee's facility for the purpose of obtaining public comments on the proposed release of part of the facility or site. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–9866 Filed 4–21–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–23–AD; Amendment 39–13126; AD 2003–08–13]

RIN 2120–AA64

Airworthiness Directives; Various Surplus Military Airplanes Manufactured by Consolidated, Consolidated Vultee, and Convair

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair. This action requires repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. This action is necessary to find and fix fatigue cracking, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 7, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–23–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5228; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 18, 2002, while dropping retardant on a fire near Lyons, Colorado, a United States Department of Agriculture (USDA) Forest Service Model P4Y–2 airplane was involved in an accident, resulting from the structural failure of the center wing. Investigation revealed fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings. The fatigue cracking has been attributed to the age, time-in-service, and flight cycles of the airplane. Such fatigue cracking, if not found and fixed in a timely manner, could result in structural failure of the wings and consequent loss of control of the airplane.

FAA's Determination

We have determined that high-cycle fatigue cracks in the area of the lower rear cap of the wing front spar, front spar web, and lower skin of the wings are likely to occur on various surplus military airplanes. Repetitive inspections of these areas are necessary to ensure that fatigue cracks will be found in a timely manner, and corrective action taken, to preclude crack growth to a size that would create an unacceptable risk of structural failure. While inspection methodologies exist that can be used to find cracks, we are currently unaware of any for the subject airplanes. Therefore, owners and operators must submit inspection procedures and repetitive inspection intervals to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, for approval. The inspection procedures must be sufficiently reliable to determine the location, size, and orientation of cracks that are very small, so that the crack will not grow to a critical length at limit load before the next scheduled inspection.

If any crack is found during any inspection, operators must replace the cracked part with a new part; or repair and inspect at new intervals per a method approved by the FAA.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other surplus military airplanes of the same type design, this

AD is being issued to find and fix fatigue cracking of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane. This AD requires repetitive inspections to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; and repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–23–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–08–13 Various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair: Amendment 39–13126. Docket 2003–NM–23–AD.

Applicability: Including, but not limited to, all of the following surplus military airplanes, certificated in any category:

Consolidated Vultee Model PB4Y–1, P4Y–2, and LB–30 airplanes;

Consolidated and Convair Model B–24 airplanes; and

Consolidated Model C–109 and C–87 airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Initial & Repetitive Inspections

(a) Within 30 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per a method approved by the Manager, Los Angeles Certification Office (ACO), FAA.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (a)(1) of this AD at the intervals approved per this paragraph.

(b) If any crack is found during any inspection required by this AD, before further flight, do the action(s) specified in paragraphs (b)(1) and (b)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Repair or replace the cracked part or structure.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at reduced intervals approved by the Manager, Los Angeles ACO to find cracks before the growth is critical and exceeds the minimum residual strength required to support limit load on the affected structure.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on May 7, 2003.

Issued in Renton, Washington, on April 16, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9861 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2003–14973; Special Federal Aviation Regulation No. 98]

RIN 2120–AH83

Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This action requires that notice be filed with the FAA for the construction or alteration of any object that exceeds 50 feet above ground level (AGL) and is within the existing prohibited airspace surrounding the private residence of the President of the United States (P–49). Due to national security interests and the unique operating requirements of the United States Marine Corps (USMC) and the Secret Service Presidential Protective Division (SSPPD), this rule provides that any object within the designated area that exceeds the obstruction standard will be deemed a hazard to air navigation unless the FAA concludes, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation. This rule is adopted for purposes of national defense and will assist in protecting the President of the United States. This rule does not apply to prior construction or alteration of objects and will terminate at the end of the President's term in office.

DATES: This final rule is effective April 22, 2003. Comments must be submitted on or before June 23, 2003.

ADDRESSES: Address your comments 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–2003–14973 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, 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:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

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.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2003–14973.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*)

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction.

Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBRFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

Background

On March 26, 2001, the FAA published a final rule in the **Federal Register** establishing prohibited airspace (P–49) over the private residence of the President in Crawford, Texas (66 FR 16391). [The FAA subsequently modified P–49 by relocating the center of the prohibited area approximately one-half mile east, southeast (68 FR 7917; February 19, 2003.)] This airspace designation is necessary to enhance security in the immediate vicinity of the presidential residence and assist the SSPPD in accomplishing its mission of providing security for the President of the United States. While that rule prohibits unauthorized aircraft from flying within the designated airspace, it does not address certain flight safety and national security issues concerning the transport of the President.

The USMC and the SSPPD provide transportation for the President and presidential personnel. The USMC and SSPPD devise various operational plans to accommodate the unique circumstances involved in transporting the President. The special operating procedures used by the USMC and the SSPPD include the concurrent operation of multiple aircraft, a variety of non-standard flight techniques for security purposes, and other special security provisions to ensure the secure transport of the President and his party during various weather and threat conditions. Flexibility in choosing altitude and direction of flight is essential for optimal use of these special procedures by the USMC and SSPPD, especially in the event of an unanticipated threat to the security of the President.

The Rule

The President's private residence in Crawford, Texas, has several landing areas for presidential aircraft. Each landing area must be accessible by flying several different approaches, depending upon the weather, threat conditions, the aircraft being used, and departure location. Also, the special operating procedures used by the USMC and the SSPPD, including the use of multiple aircraft, non-standard flight techniques and other special security provisions, require the airspace surrounding the landing areas to be clear of obstructions that could affect these operating procedures and the safety of the President. Obstructions above 50 feet above ground level (AGL) in certain locations within the designated area could inhibit the flexibility of these special operating procedures and could compromise the safe transportation and the security of the President, particularly in emergency situations.

In order to provide for the safe operations of the presidential helicopters and to accommodate the inherent national security interests involved in transporting the President, the FAA is requiring that any person constructing or altering any object that would exceed 50 feet AGL within a three nautical mile (NM) radius of the President's private residence must file notice with the FAA. This geographic area covers the same surface area that is designated as P–49. The FAA will consider objects that exceed 50 feet AGL within the designated area as obstructions to air navigation. Objects that exceed the above standard could become obstacles for the USMC and the SSPPD during certain operations and result in the inability to follow specified operating procedures and hinder the safety of the entire operations. It is critical for the USMC and SSPPD to have maximum flexibility in devising procedures that uniquely accommodate safely transporting the President. Limiting the construction of new obstructions or alteration of existing structures within the P–49 area will allow optimum operating procedures that are necessary to the safety of the entire operation.

Due to the unique operating requirements of the USMC and the SSPPD previously discussed, the aircraft conducting these operations must have the ability to take off, land or perform various flight maneuvers in virtually every direction of the landing areas within the designated area. Consequently, it is critical that this area is clear of objects that may adversely affect the operations. Therefore, any new construction or alteration of an object that exceeds the obstruction standard within the designate area is presumed a hazard to air navigation and to compromise the safety of the operations conducted herein.

Certain new construction or alteration to existing structures that would exceed 50 feet AGL may be compatible with the safe and secure transport of the President. The proponent of the construction/alteration must submit detailed information regarding the proposed construction/alteration. Only where the FAA, in consultation with the USMC and the SSPPD, determines that it would not adversely affect safety and not result in a hazard to air navigation, would the FAA issue a Determination of No Hazard. Because the decision of the Administrator may be based upon classified or otherwise sensitive information regarding the security of the President, the Administrator need not provide or disclose the basis for such determination

New construction or alterations to existing structures above 50 feet AGL, outside of the P–49 area, may still pose a danger to the safe transportation and protection of the President. Nothing in this rule, however, precludes the FAA or another federal agency from determining that a new construction or alteration to an existing object outside the designated area is a danger to the safe transportation and protection of the President. Such objects outside the designated area, however, will be addressed by other legal authorities.

Prior Construction and Alterations

The provisions of this rule do not apply to any construction or alteration that occurred before the effective date of this rule.

Duration of the Rule

This rule shall be in effect only for the duration of President George W. Bush's term of office. The FAA recognizes that all Presidents' private residences raise safety and national security concerns regarding the safe ingress and egress of the President and his party. However, the protections necessary to ensure the safe ingress and egress may vary substantially depending upon the nature and location of each President's residence. Therefore, the FAA anticipates that similar rules, tailored to the security concerns of the Presidential residence, may be needed at other locations to protect the transportation of future Presidents.

Justification for Immediate Adoption

We find that the important national security interests of protecting the President and his party during flight operations renders notice and public procedure under 5 U.S.C. 553(b) impracticable and contrary to the public interest. Furthermore, good cause exists under 5 U.S.C. 553(d) to make this rule effective immediately upon publication in the **Federal Register** so as to prevent the commencement of any construction

or alteration in the affected area between the issuance of the rule and the effective date of the rule that could affect the safe transport of the President and his party.

Paperwork Reduction Act

Information collection requirements in the amendment to 14 CFR part 77 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0001.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is taken under an emergency situation within the meaning of section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. Because this final rule is being issued with no prior notice, the FAA is not required to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended, and we have not performed such an assessment.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed ''significant intergovernmental mandate.'' Under the Act, a ''significant intergovernmental mandate'' is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends part 77 of Title 14 of the Code of Federal Regulations as follows:

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

■ 2. Add Special Federal Aviation Regulation (SFAR) No. 98 to read as follows:

SFAR No. 98—Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

Section 1. *Construction or alteration near the private residence of the President.* This section applies to:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including appurtenances and equipment or materials used therein.

(b) Any apparatus of a permanent or temporary character.

Section 2. *Notice of Construction/Alteration.* Proponents proposing construction or alteration of any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43′45 N, long. 97°32′00 W shall notify the Administrator in the form and manner prescribed in 14 CFR 77.17.

Section 3. *Obstruction Standard.*

(a) Any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43′45N, long. 97°32′00W is an obstruction and is presumed to adversely affect aviation safety and therefore is a hazard to air navigation.

(b) A Determination of No Hazard will be issued only when the FAA determines, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation.

Section 4. *Termination.* This rule will terminate at the end of President George W. Bush's term in office.

Issued in Washington, DC on April 16, 2003.

Marion C. Blakely,

Administrator.

[FR Doc. 03–9886 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30363; Amdt. No. 3053]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 11, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective May 15, 2003

Akron, CO, Colorado Plains Regional, RNAV (GPS) RWY 11, Orig
Akron, CO, Colorado Plains Regional, RNAV (GPS) RWY 29, Orig
Akron, CO, Colorado Plains Regional, GPS RWY 11, Orig, (CANCELLED)
Akron, CO, Colorado Plains Regional, GPS RWY 29, Orig, (CANCELLED)
Agana, Guam, Guam International, RNAV (GPS) RWY 6L, Orig
Gibson City, IL, Schertz Field, VOR OR GPS–A, Amdt 4 (CANCELLED)
Caruthersville, MO, Caruthersville Mem, VOR/DME RWY 18, Orig
Caruthersville, MO, Caruthersville Mem, RNAV (GPS) RWY 18, Orig
Caruthersville, MO, Caruthersville Mem, RNAV (GPS) RWY 36, Orig
Glen Falls, NY, Floyd Bennett Memorial, VOR/DME or GPS RWY 19, AMDT 6B (CANCELLED)
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 12, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 19, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 30, ORIG
Kinston, NC, Kinston Rgnl Jetport at Stallings Fld, RNAV (GPS) RWY 23, Amdt 1
Bellefontaine, OH, Bellefontaine Muni, VOR/DME RNAV RWY 22, Amdt 5A, (CANCELLED)
Bellefontaine, OH, Bellefontaine Muni, NDB OR GPS RWY 22, Amdt 6, (CANCELLED)
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 16R, Amdt 1B
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 34R, Amdt 1B

Effective June 12, 2003

Anahuac, TX, Chambers County, NDB RWY 12, Amdt 2

** * * Effective July 10, 2003*

Aurora, NE, Aurora Muni, NDB RWY 16, Amdt 3A (CANCELLED)
Crete, NE, Crete Muni, NDB RWY 17, Amdt 2A (CANCELLED)
Crete, NE, Crete Muni, NDB RWY 35, Amdt 2A (CANCELLED)

The FAA published the following procedures in Docket No. 30359; Amdt. No. 3049 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 54, Page 13622; dated Friday, March 20, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 11, Orig
Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 29, Orig
Akron, CO, Colorado Springs Regional, GPS RWY 11, Orig, (CANCELLED)
Akron, CO, Colorado Springs Regional, GPS RWY 29, Orig, (CANCELLED)

The FAA published the following procedures in Docket No. 30360; Amdt. No. 3051 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 65, Page 16413; dated Friday, April 4, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Agana, Guam, Guam International, RNAV (GPS) Y RWY 6L, Orig
Agana, Guam, Guam International, RNAV (GPS) Z RWY 6L, Orig

[FR Doc. 03–9724 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.30364; Amdt. No. 3054]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 22, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach

Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 11, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33 and § 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
03/26/03	OK	Sand Springs	William R. Pogue Muni	3/2388	NDB Rwy 35, Amdt 2B
03/27/03	IL	Chicago	Chicago Midway	3/2415	ILS Rwy 4R, Amdt 9B
03/27/03	GA	Newnan	Newnan Coweta County	3/2432	GPS Rwy 32, Orig
03/28/03	CO	Denver	Centennial	3/2448	VOR/DME RNAV Rwy 28, Amdt 1
03/28/03	WY	Riverton	Riverton Regional	3/2465	VOR Rwy 10, Amdt 8A
03/31/03	OH	Bellefontaine	Bellefontaine Regional	3/2499	RNAV (GPS) Rwy 25, Orig
03/31/03	OK	Sand Springs	William R. Pogue Muni	[1] 3/2504	GPS Rwy 35, Orig-A
04/01/03	LA	Lake Charles	Chennault Intl	3/2534	ILS Rwy 15, Amdt 4B
04/02/03	WV	Bluefield	Mercer County	3/2571	VOR Rwy 23, Amdt 8A
04/02/03	WV	Bluefield	Mercer County	3/2572	VOR/DME or GPS Rwy 23, Amdt 4A
04/02/03	WV	Bluefield	Mercer County	3/2573	ILS Rwy 23, Amdt 14D
04/02/03	IL	Decatur	Decatur	3/2577	NDB Rwy 6, Amdt 6

FDC date	State	City	Airport	FDC No.	Subject
04/02/03	IL	Decatur	Decatur	3/2578	LOC BC Rwy 24, Amdt 10
04/02/03	IL	Decatur	Decatur	3/2581	ILS Rwy 6, Amdt 13A
04/02/03	IL	Decatur	Decatur	3/2582	VOR Rwy 36, Amdt 15
04/02/03	TX	San Antonio	San Antonio Intl	3/2595	ILS Rwy 12R (Cat I, II), Amdt 13
04/03/03	OH	Cleveland	Cleveland-Hopkins Intl	3/2609	ILS Rwy 6L, Orig-B
04/04/03	NY	Newburgh	Newburgh/Stewart Intl	3/2641	VOR Rwy 27, Amdt 4A
04/04/03	PA	Franklin	Venango Regional	3/2654	ILS Rwy 20, Amdt 4B
04/07/03	VT	Burlington	Burlington Intl	3/2624	ILS/DME Rwy 33, Orig-D
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2735	RADAR–1, Amdt 1
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2736	ILS Rwy 18, Amdt 1C
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2737	RNAV (GPS) Rwy 18, Amdt 1
04/09/03	TN	Dickson	Dickson Muni	3/2754	VOR/DME Rwy 17, Amdt 4B
04/09/03	TN	Dickson	Dickson Muni	03/2755	RNAV (GPS) Rwy 17, Orig
04/09/03	TN	Dickson	Dickson Muni	3/2756	NDB Rwy 17, Amdt 2A

[1] Replaces 3/2370.

[FR Doc. 03–9725 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02P–0494]

Medical Devices; Exemption From Premarket Notification; Class II Devices; Optical Impression Systems for Computer Assisted Design and Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for data acquisition units for ceramic dental restoration systems. This rule exempts from premarket notification data acquisition units for ceramic dental restoration systems and establishes a guidance document as a special control for this device. FDA is publishing this order in accordance with the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective April 22, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext 185.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, Class II, or Class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into Class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into Class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into Class III (premarket approval), if there is insufficient information to support classifying a device into Class I or Class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of Class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published

that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a Class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the Internet on the CDRH home page at *http://www.fda.gov/cdrh.guidance.html* or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petition

On October 25, 2002, FDA received a petition requesting an exemption from premarket notification for data acquisition units for ceramic dental restoration systems. These devices are currently classified under § 872.3660 *Impression material* (21 CFR 872.3660) as an accessory. In the **Federal Register** of January 30, 2003 (67 FR 2787), FDA published a notice announcing that this petition had been received and provided opportunity for interested persons to submit comments on the petition by March 3, 2003. FDA did not receive any comments.

FDA has determined that maintaining classification of the data acquisition units in Class II and exempting them from the premarket notification requirements, with the guidance document as a special control, will provide reasonable assurance of the safety and effectiveness of these devices and, therefore, they meet the criteria for exemption from the premarket notification requirements. For precision and clarity, FDA is: (1) Designating these devices as ''optical impression systems for computer assisted design and manufacturing (CAD/CAM);'' (2) placing them in new § 872.3661; (3) exempting them from the premarket notification requirements; and (4) establishing the guidance document entitled ''Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA'' as the special control for these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance document. Following the effective date of this final rule any firm submitting a 510(k) premarket notification for an optical impression system for CAD/CAM will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. All other devices classified under § 872.3660 will continue to be classified in that section and subject to the same regulatory requirements as before.

For the benefit of the reader, FDA is also adding a § 872.1(e) to direct the reader to the Web site for guidance documents.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule will relieve a burden and simplify the marketing of these devices. The guidance document is based on existing review practices and will not impose any new burdens on these devices. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the 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 has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.1 is amended by adding paragraph (e) to read as follows:

§ 872.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh.guidance.html.*

■ 3. Section 872.3660 is amended by revising paragraph (b) to read as follows:

§ 872.3660 Impression material.

* * * * *

(b) *Classification.* Class II (Special Controls).

■ 4. Section 872.3661 is added to subpart D to read as follows:

§ 872.3661 Optical Impression Systems for CAD/CAM.

(a) *Identification.* An optical impression system for computer assisted design and manufacturing (CAD/CAM) is a device used to record the topographical characteristics of teeth, dental impressions, or stone models by analog or digital methods for use in the computer-assisted design and manufacturing of dental restorative prosthetic devices. Such systems may consist of a camera, scanner, or equivalent type of sensor and a computer with software.

(b) *Classification.* Class II (Special Controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of the chapter subject to the limitations in § 872.9. The special control for these devices is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA.'' For the availability of this guidance document, see § 872.1(e).

Dated: April 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9869 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 810

[CSOSA–0002–F]

RIN 3225–AA00

Community Supervision: Administrative Sanctions

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'') is finalizing its interim rule on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. The purpose of imposing sanctions is to enable CSOSA staff to respond as swiftly, certainly, and consistently as practicable to non-compliant behavior. Using sanctions will reduce the number of violation reports sent to the releasing authority (for example, the sentencing court or the United States Parole Commission). CSOSA staff will be able to refer offenders back to the releasing authority having demonstrated that CSOSA has exhausted the range of options at its disposal to change the offender's non-compliant behavior. The releasing authority may then concentrate on those referrals which fully merit scrutiny. The purpose of the regulations is to prevent crime, reduce recidivism, and support the fair administration of justice through the promotion of effective community supervision.

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. These interim regulations were published in the **Federal Register** on September 20, 2001 (66 FR 48336).

CSOSA is responsible for the supervision of adults on probation, parole, or supervised release in the District of Columbia. A critical factor in such supervision is the ability to introduce an accountability structure into the supervision process and to provide swift, certain, and consistent responses to non-compliant behavior. Under traditional procedures, when offenders under CSOSA supervision violate the general or specific conditions of their release, CSOSA staff must refer the matter to the releasing authority. In most cases, the releasing authority is the sentencing court (usually the Superior Court of the District of Columbia) or the United States Parole Commission (''USPC''). The releasing authority, however, may include any of the jurisdictions participating in the Interstate Compact. The referrals necessarily increase the workload for the releasing authority. The response and response time between a reported violation and a hearing is consequently uncertain.

Regulations issued by the USPC (*see* 28 CFR 2.85(a)(15)) authorize CSOSA's community supervision officers to impose graduated sanctions if a parolee has tested positive for illegal drugs or has committed any non-criminal violation of the conditions of parole. The USPC retains the authority to override an imposed sanction and issue a warrant or summons if it finds that the parolee is a risk to public safety or is not complying in good faith with the sanction. The Superior Court of the District of Columbia typically includes authorization for a program of graduated sanctions in connection with illicit drug use or other violation of conditions of probation as part of the offender's general conditions of probation. By issuing these interim regulations on the imposition of administrative sanctions, CSOSA intended to ensure the consistency, certainty, and timeliness of imposed sanctions for all offenders (parolees, probationers, and supervised releasees) under its supervision.

Under these interim regulations, CSOSA established a supervision level and minimum contact requirements for the individual offender (*see* § 810.1). CSOSA uses an accountability contract (*see* § 810.2) between the offender and CSOSA to define non-compliant behavior. The accountability contract outlines the expectations for behavior and the consequences (that is, the sanctions) for failing to comply. The sanctions present the community supervision officer with a range of corrective actions (*see* § 810.3) which can be applied short of court or USPC approval. The goal of these sanctions is to change offender behavior. Imposing the sanctions quickly and consistently may prevent escalation of the offender's non-compliant behavior.

The accountability contract identifies a schedule for imposing sanctions which is keyed to the recurrence of violations. The accountability contract also provides for positive reinforcements for compliant behavior (*see* § 810.3(d)).

Administrative sanctions accordingly are a component of effective supervision. When CSOSA does make a referral to the court or to the USPC, it will be able to demonstrate that it has exhausted the range of options at its disposal with respect to the offender's non-compliant behavior or that the violation is so severe immediate action by the releasing authority may be

necessary to revoke the offender's liberty in the community.

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments and without any delay in its effectiveness, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The anticipated benefits of the rulemaking include an increase in the public safety of the community, relief to the courts and the USPC, and responsive supervision for offenders who may be at risk for continued non-compliant behavior.

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of its procedures for the imposition of administrative sanctions. CSOSA received one comment on the interim regulations. The commenter, the Director of Corrections for Volunteers of America, a national, nonprofit organization, expressed support for the interim regulations. The commenter, citing previous technical violation pilot projects and guides produced by the Center for Effective Public Policy and the National Institute of Corrections, stated that CSOSA's interim regulations were what community corrections needs nationwide to effectively empower community supervision staff and reduce unnecessary paperwork and downtime for judges/judicial staff, parole commission and staff, and supervising agency staff. CSOSA is therefore adopting the interim regulations as final without any change.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 810

Probation and Parole.

PART 810—COMMUNITY SUPERVISION: ADMINISTRATIVE SANCTIONS

■ Accordingly, CSOSA adopts the interim rule published at 66 FR 48336 which added part 810 to chapter VIII, title 28 of the Code of Federal Regulations as a final rule without change.

Paul A. Quander, Jr.,

Director.

[FR Doc. 03–9932 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 811

[CSOSA–0005–F]

RIN 3225–AA03

District of Columbia Sex Offender Registration

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'') is finalizing its interim rule that set forth procedures and requirements relating to the registration in the District of Columbia of sex offenders, the verification of the information maintained on registered sex offenders, and the reporting of changes in that information. These regulations carry out responsibilities of CSOSA under Federal and District of Columbia law.

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on the registration of sex offenders in the District of Columbia (28 CFR part 811) which were published in the **Federal Register** on August 21, 2002 (67 FR 54093).

Under the Sex Offender Registration Act of 1999 (''SORA'' or ''Act'', D.C. Law 13–137, D.C. Official Code 22–4001 *et seq.*), and section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 § 166(a), 113 Stat. 1530; D.C. Official Code § 24–133(c)(5)), CSOSA is responsible for carrying out sex offender registration functions in the District of Columbia, including maintaining and operating the sex offender registry. The sex offender registry contains information about sex offenders who live, reside, work, or attend school in the District of Columbia. Information about sex offenders and photographs, fingerprints, and supporting documents are provided by CSOSA to the Metropolitan Police Department, which is responsible for disclosing information about registered sex offenders to the public in

conformity with District of Columbia laws and regulations. Appropriate information is also transmitted to the FBI, which operates the National Sex Offender Registry, and to sex offender registration authorities in other jurisdictions. This system is designed to further public safety by facilitating effective law enforcement, enabling members of the public to take lawful measures to protect themselves and their families, and reducing offenders' exposure to temptation to commit more crimes.

Matters of Regulatory Procedure

Administrative Procedure Act

CSOSA implemented its sex offender registration functions as interim regulations, with provision for post-promulgation public comments, based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The regulations implement, in part, section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 § 166(a), 113 Stat. 1530; D.C. Official Code § 24–133(c)(5)), which directs CSOSA to carry out sex offender registration functions in the District of Columbia, and various provisions of District of Columbia law and regulations, including sections 3, 8, 9 and 10 of the Sex Offender Registration Act of 1999 (D.C. Official Code §§ 22–4002, 4007, 4008 & 4009) and 6A DCMR §§ 405.1, 409.1, 409.2, 410.1, which grant CSOSA the authority to make certain decisions and to adopt procedures and requirements relating to sex offender registration in the District of Columbia.

As stated in the report of the District of Columbia Council's Judiciary Committee for the District's Sex Offender Registration Act, ''[a] sex offender registration and notification program, if appropriately designed and effectively implemented, can promote public safety in at least three ways: by facilitating effective law enforcement; by enabling members of the public to take direct measures of a lawful nature for the protection of themselves and their families; and by reducing registered offenders' exposure to temptation to commit more offenses.'' Committee on the Judiciary, Report on Bill 13–250, The Sex Offender Registration Act of 1999, at 3 (November 15, 1999). Given the importance of having accurate, complete, and up-to-date information about sex offenders available to both law enforcement officials and to the public, and the fact that the formulation of implementing regulations closely follows the statutory framework and existing District of Columbia regulations, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). Moreover, as noted, the collection of sex offender registration information and its release to law enforcement and other agencies and the public pursuant to the Sex Offender Registration Act of 1999 furthers important public safety interests by facilitating the solution and prevention of crime by law enforcement, enabling lawful community self-protection measures, and reducing the temptation for recidivism. Delay in the full implementation of the law—including the ability to prosecute and take other actions in relation to sex offenders who fail to comply with its requirements—would thwart or delay the realization of these public safety benefits. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of the sex offender registration functions. CSOSA did not receive any public comment on the interim regulations. CSOSA is therefore adopting the interim regulations as final without any change.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 811

Incorporation by Reference, Probation and Parole.

PART 811—SEX OFFENDER REGISTRATION

■ Accordingly, CSOSA adopts the interim rule published at 67 FR 54093 which added part 811 to chapter VIII, Title 28 of the Code of Federal Regulations as a final rule without change.

Paul A. Quander, Jr.,

Director.

[FR Doc. 03–9930 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 812

[CSOSA–0006–F]

RIN 3225–AA04

Collection and Use of DNA Information

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'') is finalizing its interim rule which implemented section 4 of the DNA Analysis Backlog Elimination Act of 2000, in conjunction with District of Columbia laws enacted pursuant to that Act which specify qualifying District of Columbia offenses for purposes of DNA sample collection. The interim regulations set forth the responsibilities of CSOSA for collecting DNA samples from individuals under its supervision who have been convicted of specific offenses identified by District of Columbia statute. The regulations specify that DNA samples are to be collected, handled, preserved, and submitted to the Federal Bureau of Investigation (''FBI'') in accordance with FBI guidelines for inclusion in the Combined DNA Index System (''CODIS''), a national database of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations also specify that CSOSA will cooperate with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of a DNA sample; and define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate. The regulations identify in an appendix the offenses which qualify for DNA collection, as they appear in the District of Columbia public laws, in the District of Columbia Code (1981 ed.), and in the District of Columbia Official Code (2001 ed.).

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on the collection and use of DNA information (28 CFR part 812) which were published in the **Federal Register** on August 21, 2002 (67 FR 54098).

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The rule implements section 4 of Public Law 106–546 (42 U.S.C. 14135b), which requires the Director of CSOSA to ''collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense'' and requires collection of DNA samples to commence not later than 180 days after the effective date of the Act. Given that section 4(d) authorizes the government of the District of Columbia to ''determine those offenses under the District of Columbia Code that shall be treated * * * as qualifying District of Columbia offenses,'' Congress must have been aware that it would not be feasible within a 180-day time period to enact the required District of Columbia legislation, publish a proposed regulation for notice and comment, as well as a subsequent final rule, and for the period of the final rule's delayed effective date to have run. Public Law 106–546, in conjunction with the District of Columbia legislation, is explicit and comprehensive concerning the types of offenses that will be treated as qualifying District of Columbia offenses and concerning the responsibilities of CSOSA in collecting DNA samples. In light of the short statutory time frame for the implementation of this law and the fact that the formulation of implementing regulations involves the exercise of relatively little discretion, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Moreover, the collection, analysis, and indexing of DNA samples as required by Public Law 106–546 furthers important public safety interests by facilitating the solution and prevention of crime, *see* H.R. Rep. No. 900, 106th Cong., 2d Sess. 8–11 (2000) (House Judiciary Committee Report). Delay in the full implementation of the law—including the absence of a specification of what constitutes a refusal to cooperate in DNA sample collection and what measures are to be taken in response to such a refusal, as set forth in these regulations—would thwart or delay the realization of these public safety benefits. Dangerous offenders who might be successfully identified through DNA matching may reach the end of supervision before DNA sample collection can be carried out, thereby remaining at large to engage in further crimes against the public. Furthermore, delay in collecting, analyzing, and indexing DNA samples, and hence in the identification of offenders, may foreclose prosecution due to the running of statutes of limitations. Failure to identify, or delay in identifying, offenders as the perpetrators of crimes through DNA matching also increases the risk that innocent persons may be wrongfully suspected, accused, or convicted of such crimes. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of its procedures for DNA collection and use. CSOSA did not receive any public comment on the interim regulations. CSOSA is therefore adopting the interim regulations as final. In adopting the interim regulations as final, CSOSA is making two editorial amendments to correct typographical errors.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule

and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 812

Probation and parole.

■ Accordingly, CSOSA adopts the interim rule published at 67 FR 54098 which added part 812 to chapter VIII, title 28 of the Code of Federal Regulations as a final rule with the following editorial amendments.

Paul A. Quander, Jr.,

Director.

PART 812—COLLECTION AND USE OF DNA INFORMATION

■ 1. The authority citation for part 812 continues to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 106–546 (114 Stat. 2726).

§ 812.4 [Amended]

■ 2. In paragraph (b)(3) of § 812.4, remove the word ''provided'' and insert the word ''provide'' in its place.

Appendix A to Part 812 [Amended]

■ 3. In item (9) of Table 1 of Appendix A to part 812, remove the word ''act'' and insert the word ''Act'' in its place.

[FR Doc. 03–9931 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–139–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are announcing the removal of a required amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are removing the required amendment because the Federal regulation upon which the required amendment was based no longer exists.

EFFECTIVE DATE: April 22, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Email: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania 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 Pennsylvania 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

In the January 7, 2003, **Federal Register** (68 FR 721), we announced our proposal to remove the required amendment to Pennsylvania's program found at 30 CFR 938.16(ss). OSM proposed to remove the required amendment because the Federal regulation upon which the required amendment was based no longer exists. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 6, 2003. We did not receive any comments.

III. OSM's Findings

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

At 30 CFR 938.16(ss), OSM required Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii), we noted:

> Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review

decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Because the required amendment at 30 CFR 938.16(ss) required the State to comply with the previous regulations found at 30 CFR 773.15(b)(1)(ii) rather than new Federal regulations found at 30 CFR 773.14(c), it is now unnecessary and we are therefore removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in a January 7, 2003, **Federal Register** notice (68 FR 721) but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. 844.06).

Environmental Protection Agency (EPA) Concurrence

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.*). We did not seek EPA concurrence on this amendment because we determined that it contains no such provisions.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No. 844.06), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we are removing the required amendment. To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Pennsylvania program demonstrate that the State 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.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications because we have removed the counterpart Federal regulation upon which the required amendment was based. Therefore, we are requiring no action by the State.

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 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

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 removal of the required amendment, which is the subject of this rule, will have no significant economic impact upon a substantial number of small entities. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

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. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

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. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

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

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (ss).

[FR Doc. 03–9841 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7486–4]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Minnesota final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Minnesota has submitted these changes so that it may implement the EPA approved U.S. Filter Recovery Services (USFRS) XL project. The Agency published a proposed rule on September 9, 2002, and provided for public comment. The public comment period ended on October 9, 2002. We received no comments. No further opportunity for comment will be provided. EPA has determined that Minnesota's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

EFFECTIVE DATES: This final authorization will be effective on April 22, 2003, and will expire automatically 5 years after the State of Minnesota modifies its USFRS RCRA hazardous waste permit to incorporate the requirements necessary to implement this project.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 886–7450, or Nathan Cooley, Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, telephone number (651) 297–7544.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the state is granted authorization to do so.

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

The effect of this decision is to allow Minnesota to carry out the requirements outlined in the U.S. Filter Recovery Services XL Project promulgated in the May 22, 2001 **Federal Register** (66 FR 28066). On May 23, 1995 (60 FR 27282), U.S. EPA issued guidance for XL projects, with the goal of reducing regulatory burden and promoting economic growth, while achieving better environmental and public health protection. XL Projects are required to provide alternative pollution reduction strategies pursuant to eight criteria.

These criteria were met and approved in the May 22, 2001 **Federal Register**. This action merely allows Minnesota to carry out the requirements approved in the May 22, 2001 **Federal Register**.

Minnesota has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits

This action does not impose additional requirements on the regulated community. U.S. EPA believes that this project will result in cost savings and a reduction in the paperwork burden for generators. For more details please see the May 22, 2001 **Federal Register** (66 FR 28066).

D. Proposed Rule

On September 9, 2002 (67 FR 57191) EPA published a proposed rule. In that rule we proposed granting authorization of changes to Minnesota's hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal.

E. What Has Minnesota Previously Been Authorized for?

Minnesota initially received final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27170); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992, effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774).

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

On April 17, 2002, Minnesota submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make a final decision, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Minnesota final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	FEDERAL REGISTER date and page (and/or RCRA statutory authority)	Analogous State authority
Project XL Site-Specific Rulemaking for U.S. Filter Recovery Services, Roseville, Minnesota and Generators and Transporters of USFRS XL Waste.	May 22, 2001, 66 FR 28066	Minnesota Statutes sections 114C.10 through 114C.14 Effective 1996; and USFRS permit, and MPCA generator and transporter standards based on these Statutes.

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

In the changes currently being made to Minnesota's program, there are no regulations more stringent than the Federal requirements. There are no broader-in-scope provisions in these changes, either. These changes are unique to Minnesota due to the nature of Project XL as a site specific program. The changes are found in 40 CFR part 266, subpart O (§§ 266.400 through 266.422).

H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized. As the XL project involves new permits, Minnesota will issue any new permits or new portions of permits for the provisions listed in the Table above. EPA or Minnesota may enforce compliance with those permits.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:
   a. Bois Forte Indian Reservation
   b. Fond Du Lac Indian Reservation
   c. Grand Portage Indian Reservation
   d. Leech Lake Indian Reservation
   e. Lower Sioux Indian Reservation
   f. Mille Lacs Indian Reservation
   g. Prairie Island Indian Reservation
   h. Red Lake Indian Reservation
   i. Shakopee Mdewankanton Indian Reservation
   j. Upper Sioux Indian Reservation
   k. White Earth Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

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

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

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action also does not have Tribal implications within the

meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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)) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 271

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

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–9909 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 03–33]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to fourteen petitions for reconsideration that were filed in response to the regulations for unlicensed ultra-wideband (''UWB'') operation. In general, this document does not make any significant changes to the existing UWB parameters.

DATES: Effective May 22, 2003 except § 15.525 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. Written comments by the public on the new and/or modified information collection(s) are due June 23, 2003.

ADDRESSES: A copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: John Reed (202) 418–2455, Policy and Rules Division, Office of Engineering and Technology. For additional information concerning the information collection(s) contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order portion of the Commission's *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC 03–33, adopted February 13, 2003, and released March 12, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of Memorandum Opinion and Order

1. On February 14, 2002, the Commission adopted a *First Report and Order* implementing regulations to permit the unlicensed operation of ultra-wideband transmission systems. Fourteen petitions for reconsideration were filed in response to that Order. In general, this Memorandum Opinion and Order (''MO&O'') does not make any significant changes to the existing UWB technical parameters as the Commission is reluctant to do so until it has more experience with UWB devices. The Commission also believes that any major changes to the rules for existing UWB product categories at this early stage would be disruptive to current industry product development efforts.

2. The Commission reviewed the requests from the petitioners and granted those that will not increase the interference potential of UWB devices. It denied those requests that sought, without factual support, further restrictions on UWB operations. The Commission believes that the next 12 to 18 months should allow the

introduction of UWB devices under its recently adopted rules. It also hopes that additional tests using commercially available UWB devices will have been completed within that time frame. Such tests currently are being contemplated by the National Aeronautics and Space Administration (NASA), the Department of Transportation (DOT), by the Department of Defense, and by commercial entities. As these steps occur, the Commission intends to continue its review of the UWB standards to determine where additional changes warrant consideration.

3. The petitions for reconsideration can be divided into three general categories: those from developers of UWB devices that seek to expand on the UWB standards to permit or facilitate a particular type of operation; those from organizations representing authorized radio services that seek additional attenuation of UWB emissions in the frequency bands used by their devices; and those seeking changes to the Part 15 rules for non-UWB operation. The UWB developers consist of Time Domain, Inc., American Gas Association and American Public Gas Association (AGA and AGPA), Ground Penetrating Radar Industry Coalition (GPRIC), GPR Service Providers Coalition (GPR Providers), and National Utilities Contractors Association (NUCA), Multispectral Solutions, Inc. (MSSI), Siemens VDO, and Kohler Co. The organizations representing authorized radio services consist of Cingular Wireless LLC, Qualcomm, Sprint Corp., Sirius Satellite Radio Inc. and XM Radio Inc., Satellite Industry Association (SIA), and Aeronautical Radio, Inc., and Air Transport Association of America (ARINC and ATA). In addition, MSSI requests that we amend our peak power limits on non-UWB part 15 devices.

4. The UWB rules require through-wall imaging systems to operate with their –10 dB bandwidth located below 960 MHz or between 1.99–10.6 GHz. Imaging systems may not be used in conjunction with tag identifiers used to locate personnel nor may imaging systems be used to transmit voice or data information. Communications systems are required to operate with their –10 dB bandwidth located between 3.1–10.6 GHz. Through-wall systems are required to attenuate emissions in the GPS band by 10 dB below the part 15 general emission limits, *i.e.*, to –51.3 dBm/MHz, in the 1610–1990 MHz band and by 12 dB below the part 15 general emission limits, *i.e.*, to –53.3 dBm/MHz, in the 960–1610 MHz band. Other UWB devices are subject to even greater attenuation of emissions in these bands.

5. In response to the petition from Time Domain, Inc., the Commission amended its rules to permit the operation of a through-wall imaging system with a center frequency above 1990 MHz at the Part 15 general emission limits. This equipment may be used only by law enforcement officers, emergency rescue personnel and firefighters operating under the authority of a local or state government. Further, the operators of these systems must be licensed by the Commission under Part 90 of its regulations. The grant of a Part 90 license for operation of a land mobile station will automatically convey authority to operate this through-wall imaging system. The license may be held by the organization under which the UWB operator is employed. The Commission also required that this equipment be operated only for law enforcement applications, the providing of emergency services, and necessary training operations. Because of the possibility that some training areas may be located near public access areas where receiving equipment may not be under the immediate control of the UWB device public safety operator, at the request of NTIA the Commission requested that during training exercises through-wall imaging systems operating above 1990 MHz be encompassed by a 50 meter perimeter within which public access is restricted. Finally, the Commission required that the UWB public safety communication system transmitter operate with its center frequency, as defined in 47 CFR 15.503(b), between 1990 MHz and 10.6 GHz. The frequency at which the highest radiated emission occurs must be located in the 1.99 GHz to 10.6 GHz band and must not exceed an average root-mean-square (RMS) EIRP of –41.3 dBm/MHz. In addition, broadband emissions between 960 MHz and 1610 MHz must not exceed an average (RMS) EIRP of –46.3 dBm/MHz, when measured using a resolution bandwidth of at least 1 MHz, and narrowband emissions in the GPS bands must be attenuated so that they do not exceed an RMS EIRP of –56.3 dBm, when measured using a resolution bandwidth of no less than 1 kHz. Emissions appearing below 960 MHz may not exceed the part 15 general emission limits and any emissions above 10.6 GHz may not exceed an RMS EIRP of –51.3 dBm/MHz. Coordination is not required prior to operation nor is there any requirement that these devices be equipped with a manual transmission switch.

6. Ground penetrating radars (GPRs) and wall imaging systems must be operated by law enforcement, fire and emergency rescue organizations, by scientific research institutes, by commercial mining companies or by construction companies. The operation of these devices is subject to the requirement that the operator coordinate the operational location with the Commission. A dead man switch is required to ensure that the UWB device ceases to operate within 10 seconds of being released by the operator. These products must operate with their –10 dB bandwidth below 960 MHz or between 3.1–10.6 GHz and may operate within those bands at the part 15 general emission limits. Emissions within the 960–3100 MHz band are required to be attenuated below the part 15 general emission limits by 10 to 24 dB, depending on the frequency.

7. In response to petitions from AGA and APGA, the GPRIC, the GPR Providers, and the NUCA, the Commission eliminated the requirement that GPRs and wall imaging systems operate with their –10 dB bandwidths below 960 MHz or above 3.1 GHz; clarified the limitations on who may operate ground penetrating radar (GPR) systems and wall imaging systems and for what purposes; eliminated the requirement for non-hand held GPRs to employ a dead man switch; and clarified the coordination requirements for imaging devices.

8. UWB consumer devices are required to operate with their –10 dB bandwidth in the 3.1–10.6 GHz band and are limited to indoor-only and hand held systems. These systems must comply with the UWB definition by operating with a minimum fractional bandwidth of 0.20 or with a minimum –10 dB bandwidth of 500 MHz. The Commission denied MSSI requests that any type of UWB device, *e.g.*, a vehicle radar system, be permitted to operate in the 3.1–10.6 GHz band provided it employs a low PRF; and that devices be prohibited from operating under the UWB regulations if they achieve their wide bandwidth due to high data rates, *i.e.*, where the bandwidth is modulation dependent. The Commission agreed with MSSI requests that the emission charts that accompanied the February 14, 2002, News Release announcing the adoption of the UWB regulations did not correctly reflect the emission limits below 960 MHz.

9. The UWB regulations permit the operation of vehicular radar systems in the 22–29 GHz band. In the R&O, the Commission specifically precluded the operation of swept frequency systems and frequency hopping systems under

the UWB rules unless the transmissions comply with the minimum bandwidth requirement when measured with the sweep or hopping sequence stopped. The Commission indicated that this was necessary as no measurement procedure had been established to permit the emission levels from such devices to be determined while sweeping or hopping. The Commission expressed similar concerns in the Notice of Proposed Rule Making in this proceeding, 65 FR 37332 (June 14, 200), and declined to include transmitters employing swept frequency and similar modulation types from consideration as UWB devices. For these reasons, it denied the petition from Siemens VDO to permit pulsed frequency hopping vehicle radars to be included under the definition of a UWB device by permitting such transmitters to occupy the minimum required bandwidth within any 10 millisecond period rather than at any point in time.

10. The rules permit UWB devices to be operated indoors for any purpose provided the –10 dB bandwidth is within the 3.1–10.6 GHz band. These systems are permitted to operate at the part 15 general emission limits, –41.3 dBm in the subject band, and are required to attenuate their emissions outside of this band. Within the 960–1610 MHz band, the emissions may not exceed –75.3 dBm, a level 34 dB below the part 15 general emission limits. The Commission denied the petition from Kohler to increase the emission limit in the 960–1610 MHz band for indoor devices

11. The Cellular Radiotelephone Service operates at 824–849 MHz and 869–894 MHz; the PCS operates at 1850–1910 MHz and 1930–1990 MHz. UWB devices do not operate with their –10 dB bandwidths located within the PCS bands. However, like many other radio transmission systems, they may place unwanted emissions within that spectrum. The Commission denied the petitions from Cingular, Qualcomm and Sprint to decrease the emission levels permitted from UWB devices in the cellular, PCS and GPS frequency bands. It added that there was no basis for Sprint's and Cingular's claim that cellular or PCS exclusivity prohibits the Commission from providing for the operation of new radio services, including the operation of UWB devices that could place emissions within these bands. Further, the Commission denied the petitions to modify the transmission acknowledgement requirement for UWB systems, to amend the rules limiting certain UWB devices to indoor-only operation, or to amend the standards for imaging systems.

12. The Satellite Digital Audio Radio Service (SDARS) operates in the frequency bands 2320–2332.5 MHz and 2332.5–2345 MHz. Sirius, which operates under the name Satellite CD Radio Inc., uses the lower band, and XM uses the upper band. Through-wall imaging systems and surveillance systems, the only UWB devices permitted to operate in the SDARS bands, must not exceed an emission level of –41.3 dBm/MHz in the SDARS spectrum. All other UWB devices are required to attenuate any emissions that appear in the SDARS bands, as follows: (1) GPRs, wall imaging systems, low frequency through-wall imaging systems, medical imaging systems, and indoor UWB devices must attenuate emissions in the SDARS bands to at least –51.3 dBm/MHz; (2) vehicular radar systems and hand held UWB devices must attenuate their emissions in the SDARS bands to at least –61.3 dBm/MHz; and (3) the new public safety imaging systems must attenuate their emissions in the SDARS bands to at least –41.3 dBm/MHz. The Commission denied the petitions from Sirius and XM to reduce the limits on emissions in the SDARS bands from UWB devices.

13. The Fixed Satellite Service (FSS) operates in the 3.7–4.2 GHz band. UWB devices are permitted to operate in this band at an emission level not to exceed –41.3 dBm/MHz. The Commission rejected the petition of SIA requesting that the emissions from outdoor UWB devices be reduced in the FSS band. The Commission also supplied additional clarification as to how it performed the interference calculations employed in the First Report and Order.

14. Except for vehicular radar systems, all UWB non-imaging devices operate in the 3.1–10.6 GHz band at an emission level not to exceed –41.3 dBm/MHz. The Commission denied the joint petition from ARINC and ATA requesting that all UWB operations, except for coordinated terrestrial imaging systems, be located above 5.5 GHz; that the average power limits between 3.1–5.5 GHz be reduced to –51.3 dBm for indoor UWB devices and to –61.3 dBm for handheld UWB device; that the coordination information for UWB imaging systems be posted on the Internet to permit quick access by licensees and users of licensed services, including GPS users, to enable enforcement of the non-interference requirements; and that all UWB devices, particularly consumer-oriented indoor and handheld devices, be labelled ''Warning: Not for use on aircraft'' with similar warnings to be placed in the operating manuals.

15. Multipoint Distribution Service (MDS) and Instructional Television Fixed Services (ITFS) systems are permitted to operate in the 2150–2162 MHz and 2500–2690 MHz bands. UWB through-wall imaging systems and surveillance systems are permitted to operate in these bands at an emission level not to exceed –41.3 dBm/MHz. Emissions from all other UWB devices must be attenuated to –51.3 dBm/MHz or to –61.3 dBm/MHz, depending on the specific UWB equipment. The Commission denied the petition from WCA to reduce the emissions in the 2150–2162 MHz and 2500–2690 MHz bands from UWB devices to the same limits as those adopted for the PCS bands.

16. Under the non-UWB rules, emissions below 1000 MHz from most Part 15 devices are measured using a CISPR quasi-peak detector. When an average emission limit is specified, the rules also specify a limit on the permitted amount of peak power equal to 20 dB more than the average limit. In some cases, a pulse desensitization correction factor (PDCF) must be applied to the measurement of a peak level obtained from a spectrum analyzer in order to compensate for the analyzer's inability to respond fast enough to pulse widths narrower than the inverse of the resolution bandwidth. The PDCF can considerably increase the measured peak emission level. This standard was employed when Part 15 devices used narrowband emissions, and unfairly penalizes transmission systems that use a wide bandwidth. However, the Commission denied as outside the scope of this proceeding the petition from MSSI to permit peak measurements of non-UWB devices to be performed using a 1 MHz resolution bandwidth and without the use of a PDCF.

17. The Commission also used this *Memorandum Opinion and Order* as a vehicle to present a summary and discussion of comments filed in response to the measurement program, undertaken in April 2002 by the Technical Research Branch (TRB) of the OET Laboratory Division, to examine the existing levels of ambient RF signal energy present in the frequency bands used by GPS and Aeronautical Radionavigation systems. In addition, spurious emissions generated by common electronic/electrical devices were also measured within the GPS frequency bands. This measurement effort represented a ''first step'' toward collecting the data necessary to perform an objective evaluation of assumptions inherent in the link budget analysis

used to calculate the UWB emissions limit.

18. Because of the filing of an Application for Review of a grant of certification issued to Time Domain for its UWB transmitter along with an associated Request for Declaratory Ruling addressing the regulations regarding emissions from digital circuitry contained within UWB devices, the Commission clarified the regulation regarding limits on emissions produced by digital circuitry used within UWB devices. This clarification more closely comport with the text of the *First Report and Order.*

Administrative Provisions

19. *Paperwork Reduction Act:* This Memorandum Opinion and Order (MO&O) contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 23, 2003.

20. *Final Regulatory Flexibility Certification:* The Regulatory Flexibility Act of 1980, as amended (RFA)[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] 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).[5]

21. In this Memorandum Opinion and Order, we are responding to fourteen petitions for reconsideration regarding new rules adopted to permit the marketing and operation of new products incorporating ultra-wideband (''UWB'') technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. With appropriate technical standards, UWB devices can operate on spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently. Further, as noted in the text we have continued to apply conservative limits to the standards applicable for UWB operation, until such time as we gain additional experience, to ensure that harmful interference would not be caused to other radio spectrum users. Further, the changes adopted in this proceeding will not affect any party legally manufacturing or marketing UWB devices. Thus, we expect that our actions do not amount to a significant economic impact. Accordingly, we certify that the rules being adopted in this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

22. We will send a copy of the Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[6] In addition, the Memorandum Opinion and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[7]

23. *Ordering Clauses:* The Petitions for Reconsideration from MSSI, Siemens VDO, Time Domain, AGA and APGA, GPRIC, GPR Providers, and NUCA are granted to the extent described above. The Petitions for Reconsideration from Kohler, MSSI, Siemens, GPRIC, GPR Providers, Cingular, Qualcomm, Sprint, Sirius and XM, ARINC and ATA, and SIA are denied to the extent described above. Part 15 of the Commission's Rules and Regulations is amended as specified in the rule changes, effective May 22, 2003, except § 15.525 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. This action is taken pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r), 304 and 307.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

■ 2. Section 15.509 is revised to read as follows:

§ 15.509 Technical requirements for ground penetrating radars and wall imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be below 10.6 GHz.

(b) Operation under the provisions of this section is limited to GPRs and wall imaging systems operated for purposes associated with law enforcement, fire fighting, emergency rescue, scientific research, commercial mining, or construction.

(1) Parties operating this equipment must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) A GPR that is designed to be operated while being hand held and a wall imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to

[1] The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] Small Business Act, 15 U.S.C. 632.

[6] *See* 5 U.S.C. 801(a)(1)(A).

[7] *See* 5 U.S.C. 605(b).

operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(d) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–65.3
1610–1990	–53.3
1990–3100	–51.3
3100–10600	–41.3
Above 10600	–51.3

(e) In addition to the radiated emission limits specified in the table in paragraph (d) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–75.3
1559–1610	–75.3

(f) For UWB devices where the frequency at which the highest radiated emission occurs, f_M, is above 960 MHz, there is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

■ 3. Section 15.510 is added to read as follows:

§ 15.510 Technical requirements for through D-wall imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be below 960 MHz or the center frequency, f_C, and the frequency at which the highest radiated emission occurs, f_M, must be contained between 1990 MHz and 10600 MHz.

(b) Operation under the provisions of this section is limited to through-wall imaging systems operated by law enforcement, emergency rescue or firefighting organizations that are under the authority of a local or state government.

(c) For through-wall imaging systems operating with the UWB bandwidth below 960 MHz:

(1) Parties operating this equipment must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of these imaging systems requires coordination, as detailed in § 15.525.

(3) The imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(4) The radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	−65.3
1610–1990	−53.3
Above 1990	−51.3

(5) In addition to the radiated emission limits specified in the table in paragraph (c)(4) of this section, emissions from these imaging systems shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−75.3
1559–1610	−75.3

(d) For equipment operating with f_C and f_M between 1990 MHz and 10600 MHz:

(1) Parties operating this equipment must hold a license issued by the Federal Communications Commission to operate a transmitter in the Public Safety Radio Pool under part 90 of this chapter. The license may be held by the organization for which the UWB operator works on a paid or volunteer basis.

(2) This equipment may be operated only for law enforcement applications, the providing of emergency services, and necessary training operations.

(3) The radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209 of this chapter. The radiated emissions above 960 MHz shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	−46.3
1610–10600	−41.3
Above 10600	−51.3

(4) In addition to the radiated emission limits specified in the paragraph (d)(3) of this section, emissions from these imaging systems shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−56.3
1559–1610	−56.3

(5) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

(e) Through-wall imaging systems operating under the provisions of this section shall bear the following or similar statement in a conspicuous location on the device: ''Operation of this device is restricted to law enforcement, emergency rescue and firefighter personnel. Operation by any other party is a violation of 47 U.S.C. 301 and could subject the operator to serious legal penalties.''

■ 4. Section 15.511 is revised to read as follows:

§ 15.511 Technical requirements for surveillance systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be contained between 1990 MHz and 10,600 MHz.

(b) Operation under the provisions of this section is limited to fixed surveillance systems operated by law enforcement, fire or emergency rescue organizations or by manufacturers licensees, petroleum licensees or power licensees as defined in § 90.7 of this chapter.

(1) Parties operating under the provisions of this section must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	−53.3
1610–1990	−51.3
1990–10600	−41.3
Above 10600	−51.3

(d) In addition to the radiated emission limits specified in the table in paragraph (c) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−63.3
1559–1610	−63.3

(e) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

(f) Imaging systems operating under the provisions of this section shall bear the following or similar statement in a conspicuous location on the device: ''Operation of this device is restricted to law enforcement, fire and rescue officials, public utilities, and industrial entities. Operation by any other party is a violation of 47 U.S.C. 301 and could subject the operator to serious legal penalties.''

■ 5. Section 15.513 is revised to read as follows:

§ 15.513 Technical requirements for medical imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be contained between 3100 MHz and 10,600 MHz.

(b) Operation under the provisions of this section is limited to medical imaging systems used at the direction of, or under the supervision of, a licensed health care practitioner. The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) A medical imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(d) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	−65.3
1610–1990	−53.3
011990–3100	−51.3
3100–10600	−41.3
Above 10600	−51.3

(e) In addition to the radiated emission limits specified in the table in paragraph (d) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	−75.3
1559–1610	−53.3

(f) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

6. Section 15.521 is amended by revising paragraph (c) to read as follows:

§ 15.521 Technical requirements applicable to all UWB devices.

* * * * *

(c) Emissions from digital circuitry used to enable the operation of the UWB transmitter shall comply with the limits in § 15.209, rather than the limits specified in this subpart, provided it can be clearly demonstrated that those emissions from the UWB device are due solely to emissions from digital circuitry contained within the transmitter and that the emissions are not intended to be radiated from the transmitter's antenna. Emissions from associated digital devices, as defined in § 15.3(k), *e.g.*, emissions from digital circuitry used to control additional functions or capabilities other than the UWB transmission, are subject to the limits contained in Subpart B of this part.

* * * * *

7. Section 15.525 is amended by revising paragraphs (b) and (e) to read as follows:

§ 15.525 Coordination requirements.

* * * * *

(b) The users of UWB imaging devices shall supply operational areas to the FCC Office of Engineering and Technology, which shall coordinate this information with the Federal Government through the National Telecommunications and Information Administration. The information provided by the UWB operator shall include the name, address and other pertinent contact information of the user, the desired geographical area(s) of operation, and the FCC ID number and other nomenclature of the UWB device. If the imaging device is intended to be used for mobile applications, the geographical area(s) of operation may be the state(s) or county(ies) in which the equipment will be operated. The operator of an imaging system used for fixed operation shall supply a specific geographical location or the address at which the equipment will be operated. This material shall be submitted to Frequency Coordination Branch, OET, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, Attn: UWB Coordination.

* * * * *

(e) The FCC/NTIA coordination report shall identify those geographical areas within which the operation of an imaging system requires additional coordination or within which the operation of an imaging system is prohibited. If additional coordination is required for operation within specific geographical areas, a local coordination contact will be provided. Except for operation within these designated areas, once the information requested on the UWB imaging system is submitted to the FCC no additional coordination with the FCC is required provided the reported areas of operation do not change. If the area of operation changes, updated information shall be submitted to the

FCC following the procedure in paragraph (b) of this section.

* * * * *

[FR Doc. 03–9879 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5157]

RIN 2127–AH03

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

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

ACTION: Final rule; delay of effective date.

SUMMARY: On April 19, 2002, NHTSA published a final rule that amended the Federal motor vehicle safety standard on bus emergency exits and window retention and release, and specified an effective date of April 21, 2003 for the amendments made by the rule. Petitions for reconsideration of the rule were submitted to the agency. This document delays the effective date of the final rule one year to allow the agency more time to respond to those petitions.

DATES: Effective April 18, 2003 the effective date of the final rule published on April 19, 2002 (67 FR 19343) is delayed until April 21, 2004.

Any petitions for reconsideration of this final rule must be received by NHTSA not later than June 6, 2003

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366–0247. Mr. Hott's FAX number is: (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 217, *Bus emergency exits and window retention and release,* (49 CFR § 571.217) (FMVSS No. 217), specifies requirements for the retention of windows other than windshields in buses, and for operating forces, opening dimensions, and markings for bus emergency exits. The purpose of FMVSS No. 217 is to minimize the likelihood of occupants being thrown from the bus in a crash and to provide a means of readily accessible emergency egress.

Final Rule

On April 19, 2002 (67 FR 19343)(DMS Docket No. NHTSA–99–5157), NHTSA published a final rule amending FMVSS No. 217 to reduce the likelihood that wheelchair securement anchorages in new school buses will be installed in locations that permit wheelchairs to be secured where they would block access to emergency exit doors. For side emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by transverse vertical planes 305 mm (12 inches) forward and rearward of the center of the door aisle. For a rear emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by a horizontal plane 1,145 mm (45 inches) above the bus floor and a transverse vertical plane either 305 mm (12 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a gross vehicle weight rating (GVWR) over 4,536 kg (10,000 lb)) or 150 mm (6 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a GVWR of 4,536 kg or less).

The final rule also provides that emergency exit doors and emergency exit windows currently required to be labeled as an ''Emergency Door'' or ''Emergency Exit'' must also bear a label saying ''DO NOT BLOCK''. The agency said that access to these doors and exits should never be blocked with wheelchairs or other items, such as book bags, knapsacks, sports equipment or band equipment.

The final rule specified an effective date of April 21, 2003 for these amendments.

Petitions for Reconsideration

In late May 2002, NHTSA received petitions for reconsideration of the April 19, 2002 final rule from three school bus manufacturers: Thomas Built Buses, American Transportation Corporation (now known as IC Corporation), and Blue Bird Body Company. The three petitioners requested reconsideration of the final rule's use of transverse vertical and horizontal planes to define the volumes around the side and rear emergency exit doors where wheelchair anchorages may not be located. All three companies stated that the volumes should instead be defined using ''the rectangular parallelepiped fixture.''

The petitioners also raised other issues for reconsideration. They requested clarification of whether the warning label specified in the final rule is required for both emergency exit doors and emergency exit windows or emergency exit doors only. They asked whether the warning, ''DO NOT BLOCK,'' is intended to refer to wheelchairs only or other items as well, such as child restraint systems. In addition, Thomas Built asked NHTSA to revise Figure 6C to clarify whether emergency exits not required by FMVSS No. 217 must meet FMVSS No. 217 emergency exit requirements.

Finally, Thomas Built also asked about the ellipsoid used for assessing the area of unobstructed openings through windows.[1] With respect to the final rule's reference to the ''ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters,'' Thomas Built asked whether *any* major axis of the ellipse could be held in a horizontal position.

Request for Delay of Effective Date

In a letter dated January 29, 2003, Blue Bird Body Corporation asked for the agency's interpretation of several requirements adopted in the final rule. Blue Bird also requested NHTSA to delay the effective date of the rule by a year. Blue Bird asked for a one-year delay to give NHTSA an additional six months to respond to the petitions for reconsideration and to provide the school bus industry at least six months lead time to implement the changes.

Agency Decision to Delay Effective Date

The agency is in the process of responding to the petitions for reconsideration. If the effective date were not delayed, some school bus manufacturers might have to redesign some of their vehicles to meet the requirements of the April 2002 final rule. If we respond to the petitions for reconsideration by amending that final rule's method of determining the areas on a school bus where wheelchair securement anchorages can be installed, that amendment could again affect the design and manufacture of school buses. Some manufacturers might find,

[1] The final rule did not add, remove or other amend language regarding the use of an ellipsoid for assessing the area of unobstructed openings through windows.

depending on the nature of the amendments, that the redesign they had implemented to meet the April 2002 final rule was unnecessary. This outcome is not desirable. The benefits from the April 2002 rulemaking cannot be quantified, and are likely not significant.

We anticipate issuing the response to petitions for reconsideration later this year. A one-year delay of the effective date, to April 21, 2004, preserves the status quo and avoids what may turn out to be unnecessary manufacturing changes to meet the requirements of the April 2002 final rule.

Effective Date of This Document

Because the April 21, 2003 effective date for the final rule is fast approaching, NHTSA finds for good cause that this action delaying the effective date must take effect immediately. Today's final rule makes no substantive change to the standard, but delays the effective date of the April 19, 2002 final rule for one year while the agency responds to the petitions for reconsideration of the rule. If the effective date is not delayed, the availability of school buses could be reduced and costs of some vehicles could increase.

Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 Fed. Reg. 51735; October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''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.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Further, we have determined that this action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This final rule delays the effective date of an April 19, 2002 final rule. There are no additional costs associated with today's final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the April 19, 2002 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule, which delays the effective date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities. There are no additional costs associated with this final rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Since it only delays the effective date of a final rule, this final rule does not impose any new collections of information requirements for which a 5 CFR part 1320 clearance must be obtained.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule 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. The reason is that this final rule applies to manufacturers of school buses and to school buses, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect

of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA 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.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045—Economically Significant Rules Disporportionately Affecting Children

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–10040 Filed 4–18–03; 2:04 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 77
Tuesday, April 22, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV03–985–2PR]

Spearmint Oil Produced in the Far West; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee locally administers the marketing order, which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Ave, Suite 385, Portland, OR 97204; Phone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable spearmint oil beginning on June 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled.

The Far West spearmint oil marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 and subsequent marketing years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 26, 2003, and unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $191,300. The recommended assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. Because spearmint oil assessable poundage and assessment income have been lower than estimated

the last two marketing years, the Committee has had to use reserve funds to cover its budgeted expenses. To keep its reserve fund at an acceptable level, the Committee recommended the $0.01 increase and reduced its expenses for 2003–2004.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The Committee estimates that its monetary reserve will be approximately $72,394 at the beginning of the 2003–2004 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expenses (§ 985.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order, and approximately 98 producers of Class 1 (Scotch) spearmint oil and approximately 100 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 11 of the 98 Scotch spearmint oil producers and 13 of the 100 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound. The proposed assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. The quantity of assessable spearmint oil for the 2003–2004 marketing year is estimated at 1,697,200 pounds. Thus, the $0.10 rate should provide $169,720 in assessment income. This, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of $173,700, which included a decrease to committee expenses, and increases in administrative and market research and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. The proposed budget includes an expenditure reduction of $17,600 and no further alternative expenditure levels were discussed. The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. This, together with interest and other income, is approximately $280 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming 2003–2004 marketing year indicates that the producer price for the 2003–2004 marketing year could be about $9.13 per pound. Therefore, the estimated assessment revenue for the 2003–2004 marketing year as a percentage of total producer revenue could be about 1.1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the

costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 2003–2004 marketing year begins on June 1, 2003, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2003, an assessment rate of $0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: April 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9844 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–17–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters. This proposal would require modifying the SIREN cargo hook and inspecting the cargo hook locking catch (locking catch) for corrosion. This proposal is prompted by the discovery of internal corrosion on a Siren locking catch that may weaken the locking catch. The actions specified by this proposed AD are intended to detect internal corrosion of the locking catch, which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2002–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 350 B3, AS–365N, N1, AS 365N2, AS 365N3, and EC 155 B helicopters fitted with Siren cargo hooks, part number (P/N) AS–21–5–7. The DGAC advises that corrosion was discovered on a locking catch, which might lead to untimely load release.

Eurocopter has issued Alert Telexes No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model AS 365N, N1, AS 365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001, which specify an initial corrosion check, and verification of Amendment B to prevent any risk of untimely load release due to locking catch corrosion combined with in-flight vibrations. Amendment B requires marking a permanent reference line across the rotating bolt and stationery cover plate for the cargo hook, affixing a placard to the cover plate, and marking the letter ''B'' on the amendment identification plate of the release unit and on the equipment log card. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–044(A), dated January 23, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The proposed paragraph (a) action of this proposed AD for cargo hook, P/N AS–21–5–7, with Amendment B incorporated, may be performed by an owner/operator (pilot), and must be entered into the helicopter records showing compliance with that paragraph in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This proposed AD would allow a pilot to perform these actions because they involve only manipulating the manual cargo release and checking the reference line for continuity, and can be performed equally well by a pilot or a mechanic. For cargo hook, P/N AS–21–5–7, without Amendment B incorporated, a mechanic must incorporate Amendment B in accordance with the applicable alert telex.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require incorporating Amendment B, if not accomplished previously, and checking for corrosion on the locking catch before the first use of the cargo hook each day that the cargo hook is used. Incorporating Amendment B would be required to be accomplished in accordance with the alert telexes described previously.

The FAA estimates that of the 60 helicopters of U.S. registry, 6 helicopters would have the Siren cargo hook installed and would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per helicopter to incorporate Amendment B and .25 work hour to conduct and record the pilot check with 60 pilot checks performed per year, and that the average labor rate is $60 per work hour. Required parts to incorporate Amendment B would cost $4.00 for each label. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,504.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–17–AD.

Applicability: Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters, with an optional Siren load release unit cargo hook, part number (P/N) AS–21–5–7, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect internal corrosion of the Siren cargo hook locking catch (locking catch), which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release, accomplish the following:

(a) For cargo hook, P/N AS–21–5–7, with Amendment B incorporated, before the first use of the cargo hook on each day that the cargo hook is used, check for corrosion on the locking catch as follows. Amendment B has been incorporated if the letter ''B'' is marked on the amendment identification plate of the release unit of the cargo hook and placard ''G'' is installed on the release unit cover plate ''D'' and reference line ''B'' is marked over the nut and cover plate as depicted in Figure 1 of this AD. The identification plate is located on cover plate ''D'', on the opposite side of the electrical connector. See Figure 1:

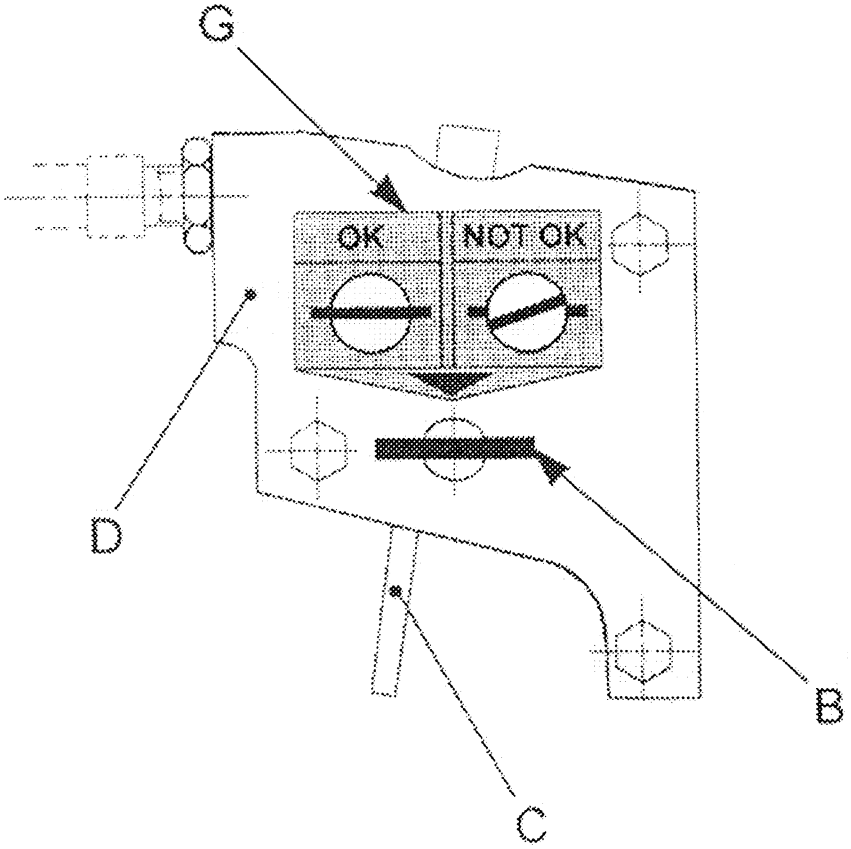

Figure 1

(1) With the cargo hook installed, cycle the red manual release control lever several times over its travel range.

(2) Return the red manual release control lever to the initial position.

(3) Determine whether the section of reference line (B) marked on the bolt (A) and the section of reference line (B) marked on the cover plate (D) form a straight line.

(i) If the reference line is straight, the cargo hook is considered airworthy.

(ii) If the reference line is not straight, the cargo hook is unairworthy and may not be used.

(b) The requirements of paragraphs (a) through (a)(ii) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraphs (a) through (a)(ii) of this AD in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(c) For cargo hook, P/N AS–21–5–7, without Amendment B, before the next sling load flight, incorporate Amendment B to the cargo hook in accordance with the Accomplishment Instructions, paragraphs 2.A.2.(a) and 2.A.2.(b), of Alert No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model SA–365N, N1, AS–365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(e) Special flight permits will not be issued allowing use of the cargo hook until the requirements of this AD are accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–044(A), dated January 23, 2002.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9864 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–02–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified model Eurocopter France (ECF) helicopters. This proposal would require replacing the main gearbox (MGB) opening neoprene

cowling seals (seals) with airworthy glass/silicone seals. This proposal is prompted by the discovery that neoprene seals currently installed on the MGB opening cowlings do not provide the fire protection required by the airworthiness standards. The actions specified by this proposed AD are intended to require installation of fire-resistant seals to prevent a fire in the engine compartment from reaching the MGB compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–02–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified ECF Model helicopters delivered before July 1, 2002. The DGAC advises that neoprene seals bonded to the MGB mobile cowlings have low fire resistance, which does not meet the certification criteria. In the event of an uncontrolled fire in the engine compartment, the fire could spread to the MGB compartment.

ECF has issued Alert Service Bulletin No. 53.00.31, dated July 11, 2002 (ASB), which specifies replacing the MGB neoprene seals with glass/silicone seals that have increased fire-resistance. The DGAC classified this ASB as mandatory and issued AD 2002–537–094(A), dated October 30, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within 200 hours time-in-service, replacing the neoprene seals with glass/silicone seals, which is terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that this AD would affect 583 helicopters of U.S. registry, that it would take approximately 2 work hours per helicopter to install the seals, and that the average labor rate is $60 per work hour. Required parts would cost approximately $98. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $127,094.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2003–SW–02–AD.

Applicability: Model AS350B, B1, B2, B3, BA, and D helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 200 hours time-in-service, unless accomplished previously.

To prevent a fire in the engine compartment from reaching the main gearbox (MGB) compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the MGB opening neoprene cowling seals with glass/silicone seals in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin No. 53.00.31, dated July 11, 2002.

(b) Replacing the MGB opening neoprene cowling seals with glass/silicone seals is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France), AD 2002–537–094(A), dated October 30, 2002.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9863 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–12–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that proposed a daily inspection of the tail rotor pitch control rod (control rod) outboard spherical bearing (bearing), a radial and axial play limit, a revised AD compliance interval, and adding the ECF Model AS350B3 helicopter and an additional control rod to the applicability. That proposal was prompted by two comments received and the FAA determination that the AD inspection interval should coincide with the normal maintenance interval and that the AD should apply to the ECF Model AS350B3 helicopter. This action retains the original proposals but changes the daily inspection to a daily check and makes other editorial changes for clarification. The actions specified by the proposed AD are intended to prevent separation of the bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–12–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

On November 19, 1998, the FAA issued AD 98–24–35, Amendment 39–10921, Docket 98–SW–41–AD (63 FR 66418, December 2, 1998), to require measuring the control rod bearing radial and axial play every 50 hours time-in-service (TIS). That action was prompted by an accident and an incident involving ECF Model AS350B2 helicopters. There were two other unconfirmed incidents cited by the National Transportation Safety Board (based on manufacturer's reports) involving the same control rod, part number (P/N) 350A33–2145–00.

After issuing AD 98–24–35, ECF issued Service Letter No. 1367–64–98, dated January 12, 1999, to provide operators with an easy way to determine the looseness of the bearing by adding an axial play limit of 0.016 inch and a daily check. When the FAA issued AD 98–24–35, neither the Direction Generale De L'Aviation Civile nor the manufacturer had issued any service information addressing this unsafe condition.

Subsequently, the FAA received comments from two commenters, the manufacturer and an operator, stating that a larger axial play limit and a 30-hour time-in-service (TIS) visual check would provide a satisfactory degree of safety for this control rod and an adequate inspection interval.

The FAA agreed and issued a proposal to amend 14 CFR part 39, published as an NPRM in the **Federal Register** on April 9, 2001 (66 FR 18416), to supersede AD 98–24–35. The NPRM

proposed adding ECF Model AS350B3 helicopters and control rod, P/N 350A33–3145–00, to the applicability; increasing the frequency of the inspection interval from every 50 hours TIS to every 30 hours TIS; establishing a daily inspection of the control rod bearing; and establishing an axial play limit of 0.016-inch. The actions of that proposed AD were intended to prevent separation of the bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter.

Since issuing that NPRM, the FAA has received various comments from 12 commenters.

Three commenters state that the proposed daily inspection of the bearing should be deleted because the requirement already exists in the maintenance work cards and in the preflight checklist in the rotorcraft flight manual (RFM). In addition, another commenter states that the daily inspection should be changed to a daily check and that a trained pilot should do the check. The FAA agrees that a pilot can do the check but believes that due to the accidents caused by failure of the control rods and because the RFM and the maintenance work cards are unclear a daily check should be required. However, we are revising our proposal to allow an owner/operator (pilot) to perform the daily check of the bearing for movement because no tools are required and the check can be accomplished by observation and feel. However, the pilot must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

One commenter, the manufacturer, states that the control rod P/N is incorrectly stated in three places. Also, in its Service Letter No. 1367–64–98, which details the most effective checking conditions, the term ''easy'' is more suitable than the term ''accurate'' as used in the proposed AD. The FAA agrees and has made those changes as requested.

The manufacturer requests that the proposed Figures 1 and 2, relating to the axial and radial play measurements, be replaced with three clearer figures provided by them. The FAA agrees. Published Figure 1 gives the method only for a visual check. Published Figure 2 shows the complete assembly of the control rod and makes it appear that the measurements can be made without removing the control rod from the helicopter. Therefore, the FAA is inserting the three clearer figures in the proposal to clearly depict the measurement of radial and axial play and is including references in the text accordingly.

Seven commenters state that the inspection interval of the bearing should be changed from the proposed 30 to 100 hours TIS. One commenter states that the inspection interval should not be less than 50 hours TIS. The FAA mistakenly proposed an inspection of all affected control rods at intervals not to exceed 30 hours TIS. The 30-hour TIS inspection interval was intended to apply only to the control rods that were removed from the helicopter because play was detected, not to newly installed or in-service control rods. Therefore, we have changed the proposed paragraph numbering and added the word ''thereafter'' to clearly indicate that the 30-hour TIS inspection interval applies to control rods in which play has been detected. We do not agree that the inspection interval for these control rods should be extended above 30 hours TIS.

The manufacturer further states that the compliance time in paragraph (a) should be changed from ''before the first flight'' (BFF) to ''after the last flight'' (ALF) of the day. The commenter states that if maintenance is required for operational reasons, ALF is preferable to BFF because the mechanic has more time to do the work and states that the ALF visit is longer and a more important daily visit compared with the BFF. The FAA does not agree. The intent is to check the helicopter for safety of flight in accordance with the requirements of this AD regardless of whether it is done ALF or BFF.

The manufacturer further states that we should add a requirement that if the ball shows evidence of scoring and/or discoloration, the control rod should be replaced with an airworthy control rod before further flight. The FAA agrees and has changed the wording of the proposed AD to state that if discoloration or scoring on the bearing is found, the bearing is unairworthy.

Another commenter with 20 years of experience with these helicopters states that neither the current AD nor this proposed AD is needed. The FAA disagrees. The FAA has determined that an AD is required based on the occurrence of accidents due to failure of these control rods.

One commenter fully agrees with the proposal and suggests adding a warning to the RFM alerting pilots that violent vibration due to a pitch control rod failure will result in separation of the tail boom. The FAA disagrees. The RFM Emergency Procedures address the tail rotor malfunction including tail rotor control failure. The daily check should preclude any impending failure of the control rod based on the conditions addressed by this AD.

Other commenters agree with the proposal to increase the axial play from .008 inch to .016 inch; however, one commenter asks if leaving the allowable play at .008 inch would not be safer. The FAA believes that a sufficient margin of safety is provided if the play is increased to .016 inch.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. Therefore, Notes 1 and 2 and paragraph (c) as published in AD 98–24–35 and the NPRM in this action are not included in this supplemental notice of proposed rulemaking. However, a revised paragraph (c) is added to the proposed action.

Some of these changes expand the scope of the originally proposed rule. Therefore, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that the AD would affect 610 helicopters of U.S. registry, that it would take approximately 1 work hour per helicopter to accomplish the inspections, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,224 for two control rods per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $783,240.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2000–SW–12–AD.

Applicability: Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N helicopters, with tail rotor pitch control rod (control rod), part number (P/N) 350A33–2145–00 or 350A33–2145–01, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the control rod outboard spherical bearing (bearing) ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day, place the tail rotor pedals in the neutral position. If the helicopter is fitted with a tail rotor load compensator, discharge the accumulator as described in the rotorcraft flight manual. Check the bearing for play on the helicopter, by observation and feel, by slightly moving the tail rotor blade in the flapping axis while monitoring the bearing for movement. *See* the following Figure 1 of this AD:

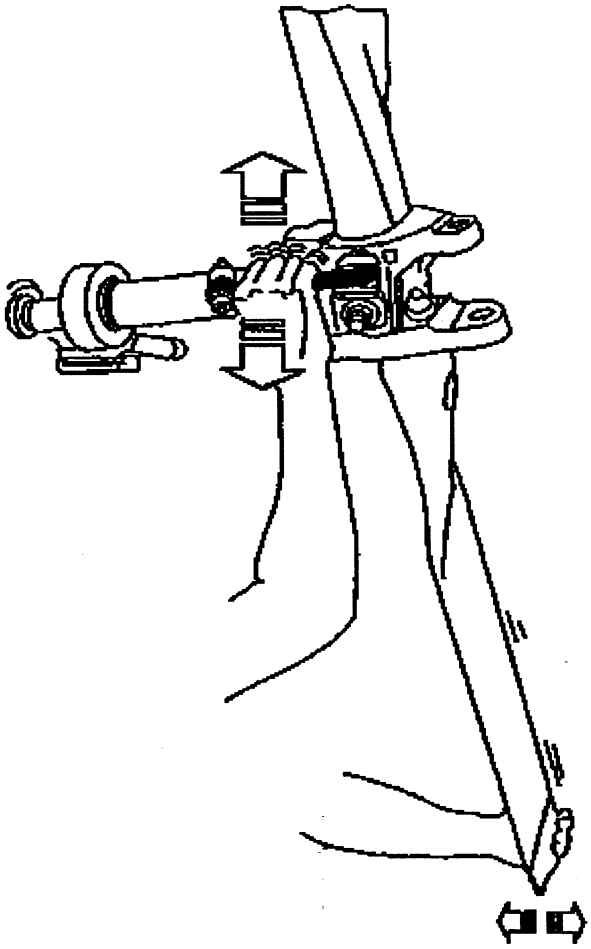

Figure 1: Manual Check for Play of the Tail Rotor Pitch Control Rod

(1) If the Teflon cloth is coming out of its normal position within the bearing, totally or partially, or if there is discoloration or scoring on the bearing, the bearing is unairworthy.

(2) An owner/operator (pilot) holding at least a private pilot certificate may perform this check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(b) If a pilot or mechanic detects play, a mechanic must remove the control rod from the helicopter, and using a dial indicator, measure the bearing wear according to the following and as shown in Figures 2 and 3 of this AD:

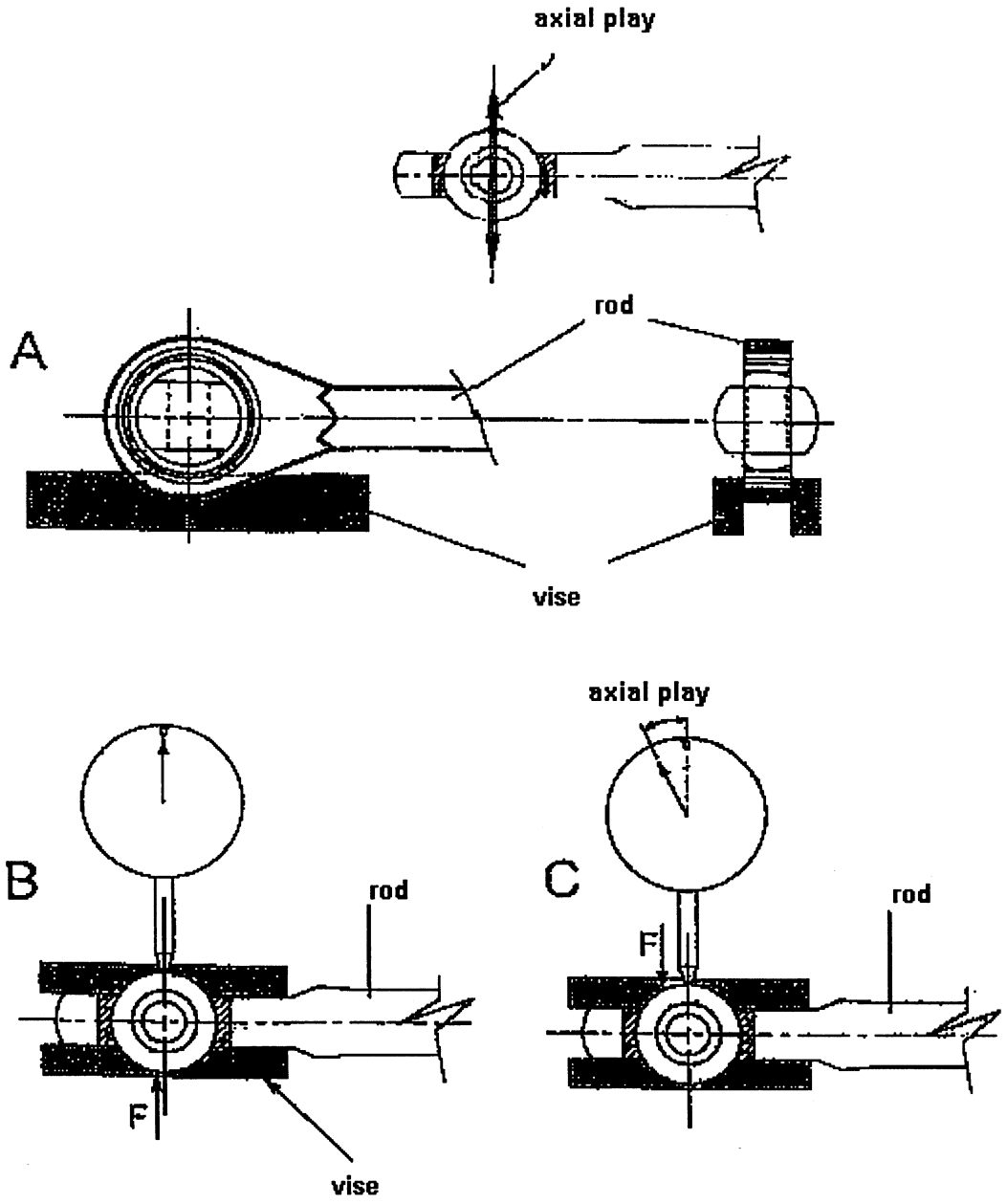

Figure 2: Measurement of the Axial Play (A) of the Bearing

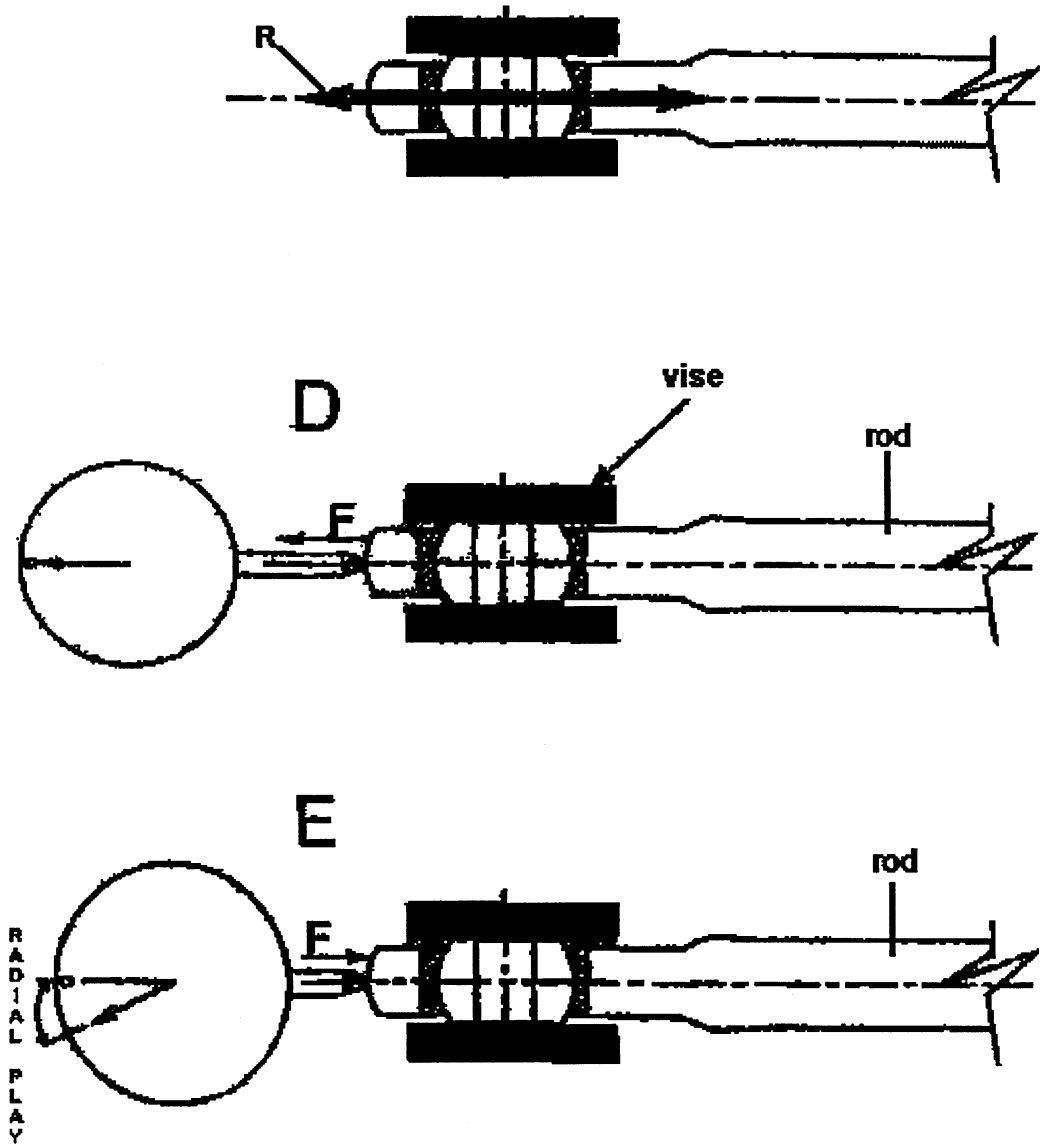

Figure 3: Measurement of the Radial Play (R) of the Bearing

(1) Remove the control rod from the helicopter.

(2) Mount the control rod in a vise as shown in Figure 2 of this AD.

(3) Using a dial indicator, take axial play readings by moving the spherical bearing in the direction F (up and down) as shown in Figure 2 of this AD.

(4) Install a bolt washer and nut to secure the bearing after removing it from the vise.

(5) Mount the bearing in a vise as shown in Figure 3 of this AD.

(6) Using a dial indicator, take radial play measurements by moving the control rod in the direction F as shown in Figure 3 of this AD.

(7) Record the hours of operation on each control rod.

(8) If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replace the control rod with an airworthy control rod before further flight.

(9) If the radial and axial play are within limits, reinstall the control rod.

(10) Thereafter, at intervals not to exceed 30 hours TIS, remove the control rod and again measure the bearing play with a dial indicator in accordance with this paragraph.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR

39.19. Contact the Manager, Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9862 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 02N–0434]

Withdrawal of Certain Proposed Rules and Other Proposed Actions; Notice of Intent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to withdraw certain advance notice of proposed rulemakings (ANPRMs), proposed rules, and other proposed actions that published in the **Federal Register** more than 5 years ago. These proposals rules are no longer considered viable candidates for final action at this time. FDA is taking this action to reduce its regulatory backlog and focus its resources on current public health issues. The FDA's actions are part of an overall regulatory reform strategy initiated by HHS Secretary Tommy G. Thompson.

DATES: Submit written or electronic comments by July 21, 2003.

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: Lisa M. Helmanis, Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION: On June 8, 2001, Secretary Thompson announced his regulatory reform initiative designed to reduce regulatory burdens in health care and respond faster to the concerns of health care providers, State, and local governments and individual Americans who are affected by HHS rules. In December of 2001 the Secretary announced the membership of his Regulatory Reform Committee designed to carry out his initiative. In November of 2002 the Committee released its final report with over 255 specific recommendations for simplifying, streamlining and generally reducing the regulatory burden while continuing to require accountability by those doing business with HHS and its agencies. Over 25 of the recommendations have been adopted and the Secretary charged the Office of the Assistant Secretary for Planning and Evaluation to continue the efforts of the Regulatory Reform Committee. FDA's continuing efforts to withdraw regulations that have been proposed but not finalized are part of this overall initiative.

I. Background

In 1990, FDA began a comprehensive review of its regulations process that included a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final action or withdrawal notice had been issued. In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA announced its intent to withdraw 115 proposed rules published before December 31, 1985, that had never been finalized and invited comment on its intent. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA issued its first notice withdrawing 89 of those outstanding proposed rules. Again, in the **Federal Register** of January 19, 1993 (58 FR 4953), FDA announced its intent to withdraw 10 proposed rules that had never been finalized and invited comment on its intent. In the **Federal Register** of January 20, 1994 (59 FR 3042), the agency withdrew an additional 9 outstanding proposed rules.

Once again, FDA has reviewed its pending proposed rules and other notices that published in the **Federal Register** more than 5 years ago, and for which no final rule or notice of withdrawal has been issued. The agency has identified 84 such proposed rules and other actions that should be formally withdrawn. Included in this current list are 19 proposed rules that were included in the original 1991 list, but at that time, the agency decided to defer its decision to withdraw or finalize them until a later date. As with the other proposals it intends to withdraw, FDA believes that it is no longer appropriate to continue these rulemakings. These 19 proposed rules are identified in table 1 of this document.

As with the 1991 review, the agency undertook this most recent review because it believes that the backlog of pending proposals dilutes its ability to concentrate on higher priority regulations that are mandated by statute or necessary to address current public health issues. Because of the agency's limited resources and changing priorities, FDA has been unable to consider, in a timely manner, the issues raised by the comments on these proposals and either complete the action on them or withdraw the proposals. Additionally, because many of the proposals have become outdated in the time that has elapsed since their publication, the agency would need to obtain further comment on them before proceeding to final action. FDA has determined that the proposals identified in this document are lower in priority than those on the Unified Agenda and the Regulatory Plan. It is unlikely that the agency will have sufficient resources in the foreseeable future to further consider or prioritize these proposed rules. Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by withdrawing these 84 proposals. In some instances, the agency has already completed action on alternatives, e.g., the issuance of guidance or inclusion of provisions in related regulations, that have obviated the need to complete the proposed action.

If the agency does withdraw these proposals, that action would not preclude the agency from reinstituting proceedings to issue rules concerning the issues addressed in the proposals listed in table 1 of this document. Should FDA decide to undertake such a rulemaking sometime in the future, it will re-propose the actions and provide new opportunities for comment. For some proposals, the agency already has plans to institute new proceedings. Further, interested persons may submit a citizen petition requesting that the agency initiate rulemaking on any of the issues covered by the proposed rules that FDA intends to withdraw.

The agency advises that in some cases the preambles of these proposals may still reflect the current position of FDA on the matter addressed. In addition, withdrawal of a proposal is not intended to affect whatever utility the preamble statements may currently have as indications of FDA's position on a matter at the time the proposal was published.

Therefore, for the reasons set forth previously, and under the Federal Food, Drug, and Cosmetic Act, the agency

announces its intent to withdraw the following documents, published in the **Federal Register** on the dates indicated in table 1:

TABLE 1.

Title	Docket No.	FR publication date and cite
Radioactive Drugs, Including Biological Products	75N–0069	July 25, 1975, 40 FR 31314
Conditions for Use of Methadone	75N–0125	April 29, 1976, 41 FR 17922
Pasteurized Milk Ordinance and Interstate Milk Shippers	75N–0243	May 5, 1975, 40 FR 19513
Oral Contraceptive Drug Products; Physician and Patient Labeling	75N–0304	December 7, 1976, 41 FR 53633
Penicillin Streptomycin Powder; Penicillin—Dihydrostreptomycin Powder; Proposed Revocation of Certification Provision	75N–0374	July 9, 1976, 41 FR 28313
Conditions for Use of Methadone; Physiologic Dependence, Staffing, and Urine Testing Requirements	76N–0098	April 29, 1976, 41 FR 17926
Sorbic Acid and Its Salts; Proposed Affirmation and Deletion of GRAS Status	77G–0379[1]	March 10, 1978, 43 FR 9823
Butylated Hydroxytoluene; Use Restrictions	77N–0003[1]	May 31, 1977, 42 FR 27603
Color Additives; Proposed Use of Abbreviations for Labeling Foods, Drugs, Cosmetics, and Medical Devices	77N–0009 and 78P–0164	June 6, 1985, 50 FR 23815
Brown and Yellow Mustard and Their Derivatives; Proposed Affirmation of GRAS Status as Direct Human Food Ingredients	77N–0033[1]	August 26, 1977, 42 FR 43092
Acrylonitrile Copolymers Intended for Use in Contact With Food; Proposed Rulemaking	77N–0078	March 11, 1977, 42 FR 13562
Gelatin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient	77N–0232[1]	November 11, 1977, 42 FR 58763 and May 12, 1993, 58 FR 27959 (Tentative final rule)
New Animal Drugs for Use in Animal Feeds; Animal Feeds Containing Penicillin and Tetracycline	77N–0318	January 20, 1978, 43 FR 3032
Ethylene Oxide, Ethylene Chlorohydrin, and Ethylene Glycol; Proposed Maximum Residue Limits and Maximun Daily Levels of Exposure	77N–0424[1]	June 23, 1978, 43 FR 27474
Label Designation of Ingredients in Cheese and Cheese Products	77P–0146	July 19, 1984, 49 FR 29242
Food Chemicals Codex Monographs; Opportunity for Public Comment on Revisions	78N–0072	April 18, 1978, 43 FR 16413
Cellulose Derivatives; Affirmation of GRAS Status	78N–0144[1]	February 23, 1979, 44 FR 10751
Tocopherols and Derivatives; Proposed Affirmation of GRAS Status for Certain Tocopherols and Removal of Certain Others From GRAS Status as Direct Human Food Ingredients	78N–0213[1]	October 27, 1978, 43 FR 50193
Chlortetracycline-Sulfamethazine Tablets	78N–0247	September 22, 1978, 43 FR 43036
Phosphates; Proposed Affirmation of and Deletion From GRAS Status as Direct and Human Food Ingredients	78N–0272	December 18, 1979, 44 FR 74845
Biotin; Proposed Affirmation of GRAS Status	78N–0308[1]	January 14, 1983, 48 FR 1739
Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients	78N–0336[1]	May 18, 1979, 44 FR 29102
Glycerin; Affirmation of GRAS Status as a Direct Human Food Ingredient	78N–0348[1]	February 8, 1983, 48 FR 5758
Medical Devices; Sponges for Internal Use	78N–1074	November 28, 1976, 43 FR 55697
Medical Devices; Classification of Powered Myoelectric Biofeedback Equipment	78N–1183	August 28, 1979, 44 FR 50464
Porcine burn dressing	78N–2670	January 19, 1982, 47 FR 2828
Food Ingredient Labeling, Emulsifiers, and Stabilizers (Carob Bean Gum); Exemptions	78P–0052	April 17, 1985, 50 FR 15177

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Sodium Dithionite and Zinc Dithionite; Proposed Affirmation of GRAS Status	79N–0095[1]	January 25, 1980, 45 FR 6117 and September 17, 1982, 47 FR 41137 (Tentative final rule)
Current Good Manufacturing Practice in Manufacture Processing, Packing, or Holding; Proposed Exemption From Active Ingredient Identity and Strength Testing for Homoeopathic Drug Products	79P–0265	April 1, 1983, 48 FR 14003
Hydrochloric Acid; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient	80N–0148[1]	April 26, 1984, 49 FR 17966
Cheeses and Related Cheese Products; General Standard of Identity for ''Certain Other Cheeses''	80N–0373	April 23, 1984, 49 FR 17018
Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study	80N–0418[1]	October 21, 1980, 45 FR 69817
Policy for Regulating Carcinogenic Chemicals in Food and Color Additives; Advance Notice of Proposed Rulemaking	81N–0281	April 2, 1982, 47 FR 14464
Magnesium Gluconate, Potassium Gluconate, Sodium Gluconate, Zinc Gluconate, and Gluconic Acid; Proposed GRAS Status as Direct and Indirect Human Food Ingredients	81N–0382	October 29, 1982, 47 FR 49028
Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status	82N–0006[1]	December 8, 1983, 48 FR 54990
Zinc Salts; Proposed Affirmation of GRAS Status	82N–0167[1]	October 26, 1982, 47 FR 47441
Regenerated Collagen; Proposed GRAS Status as a Direct Human Food Ingredient	82N–0219[1]	April 26, 1983, 48 FR 18833
Ascorbic Acid and Its Sodium and Calcium Salts, Erythorbic Acid and Its Sodium Salt, and Ascorbyl Palmitate; Proposed Affirmation of GRAS Status and Removal of Calcium Ascorbate From the List of GRAS Ingredients	82N–0246[1]	January 14, 1983, 48 FR 1735
Caffeine in Nonalcoholic Carbonated Beverages	82N–0318	May 20, 1987, 52 FR 18923
Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages	82N–0389	June 1, 1984, 49 FR 22831
Reclassification of Electroconvulsive Therapy	82P–0316	September 5, 1990, 55 FR 36578
New Drug and Antibiotic Application Review; Proposed User Charge	84N–0101	August 6, 1985, 50 FR 31726
Proposed Uses of Vinyl Chloride Polymers	84N–0334	February 3, 1986, 51 FR 4177
Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Food Ingredients	84N–0341[1]	April 1, 1985, 50 FR 12821
Use of Acrylonitrile Copolymers	85N–0145	March 8, 1990, 55 FR 8476
Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components	85N–0241	February 19, 1988, 53 FR 5108
New Drugs for Human Use: Proposed Clarification of Requirements for Application Supplements	86N–0077	June 4, 1986, 51 FR 20310
Quality Standard for Foods With No Identity Standards; Bottled Water	86N–0445	September 16, 1988, 53 FR 36063
Pineapple Juice; Proposal to Amend U.S. Standards of Identity and Quality	86P–0338	May 21, 1987, 52 FR 19169
New Animal Drug Regulations	88N–0058	December 17, 1991, 56 FR 65544
Current Good Manufacturing Practices for Blood and Blood Components; Proficiency Testing Requirements	88N–0413	June 6, 1989, 54 FR 24296
Canned Pineapple; Proposal to Amend Standards of Identity and Quality	88P–0224	March 24, 1989, 54 FR 12237
Shellac and Shellac Wax; Proposed Affirmation of GRAS Status With Specific Limitations as Direct Human Food Ingredients	89N–0106	July 26, 1989, 54 FR 31055

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Erythromycin Capsules; Proposed Amendment of Dissolution Standard of Erythromycin Capsules	89N–0378[1]	October 26, 1989, 54 FR 43592
Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions to Establish Standards of Indentity and to Amend the Existing Standards	89P–0208 and 89P–0444	May 31, 1991, 56 FR 24760
Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont	89P–0314	October 30, 1990, 55 FR 45615
Amend Animal Care Regulations	89P–0320	July 3, 1990, 55 FR 27476
Food Labeling; Declaration of Ingredients; Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; ''and/or'' Labeling for Soft Drinks	90N–361M	January 6, 1993, 58 FR 2950
Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use	91N–0074	October 11, 1991, 56 FR 51354
Cosmetic Products Containing Certain Hormone Ingredients; Notice of Proposed Rulemaking	91N–0245	September 9, 1993, 58 FR 47611
Substances in Food-Contact Articles in the Household, Food Service Establishments, and Food Dispensing Equipment	91N–0313	April 12, 1974, 39 FR 13285
Drug Listing Compliance Verification Reports	92N–0291	September 2, 1993, 58 FR 46587
Food Labeling; Metric Labeling Requirements	92N–0406	May 21, 1993, 58 FR 29716
Food Labeling; Net Quantity of Contents; Compliance	92P–0441	March 4, 1997, 62 FR 9826
Cardiovascular Devices; Effective Date of Requirement for PMA of Nonroller-Type Cardiopulmonary Bypass Blood Pump	93M–0150	July 6, 1993, 58 FR 36290
Amendment of Performance Standards; Laser Products	93N–0044	March 24, 1999, 64 FR 14180
Quality Standards for Foods With No Identity Standards; Bottled Water	93N–0200	October 6, 1993, 58 FR 52042
Metric Labeling; Quantity of Contents Labeling Requirement for Foods, Human and Animal Drugs, Animal Foods, Cosmetics, and Medical Devices	92N–0406 and 93N–0226	December 21, 1993, 58 FR 67444
Lead in Food and Color Additives and GRAS Ingredients; Request for Data	93N–0348	February 4, 1994, 59 FR 5363
Substances Prohibited From Use in Animal Food or Feed; Specified Offal From Adult Sheep and Goats Prohibited in Ruminant Feed; Scrapie	93N–0467	August 29, 1994, 59 FR 44584
Dental Devices; Effective Date of Requirement for Premarket Approval of Over-the-Counter (OTC) Denture Cushions or Pads and OTC Denture Repair Kits	95N–0034	July 11, 1995, 60 FR 35713
Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements	95N–0103	February 2, 1996, 61 FR 3885
Maltodextrin; Food Chemicals Codex Specifications	95N–0189	September 21, 1995, 60 FR 48939
Beverages: Bottled Water	95N–0203	November 13, 1995, 60 FR 57132
Dental Devices; Effective Date of Requirement for Premarket Approval of Partially Fabricated Denture Kits	95N–0298	November 29, 1995, 60 FR 61232
Yogurt; Low Fat And Non-Fat, Revocation	95P–0250	November 9, 1995, 60 FR 56541
Food Standards; Reinvention of Regulations Needing Revisions; Request for Comments on Certain Existing Regulations	96N–0149	June 12, 1996, 61 FR 29701
Reinvention of Certain Food Additive Regulations	96N–0177	June 12, 1996, 61 FR 29711
Food Labeling; Declaration of Free Glutamate in Food	96N–0244	September 12, 1996, 61 FR 48102
Regulation of Medical Foods	96N–0364	November 29, 1996, 61 FR 60661
Food Labeling: Nutrient Content Claims Pertaining to the Available Fat Content of Food	96N–0421 and 94P–0453/CP1	December 20, 1996, 61 FR 67243

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Food Labeling; Serving Sizes; Reference Amounts for Candies	96P–0023 and 96P–0179	January 8, 1998, 63 FR 1078

[1]Denotes documents that were included in the December 1991 withdrawal notice, but were not withdrawn at that time.

II. Submission of Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments regarding this proposal. 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. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9865 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 803

[CSOSA–0007–P]

RIN 3225–AA05

Agency Seal

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency) proposes to adopt regulations on the use of its official seal and the official seal for the District of Columbia Pretrial Services Agency (PSA or Agency), an independent entity within CSOSA. Use by any person or organization may be made only with CSOSA's or PSA's prior written approval. Wrongful use of an official seal is subject to administrative action and/or criminal penalty.

DATES: Comments due by June 23, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is proposing to adopt regulations (28 CFR part 803) on the use of its official seal and the official seal for PSA, an independent entity within CSOSA.

CSOSA and PSA have each developed a seal which signifies the authoritativeness of the item or document to which it is affixed as an official endorsement of the Agency. The seals are to be used for official Agency business or as approved under CSOSA's regulations.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This interim rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call Roy Nanovic at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 803

Probation and parole; Seals and insignia.

Paul A. Quander, Jr.,

Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 803 as set forth below.

PART 803—AGENCY SEAL

Sec.
803.1 Description.
803.2 Authority to affix seal.
803.3 Use of the seal.

Authority: 5 U.S.C. 301; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

§ 803.1 Description.

(a) The Agency seal of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words ''Community, Accountability, and Justice'' and gold laurel branches, with gold edges bearing the inscription ''COURT SERVICES AND OFFENDER SUPERVISION AGENCY'' above three stars at either side of the words ''DISTRICT OF COLUMBIA'' in smaller letters in the base; letters and stars in gold. A reproduction of the Agency seal in black and white appears as follows:

(b) The Agency seal of the District of Columbia Pretrial Services Agency (PSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words ''Community, Accountability, and Justice'' and gold laurel branches, with gold edges bearing the inscription ''DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY''; letters in gold. A reproduction of the Agency seal in black and white appears as follows:

§ 803.2 Authority to affix seal.

The Director of CSOSA or PSA (as appropriate) and the Director's designees are authorized to affix the Agency seal (including replicas and reproductions) to appropriate documents, certifications, and other materials for all purposes authorized by this part.

§ 803.3 Use of the seal.

(a) The Agency seal is used by Agency staff for official agency business as approved by the appropriate Director or designee.

(b) Use of the Agency seal by any person or organization outside of the Agency may be made only with the appropriate prior written approval.

(1) Any request for such use must be made in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004, and must specify, in detail, the exact use to be made. Any permission granted by the appropriate Director or designee applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(2) The decision whether to grant such a request is made on a case-by-case basis, with consideration of all relevant factors, which may include: The benefit or cost to the government of granting the request; the unintended appearance of endorsement or authentication by the Agency; the potential for misuse; the effect upon Agency security; the reputability of the use; the extent of the control by the Agency over the ultimate use; and the extent of control by the Agency over distribution of any products or publications bearing the Agency seal.

(c) Falsely making, forging, counterfeiting, mutilating, or altering the Agency seal or reproduction, or knowingly using or possessing with fraudulent intent an altered Agency seal or reproduction is punishable under 18 U.S.C. 506.

(d) Any person using the Agency seal or reproduction in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Agency seal, and other provisions of law as applicable.

[FR Doc. 03–9936 Filed 4–21–03; 8:45 am]
BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 804

[CSOSA–0008–P]

RIN 3225–AA06

Acceptance of Gifts

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) proposes to adopt regulations on the acceptance or use of gifts by itself and by the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. In accordance with specific statutory authority, CSOSA and PSA may accept and use gifts in the form of in-kind contributions of space and hospitality for the purpose of supporting offender and defendant programs and of equipment and vocational training services to educate and train offenders and defendants. These regulations delegate authority to the Director of PSA with respect to gifts supporting defendant programs and vocational training services, establish procedures for the public to follow when offering a gift, establish criteria for accepting and using gifts, and establish procedures for audit and public inspection of records pertaining to the acceptance and use of gifts. These regulations are intended to enhance CSOSA's ability to provide appropriate treatment and support services that can assist defendants and offenders in reintegrating into the community.

DATES: Comments due by June 23, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA proposes to adopt regulations (28 CFR part 804) on the acceptance of use of gifts by itself and by PSA, an independent entity within CSOSA.

Generally speaking, federal agencies are prohibited from accepting or soliciting gifts, donations, contributions, and similar items from the public. CSOSA's Director, however, has been granted specific authority by Congress to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs and to enable the Agency to provide vocational training services to educate and train offenders and defendants (District of Columbia Appropriations Act of 2002, Public Law 107–96, 115 Stat. 923, 931).

These implementing regulations delegate authority to the Director of PSA with respect to gifts supporting defendant programs and vocational training services. The regulations also establish procedures for the public to follow when offering a gift, criteria for accepting and using gifts, and procedures for audit and public inspection of records pertaining to the acceptance and use of gifts. In establishing such procedures, CSOSA seeks to ensure that Agency employees may process requests for donations and remain in compliance with the general federal prohibition on solicitation of gifts.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This interim rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call Roy Nanovic at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 804

Authority delegations (Government agencies); Government Property; Probation and Parole.

Paul A. Quander, Jr.,

Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 804 as set forth below.

PART 804—ACCEPTANCE OF GIFTS

Sec.
804.1 Purpose.
804.2 Delegation of authority.
804.3 Restrictions.
804.4 Submission and approval.
804.5 Audit and public inspection.

Authority: 5 U.S.C. 301; Public Law 107–96, 115 Stat. 923, 931.

§ 804.1 Purpose.

By statute, the Director of the Court Services and Offender Supervision Agency (CSOSA or Agency) is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and of equipment and vocational training services to educate and train offenders and defendants. The purpose of this part is to:

(a) Inform the public of the procedures to follow when offering a gift;

(b) Establish criteria for accepting and using gifts;

(c) Establish procedures for audit and public inspection of records pertaining to the acceptance and use of gifts; and

(d) Delegate gift acceptance authority to the Director of the Pretrial Services Agency (PSA or Agency).

§ 804.2 Delegation of authority.

The Director of CSOSA hereby delegates to the Director of PSA the authority to accept and use gifts in the form of in-kind contributions of space and hospitality to support defendant programs, and of equipment and vocational training services to educate and train defendants in accordance with the requirements of this part. This delegation of authority may not be further delegated.

§ 804.3 Restrictions.

(a) The Agency is not authorized to accept gifts of money, stock, bonds, personal or real property, or devises or bequests of such items, except as provided in this part.

(b) Agency employees may not solicit any type of gift to the Agency.

§ 804.4 Submission and approval.

(a) *Offender programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support offender programs, or equipment or vocational training services to educate and train offenders may submit the following information in writing to the Agency's

Ethics Officer in the Office of the General Counsel:

(i) The name of the person or organization offering the gift;

(ii) A description of the gift;

(iii) The estimated value of the gift;

(iv) Any restrictions on the gift placed by the donor; and

(v) A signed statement that the gift is unsolicited.

(2) The Director, after consultation with the Agency's Ethics Officer, shall determine whether to accept or reject the gift.

(3) CSOSA staff shall advise the person offering the gift of the Agency's determination, including, if applicable, the reason for rejection. Reasons for rejecting a gift include findings that:

(i) There is a conflict of interest in accepting the gift;

(ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;

(iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or

(iv) Operation of the program, equipment, or vocational training services would not be practicable.

(b) *Defendant programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support defendant programs, or equipment or vocational training services to educate and train defendants may submit the following information in writing to the Agency's Ethics Officer in the Office of the General Counsel:

(i) The name of the person or organization offering the gift;

(ii) A description of the gift;

(iii) The estimated value of the gift;

(iv) Any restrictions on the gift placed by the donor; and

(v) A signed statement that the gift is unsolicited.

(2) The General Counsel shall forward the request to PSA's Director with a recommendation whether to accept or reject the gift.

(3) PSA staff shall advise the person offering the gift of the Agency's determination, including the reason for rejection. Reasons for rejecting a gift include findings that:

(i) There is a conflict of interest in accepting the gift;

(ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;

(iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or

(iv) Operation of the program, equipment, or vocational training services would not be practicable.

§ 804.5 Audit and public inspection.

(a) Records regarding the acceptance and use of gifts shall be made available for Federal Government audit.

(b) Public inspection of records regarding the acceptance and use of gifts shall be afforded through Freedom of Information Act requests (*see* 28 CFR part 802).

[FR Doc. 03–9937 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 03–33]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Fourteen petitions for reconsideration were filed in response to the regulations for unlicensed ultra-wideband (''UWB'') operation. Some of the petitions addressed matters that were outside of the scope of this proceeding, resulting in the Commission issuing a Further Notice of Proposed Rule Making to address the issues raised.

DATES: Comments due July 21, 2003. Reply Comments due August 20, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Reed (202) 418–2455, Policy and Rules Division, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rule Making portion of the Commission's *Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* FCC 03–33, adopted February 13, 2003, and released March 12, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of Further Notice of Proposed Rule Making

1. On February 14, 2002, the Commission adopted a *First Report and Order* implementing regulations to permit the unlicensed operation of ultra-wideband transmission systems. Fourteen petitions for reconsideration were filed in response to that Order. New rules were proposed to address issues raised by MSSI and by Siemens regarding the operation of low pulse repetition frequency (PRF) UWB systems, including vehicular radars, in the 3.1–10.6 GHz band; and the operation of frequency hopping vehicular radars in the 22–29 GHz band as UWB devices. The Commission also proposed new rules that would establish new peak power limits for wideband Part 15 devices that do not operate as UWB devices and proposed to eliminate the definition of a UWB device.

2. *Proposed changes to the UWB standards to accommodate the MSSI radar system.* Comments are requested on allowing UWB systems that employ a pulse repetition frequency (PRF) no greater than 200 kHz to be used for any type of application in the 3.1 GHz to 10.6 GHz band. MSSI specifically mentioned vehicular radar systems as an example of such equipment. The emission standards limit the interference potential of low PRF emitters. As the PRF decreases below a certain level, depending on the RBW used to measure the peak emission, the peak limit becomes the defining standard and the average emission level generated in a 1 MHz RBW decreases below the limit specified in the regulations. Accordingly, UWB devices employing a low PRF are limited in their output levels by the standard on peak emission levels, not by the standard on average emission levels. Comments are requested on whether a different PRF limit should be employed, if any other changes to the standards, including changes to the emission limits, are necessary to incorporate this addition to the type of UWB devices permitted to operate outdoors, or if the addition to the operation of outdoor UWB devices should be expanded only to include low PRF vehicular radar systems. Specific technical analyses supporting the comments are requested.

3. *Proposed changes to the UWB standards to accommodate the Siemens VDO radar system.* Siemens requested an amendment of the rules to permit the operation vehicular radar systems in the 22–29 GHz band using frequency

hopping modulation to comply with the UWB definition and bandwidth requirements, provided the measurements are averaged over a 10 millisecond period. Siemens VDO also requested that vehicular radar systems be permitted to comply with the RMS average emission limits based on averaging over a 10 millisecond time period. The Commission agrees that public comment should be obtained on Siemens VDO's proposal. This proposal is limited solely to vehicle radar systems operating in the 22–29 GHz band. Further, no changes are proposed to the emission limits applied to UWB vehicular radar systems. Rather, we are proposing new measurement techniques that may accommodate frequency hopping systems as UWB vehicular radars. We propose to permit frequency hopping systems to operate under the provisions for UWB vehicular radar systems provided the minimum UWB bandwidth is achieved in no greater than 10 milliseconds and the transmitter complies with all other technical standards for UWB operation in the 22–29 GHz band. Compliance with the average emission limit would be based on measurement using a one megahertz resolution bandwidth (RBW), a video bandwidth equal to or greater than the RBW, an RMS detector function, and a maximum 10 millisecond averaging time. The peak measurement would be required to be performed as currently specified in the rules using a peak hold detector and shall be performed over a sufficiently long period that the peak levels being measured cease increasing.

4. Comments are requested on whether the higher instantaneous power delivered by a frequency hopping system would cause harmful interference to these systems. Comments also are requested on the proposed measurement procedures. For example, should the peak measurement be performed with the hopping sequence stopped; should a different averaging time be employed; should the averaging time be based on the number of hops and the dwell time of the hops; and should a maximum time be specified within which all hopping channels must be used? Comments also are sought on the measurement procedure that would be used to demonstrate compliance with the UWB bandwidth limit. Siemens requests that the bandwidth be measured based on two different possible procedures described in the appendix to its petition. Both of the procedures suggested by Siemens are performed with the frequency hopping system active. However, we are concerned that those procedures may not indicate the actual bandwidth employed by the system and the corresponding distribution of RF energy, depending on various technical parameters of the actual hopping system, *e.g.*, the distribution of the hopping channels, the dwell times for the hops, the number of hopping channels, the separation of the channels, the bandwidth of a single hopping channel, the number of hops in a specified time period, etc. Thus, we propose that the bandwidth be measured by first measuring the −10 dB bandwidth of a single hopping channel based on use of a peak hold detector and a 1 MHz resolution bandwidth, determining how many non-overlapping hops occur within a 10 millisecond period and multiplying the two values. Comments are requested on this proposed measurement procedure as well as the procedures described by the petitioner. Comments also are requested on any interference concerns that arise from this new modulation type or its method of measurement. The comments should address specific interference concerns such as possible interference to Amateur Radio Service operations, including amateur satellite systems, to EESS operation, and to police radar operations and should include a technical justification. Comments are requested on whether the compliance measurement procedure proposed by the petitioner is applicable only to systems that are similar to its vehicular radar system or if they are applicable to vehicular radar systems in general. Do the various system parameters need to be limited to a specific range of values for the measurements to be meaningful? If so, what is the range of parameters over which the limits are to be applied? Can a general measurement procedure be developed that is applicable for a full range of system parameters? If so, what is this measurement procedure? The measurement procedure proposed by the petitioner involves a power measurement over a 10 millisecond averaging time period. Comments are requested as to whether these time averaged measurements should be made using a spectrum analyzer in a swept frequency mode or should the spectrum analyzer be stepped across the frequency band of interest in discrete steps with a defined dwell time at each step. Comments also are requested on the adequacy of the measurement results for the purpose of quantifying the impact to systems that could receive interference from the frequency hopping vehicular radar systems. Comments also are requested on any limits that should be applied to the number of hopping channels, the maximum occupancy time permitted for a hopping channel during any full hopping sequence, the maximum time it takes to complete a full hopping sequence, and any other pertinent technical characteristics.

5. *Proposed changes to the non-UWB standards to accommodate wideband Part 15 transmitters.* The peak emission limit specified in 47 CFR 15.35(b) was established based on the operation of narrowband transmission systems and may unfairly penalize some wideband operations. A limit similar to that adopted in the R&O for UWB systems is proposed to eliminate the bias under the part 15 regulations towards narrowband operation. Under the UWB regulations, the EIRP limit on peak emissions is 0 dBm based on the use of a 50 MHz resolution bandwidth (RBW). A lower RBW may be employed, down to as low as 1 MHz, provided the peak limit is similarly reduced to the level 20 log (RBW/50) dBm EIRP, where RBW is the resolution bandwidth in megahertz. UWB systems also must operate with a −10 dB fractional bandwidth of at least 0.2 or have a −10 dB bandwidth of at least 500 MHz, whichever is less. Below 2.5 GHz, the fractional bandwidth is dominant and above 2.5 GHz the 500 MHz bandwidth limit dominates. Because we appear to be dealing primarily with systems operating above 2.5 GHz, we will employ the 500 MHz minimum UWB bandwidth as a guideline for simplicity. Thus, the maximum resolution bandwidth that is used to measure peak limit for UWB emitters is one-tenth of the minimum UWB bandwidth. Accordingly, it appears that a peak limit, equivalent to the UWB standards, can be established for conventional part 15 devices based on a limit of 20 log (RBW/50) dBm EIRP where RBW is the resolution bandwidth of the measurement instrument in megahertz and where RBW must not be greater than one-tenth of the −10 dB bandwidth of the emission being measured.

6. We propose to amend 47 CFR 15.35(b) to clarify the existing requirements as requested by MSSI, and to provide an alternative standard for peak emission limits for wideband Part 15 transmission systems. The specific proposed changes to this rule paragraph are shown in the rules section at the end of this summary. Comments are requested on this proposal. Comments also are requested on the alternative proposal presented by MSSI, namely should the rules be amended to permit devices operating above 1000 MHz under the part 15 general emission standards in 47 CFR 15.209 to comply with a peak emission limit of 5000 uV/

m at 3 meters based on a measurement using a peak detector, a 1 MHz resolution bandwidth and a video bandwidth no less than 1 MHz? We request comments on any changes to the interference potential of wideband part 15 devices that may occur as a result of these proposals. Technical support is requested for comments arguing interference concerns.

7. *UWB definition.* The minimum UWB bandwidth requirement could cause a manufacturer to design transmitters that occupy more bandwidth than is operationally necessary or transmitters that inject noise to increase the occupied bandwidth simply to permit operation under the UWB regulations. Such systems would place greater energy in frequency bands where operation is not necessary for the system to function. Thus, a minimum bandwidth standard can be counterproductive to reducing the potential for harmful interference. For this reason, we are proposing to eliminate the definition of an ultra-wideband transmitter in 47 CFR 15.503(d). In its place, we would permit the operation of any transmission system, regardless of its bandwidth, as long as it complies with the standards for UWB operation set forth in Subpart F of 47 CFR 15. We also propose to change the limit on peak power to the same limit we proposed above for non-UWB operation. This will ensure that excessive peak power levels are not permitted from narrowband systems. Comments are requested on this proposal. We request comments on any potential increase or decrease in interference potential to authorized radio services that could be caused by the adoption of this proposal. The comments should address the interference potential from narrowband systems operating under the UWB regulations. The comments also should address whether additional standards, such as a spectral power density limit based on a bandwidth narrower than 1 MHz, are needed. All comments should be based on a technical analysis of the interference potential.

Administrative Provisions

8. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (''Further Notice''). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided in paragraph 175 of the item. The Commission shall send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.[2]

A. Reason for Action

This rulemaking proposal is initiated to obtain comments regarding proposed changes to the regulations for radio frequency devices that do not require a license to operate. The Commission seeks to determine if its standards should be amended to permit the operation of vehicular radar and other low-pulse repetition frequency outdoor UWB devices in the 3.1–10.6 GHz band and to permit the operation of frequency hopping vehicular radar systems in the 22–29 GHz band under the UWB regulations. It also seeks to amend the peak power limit on non-UWB unlicensed devices.

B. Legal Basis

The proposed action is taken pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act 10 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] 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).[6]

A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] ''Small governmental jurisdiction''[9] generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[10] As of 1992, there were approximately 85,006 governmental entities, total, in the United States.[11] This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[12] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Nationwide, as of 1992, there were 4.44 million small business firms, according to SBA data.[13]

The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[14] and Cellular and Other Wireless Telecommunications.[15] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[16] Of this total, 1303 firms

[1] 5 U.S.C. 603.

[2] 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] 15 U.S.C. 632.

[7] 5 U.S.C. 601(4).

[8] U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[9] 47 CFR 1.1162.

[10] 5 U.S.C. 601(5).

[11] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

[12] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

[13] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities, UC 92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms.

[14] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[15] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of

Continued

had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[17] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[18] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[19] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

The SBA has established a small business size standard for *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. Under this standard, firms are considered small if they have 750 or fewer employees.[20] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category.[21] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small.

Satellite Telecommunications. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[22] In addition, a second SBA size standard for Other Telecommunications includes ''facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems,''[23] and also has a size standard of annual receipts of $12.5 million or less. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total, that operated for the entire year.[24] Of this total, 273 firms had annual receipts of $5 million to $9,999,999 and an additional 24 firms had annual receipts of $10 million to $24,999,990.[25] Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 1997, there were 439 firms in the category Satellite Telecommunications, total, that operated for the entire year.[26] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990.[27] Thus, under this second size standard, the majority of firms can be considered small.

As no party currently is permitted to market or operate the proposed UWB standards, there will not be any impact on any small entities. On the other hand, the proposed change in the limit on peak power levels may relax the current emission limit for wideband transmission systems. The Commission does not have an estimated number for the small entities that may produce such products but believes that there are only a few in existence.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The reporting and recordkeeping requirements associated with these equipment authorizations would not be changed by the proposals contained in this Notice. These changes to the regulations would permit the introduction of an entirely new category of radio transmitters. The change in the method of measuring peak power for wideband transmitters will result in a slight relaxation of the peak power limit standard on these devices.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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 such small entities.''[28]

The standards proposed in this proceeding are based on equipment performance and not on equipment design. As no party currently is permitted to market or operate the proposed UWB standards, there will not be any impact on any small entities. On the other hand, the proposed change in the limit on peak power levels may relax the current emission limit for wideband transmission systems.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

9. *Request for Comments:* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.2306(a).

10. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 21, 2003, and reply comments on or before August 20, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html*, or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 23121 (1998).

11. 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

Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513321 (issued Oct. 2000).

[17] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[18] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued Oct. 2000).

[19] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[20] 13 CFR 121.201, NAICS code 334220.

[21] U.S. Census Bureau, 1977 Economic Census, Industry Series: Manufacturing, ''Industry Statistics by Employment Size,'' Table 4, NAICS code 334220 (issued August 1999).

[22] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517410 (formerly 513340).

[23] *Id.* NAICS code 517910 (formerly 513390).

[24] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipt Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 517410 (issued Oct. 2000).

[25] *Id.*

[26] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipt Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 517910 (issued Oct. 2000).

[27] *Id.*

[28] 5 U.S.C. 603(c)(1) through (c)(4).

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, 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 including 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.

12. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW–A306, 445 12th Street, SW., Washington, DC 20554.

13. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is proposed to be amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Section 15.35 is amended by revising paragraph (b) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, average measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including emission measurements below 1000 MHz, there also is a limit on the peak radio frequency emissions. UWB devices operating under subpart F of this part shall comply with the peak limits specified in that subpart. For all other part 15 devices subject to limits based on average radiated emissions, the peak level shall comply with one of the following two levels, at the option of the responsible party:

(1) Unless a different peak limit is specified in the rules, *e.g.*, *see* § 15.255 of this chapter, the total peak power shall not exceed by more than 20 dB the average limit permitted at the frequency being investigated. Note that a pulse desensitization correction factor may be required to measure the total peak emission level.

(2) The peak power shall not exceed an EIRP of 20 log (RBW/50) dBm where RBW is the resolution bandwidth in MHz employed by the measurement instrument. The RBW may not be lower than 1 MHz or greater than 50 MHz. Further, the RBW used in the measurement instrument shall not be greater than one-tenth of the −10 dB bandwidth of the device under test.

* * * * *

[FR Doc. 03–9880 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 77

Tuesday, April 22, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Federal-State Special Supplemental Nutrition Program Agreement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request OMB approval of the Federal-State Special Supplemental Nutrition Program Agreement.

DATES: Comments on this notice must be received by June 23, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: Federal-State Special Supplemental Nutrition Program Agreement.

OMB Number: 0584–0332.

Expiration Date: 05/31/2003.

Type of Request: Extension of a currently approved collection.

Abstract: The Agreement is the contract between USDA and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) State agencies which empowers the Department to release funds to the States for the administration of the WIC Program in the jurisdiction of the State in accordance with the provisions of 7 CFR part 246.

The Agreement requires the signature of the agency official and includes a certification/assurance regarding drug-free workplace, a certification regarding lobbying and a disclosure of lobbying activities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Chief Health Officer of the State agency.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Time per Response: .25.

Estimated Total Annual Burden on Respondents: 22 hours.

Dated: April 14, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–9848 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Georgia Transmission Corporation for assistance from RUS to finance the construction of a 115 kV electric substation in Ben Hills County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 115 kV substation approximately 2 miles south of the City of Fitzgerald in southwest Ben Hill County. The proposed substation site is approximately 1,200 feet east of Perry House Road along an existing 115 kV electric transmission line. The proposed substation is to be identified as the Lake Beatrice Station. The property where the substation is to be located is approximately 24.5 acres of which approximately 8 acres will be disturbed for construction of the substation.

Copies of the FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. John Lasseter, Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088, telephone (770) 270–7710. Mr. Lasseter's e-mail address is *john.lasseter@gatrans.com.*

Dated: April 16, 2003.

Blaine D. Stockton,

Assistant Administrator, Electric Program.

[FR Doc. 03–9881 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20–2003]

Foreign-Trade Zone 191—Palmdale, CA, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Palmdale, California, grantee of Foreign-Trade

Zone 191, requesting authority to expand FTZ 191 in the Palmdale, California, area, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 16, 2003.

FTZ 191 was approved on January 15, 1993 (Board Order 628, 58 FR 6614, 2/1/93), and expanded on November 4, 2002 (Board Order 1252, 67 FR 69715, 11/19/02). The zone project currently consists of the following ten sites in the Palmdale area: Site 1 (800 acres)—3 parcels within the 1,297 acre Lockheed Martin Aeronautics Industrial Park, Palmdale; Site 2 (87 acres)—Antelope Valley Business Park, Palmdale; Site 3 (30 acres)—Freeway Business Center, Palmdale; Site 4 (70 acres)—Palmdale Trade & Commerce Center, Palmdale; Site 5 (120 acres)—Fairway Business Park, Palmdale; Site 6 (140 acres)—Sierra Gateway Center, Palmdale; Site 7 (15 acres)—Pacific Business Park, Palmdale; Site 8 (20 acres)—Winnell Industrial Park, Palmdale; Site 9 (33 acres)—Park One Industrial Center, Palmdale; and, Site 10 (40 acres)—California City Airport Industrial Park, California City.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site at the Mojave Airport (*Proposed Site 11*—12 parcels, 91 acres) located at 1434 Flight Line, Mojave, California. The site is owned by the East Kern Airport District and includes airport jet fuel storage/distribution facilities. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is June 23, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 7, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the City of Palmdale's Office of Economic Development, 38250 N. Sierra Highway, Palmdale, California 93550.

Dated: April 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9935 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570–881

Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 22, 2003.

ACTION: Notice of preliminary determination of critical circumstances in the less than fair value investigation of certain malleable iron pipe fittings from the People's Republic of China.

SUMMARY: The Department of Commerce has preliminarily determined that critical circumstances exist for imports of certain malleable iron pipe fittings from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, Ann Barnett-Dahl or Helen Kramer at (202) 482–6375, (202) 482–3833, or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Section 351 (2002).

Background

On November 19, 2002, the Department initiated an investigation to determine whether imports of malleable iron pipe fittings (MPF) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV). *See Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 67 FR 70579 (November 25, 2002) (Initiation Notice). On December 16, 2002, the International Trade Commission (ITC) published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of MPF from the PRC. *See Malleable Iron Pipe Fittings from the People's Republic of China*, International Trade Commission, Investigation No. 731-TA-1021 (Preliminary), USITC Publication 3568 (ITC Preliminary Determination). On February 28, 2003, the petitioners in this investigation, Ward Manufacturing, Inc. and Anvil International, Inc. (collectively, petitioners) alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of MPF from the PRC.

In accordance with 19 C.F.R. 351.206(c)(2)(i), because the petitioners submitted their critical circumstances allegations 20 days or more before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances finding not later than the date of the preliminary determination. In Policy Bulletin 98/4, issued on October 8, 1998, the Department stated that it may issue a preliminary critical circumstances determination prior to the date of the preliminary determination of sales at less than fair value, assuming sufficient evidence of critical circumstances is available (*see Policy Bulletin 98/4: Timing of Issuance of Critical Circumstances Determinations* (63 FR 55364)). In accordance with this policy, at this time we are issuing the preliminary critical circumstances decision in the investigation of MPF from the PRC for the reasons discussed below and in the concurrent decision memorandum. *See* Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration from Richard

Weible, Director, Office 9: Antidumping Duty Investigation of Certain Malleable Pipe Fittings from the People's Republic of China Preliminary Affirmative and Negative Determinations of Critical Circumstances, dated April 14, 2003 (*Critical Circumstances Memorandum*), on file in Import Administration's Central Records Unit (CRU), Room B-099, of the Department of Commerce building.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Section 351.206(i) further provides that if the Department finds that importers, exporters, or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) the evidence presented by the petitioners in their February 28, 2003 letter; (ii) exporter-specific shipment data requested by the Department on March 7, 2003; and (iii) U.S. ITC DataWeb import statistics.

History of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to existing antidumping orders, the petitioners note that the European Community (EC) currently imposes a 49.4 percent duty on MPF from the PRC. Therefore, pursuant to section 733(e)(1)(A)(i) of the Act, the Department finds a history of injurious dumping of MPF from the PRC. Additionally, as the Department finds a history of injurious dumping of MPF from the PRC, and under section 733(e)(1) of the Act a history of injurious dumping is sufficient basis to determine that critical circumstances exist, we have not addressed the issue of importer knowledge.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). However, as stated in section 351.206(i) of the Department's regulations, ''if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.'' Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* Section 351.206(h)(2).

For the reasons set forth in the Critical Circumstances Memorandum, we find no reason to believe that importers, exporters, or producers had reason to believe a proceeding was likely, prior to the filing of the petition. The Department requested from the respondents in this investigation monthly shipment data for October 2000 through April 2003, and obtained data through February 2003. In addition, we obtained U.S. import data for subject merchandise for October 2000 through January 2003 from the U.S. ITC DataWeb. Accordingly, because the Department has four months of data, from the date of the filing of the petition, available for respondents, we determined that July 2002 through October 2002 should serve as the ''base period,'' while November 2002 through February 2003 should serve as the ''comparison period,'' in determining whether or not imports have been massive over a relatively short period for respondents.

According to 19 C.F.R. 351.206(i), the comparison period normally should be at least three months; however, if we determine that importers, exporters or producers had reason to believe that a proceeding was likely, then the Department may consider a longer period. In this case, we have chosen a period of four months as the period for comparison in preliminarily determining whether imports of the subject merchandise have been massive because respondents provided data inclusive of February 2003, and because choosing a four-month period in general properly reflects the ''relatively short period'' commanded by the statute for determining whether imports have been massive. *See* Section 733(e)(1)(B) of the Act.

We have determined that November 2002 is the month in which importers, exporters or producers knew or should have known an antidumping duty investigation was likely, because the petition was filed on nearly the last day of October 2002. Therefore, in applying the four-month period, we used a comparison period of November 2002 to February 2003, and a base period of July 2002 to October 2002. The Department requested from the respondents in this investigation monthly shipment data for October 2000 through April 2003. To date, the Department has received from respondents data inclusive of February 2003. In addition, we obtained U.S. import data for subject merchandise for October 2000 through January 2003 from the U.S. ITC DataWeb.

Pursuant to 19 C.F.R. 351.206(h)(2), we found imports of MPF from the PRC increased by more than 15 percent in the comparison period; accordingly, we find that imports have been massive. With regard to the issue of massive imports, in accordance with our current practice (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5561 (February 4, 2000)), we first considered the shipment data

reported by the mandatory and non-selected respondents for the base and comparison periods (July 2002 through October 2002 and November 2002 to February 2003, respectively). We found massive imports for one of the mandatory respondents, Jinan Meide Casting Co. (JMC), and one of the non-selected respondents, SCE Co., Ltd. (SCE), based on an increase in imports exceeding the required 15 percent, but no massive imports for the other mandatory respondents, Langfang Pannext Pipe Fitting Co., Ltd. (Pannext), and Beijing Sai Lin Ke (SLK), and the other non-selected respondents Myland Industrial Co., Ltd. (Myland) and Chengde Malleable Iron General Factory (Chengde). In addition, we find that imports of subject merchandise were massive in the three-month comparison period for the PRC-wide entity for which data is available. *See* Critical Circumstances Memorandum for more detailed information.

Conclusion

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memorandum, we preliminarily determine that critical circumstances exist for imports of MPF from the PRC exist for JMC and SCE and for the PRC-wide entity, but not for Pannext, SLK, Myland or Chengde.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if the Department issues an affirmative preliminary determination of sales at LTFV in the investigation with respect to JMC, SCE, or the PRC-wide entity, the Department, at that time, will direct Customs to suspend liquidation of all entries of MPF from the PRC from these exporters that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, if any, reflected in the preliminary determination of sales at LTFV published in the **Federal Register**. Any suspension of liquidation issued after our preliminary determination of sales at LTFV will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for the PRC when we make our final dumping determinations in this investigation, which will be 75 days (unless extended) after issuance of the preliminary LTFV determinations.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the Commission of our determinations.

We are issuing and publishing these results and notice in accordance with section 777(i) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9933 Filed 4–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–506]

Notice of Rescission of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) for one manufacturer/exporter of the subject merchandise, Clover Enamelware Enterprise, Ltd. of China (Clover), and its Hong Kong affiliated reseller, Lucky Enamelware Factory Ltd. (Lucky), collectively referred to as Lucky/Clover, for the period December 1, 2001 through November 30, 2002. This review has now been rescinded due to timely withdrawal of requests for an administrative review from both Columbian Home Products, LLC, a domestic interested party,[1] and the respondent.[2]

EFFECTIVE DATE: April 22, 2003.

FOR FURTHER INFORMATION CONTACT: George McMahon, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;telephone (202) 482–1167.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2002, Columbian Home Products, LLC, a domestic interested party, requested that the Department conduct an administrative review of Lucky/Clover, manufacturer and/or reseller of the subject merchandise in the PRC for the period, December 1, 2001 through November 30, 2002. Respondent also requested an administrative review on January 2, 2003. On January 22, 2003, the Department published in the **Federal Register** a notice of initiation of an administrative review with respect to Lucky/Clover for the period December 1, 2001 through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 3009 (January 22, 2003). On February 19, 2003, respondent withdrew its request for an administrative review, and also stated that in the event that this review is rescinded, they also withdraw their request that the Department revoke this antidumping order with respect to Lucky/Clover. On February 24, 2003, the domestic interested party also withdrew its request for an administrative review.

Scope of the Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses.

As a result of the Department's prior scope exclusion determinations, the following products are excluded from the scope of the order of POS cooking ware: barbeque grill basket, Delux Grill Topper, Porcelain Coated Grill Topper, and Wok Topper.

The merchandise is currently classifiable under item 7323.94.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Review

Within 90 days of the January 22, 2003 notice of initiation, the domestic interested party and respondent withdrew their requests for the above referenced administrative review. *See*

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[1] Pursuant to 771(9)(A) of the Act, Columbian Home Products, LLC is a domestic interested party in this case because they are a domestic manufacturer of subject merchandise.

[2] The respondent in this case is Clover Enamelware Enterprises Ltd. (Clover) and Lucky Enamelware Factory Ltd. (Lucky), and the U.S. importer, CGS International, Inc., collectively referred to as Lucky/Clover.

Letter from respondent to the Department dated February 19, 2003, and Letter from domestic interested party to the Department dated February 24, 2003, on file in the Central Records unit, Room B-099, Main Building of the Department of Commerce.

In accordance with the Department's regulations, and consistent with its practice, the Department hereby rescinds the administrative review of POS cooking ware from the PRC for the period December 1, 2001 to November 30, 2002. *See* 19 CFR section 351.213(d)(1), which states in pertinent part, ''The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.''

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: April 15, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 03–9934 Filed 4–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 02–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Virginia Apple Growers Association Inc., (''VAGA''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2002).

The Office of Export Trading Company Affairs (AOETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

A. Products

1. *Fresh Apples:* Any variety of apples intended for human consumption including but not limited to: Red Delicious, Golden Delicious, Rome, Stayman, York, Winesap, Granny Smith, Jonathan, Red, Gala, Empire McIntosh, Fuji, Ginger Gold, Braebur, and Cortland.

2. *Processed Apples:* Includes a variety of apple products used for human consumption; mainly apple juice, apple cider, applesauce and apple butter.

B. Export Trade Facilitation Services (as They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

II. Export Market

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Members (Within the Meaning of Section 325.(1) of the Regulations) Bowman Fruit Sales, L.L.C.,

Timberville, Virginia; Crown Orchard Company, LLP, Batesville, Virginia; Flippin-Seaman, Inc., Tyro, Virginia; and Fred L. Glaize, L.C., Winchester, Virginia.

IV. Export Trade Activities and Methods of Operation

With respect to export trade activities, VAGA and/or one or more of its members may on behalf of and with the advice and assistance of its Members:

1. Participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

a. The quantities, time periods, prices and terms and conditions in connection with actual or potential bona fide export opportunities, and

b. Non-tariff trade barriers in the Export Markets;

2. Establish export prices and allocate export sales among its Members, in connection with actual or potential bona fide export opportunities;

3. Enter into agreements with non-Members, whether or not exclusive, to provide Export Trade Facilitation Services;

4. Negotiate and enter into agreements with providers of transportation services for the export of Products;

5. Advise and cooperate with the United States and foreign governments in:

a. Establishing procedures regulating the export of the Products, and

b. Fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of the Products;

6. Establish and operate fumigation facilities and administer phytosanitary protocols to qualify the Products for Export Markets;

7. Communicate and process export orders;

8. Conduct direct sales;

9. Broker or take title to Products acquired from non-Member producers whenever necessary to fulfill specific sales obligations;

10. Operate foreign sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

11. Refuse to deal with or provide quotations to other Export Intermediaries for sales of the Members' Products into the Export Markets;

12. Retain the option for VAGA to be the exporter of record with regard to sales conducted by and through VAGA;

13. Develop internal operational procedures and disseminate information to Members to assist the membership in meeting the criteria necessary for exporting;

14. VAGA, through employees or agents of VAGA who are not also employees of a Member, may receive and each Member may supply to such employees or agents of VAGA, information as to such Member's actual or intended total export shipments of certified products in any previous or future growing season or seasons, provided that such information is not

disclosed by VAGA to any other Member;

15. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services, Export Trade Activities and Methods of Operation;

16. Provide Export Market entry and development assistance to its Members, including:

a. Designing and executing foreign marketing strategies for VAGA's Export Markets,

b. Designing, developing and marketing generic corporate labels, and

c. Other related administrative and promotional services;

17. Solicit non-Members to become Members;

18. Recover administrative expenses and costs through fees and assessments allocated to each Member on a pro-rata share basis or any other non-discriminatory method. Any Member objecting to the method of allocating expenses and costs will be charged based on actual expenses incurred;

19. Apply for and utilize export assistance and incentive programs, as well as arrange financing through bank holding companies, governmental programs, and other arrangements; and

20. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services.

V. Definition

''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

VI. Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither VAGA, nor any Member, shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's costs, production, inventories, domestic prices, domestic sales, domestic customers, capacity to produce apples for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. VAGA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

VII. Protection Provided by Certificate

This Certificate protects VAGA, its Members, and directors, officers, and employees acting on behalf of VAGA and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

VIII. Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

IX. Other Conduct

Nothing in this Certificate prohibits VAGA and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of U.S. antitrust laws.

X. Disclaimer

The issuance of this Certificate of Review to VAGA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of VAGA or its Members or (b) the legality of such business plans of VAGA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and the Regulations, this Certificate of Review is hereby issued to the Virginia Apple Growers Association, Inc.

The effective date of the Certificate is April 4, 2003. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 16, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–9833 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, May 8, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP including the 360vu National Accounts initiative. Discussions scheduled to begin at 8 a.m. and to end at 12 p.m. on May 8, 2003, on MEP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in

order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Tuesday, May 6, 2003, and she will provide you with instructions for admittance. Ms. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene May 8, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on May 8, 2003.

ADDRESSES: The meeting will be held in the Employees' Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carrie Hines, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–3360.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 11, 2003, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 14, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–9867 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030411083–3083–01]

RIN 0648–ZB40

Call for Proposals for Research in the Area of Climate and Weather Impacts on Society and the Environment

AGENCIES: National Climatic Data Center and Coastal Services Center, National Oceanic and Atmospheric Administration (NOAA); Department of Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: NOAA invites applications to establish a cooperative agreement with two of NOAA's centers, the National Climatic Data Center (NCDC) and the Coastal Services Center (CSC). In general terms, the agreement will be established to provide a collaborative environment between the National Climatic Data Center, the Coastal Services Center, and the recipient, within which a broad-based research program will be conducted that links climate and weather processes, the formation of severe events, and the impacts of these events for the region of the South Atlantic Bight, including the coastal ocean to the mountain environment. This announcement provides guidelines for the proposed cooperative agreement, and includes details for the technical program, proposal development, evaluation criteria, and competitive selection procedures. NOAA will collaborate on cooperative research and development activities and provide financial support to enhance the public benefits to be derived from the research results, including practical applications for the needs of coastal and inland communities. The selected applicant and NOAA will work together to engage the support of both the science and management communities, and ensure that a broad group of constituents will benefit from the products as well as contribute to their design and use. The agreement will be established based on ease and effectiveness of interaction and collaboration with the National Climatic Data Center and the Coastal Services Center, and/or expertise in areas related to the missions of NOAA, particularly the National Climatic Data Center and the Coastal Services Center. The selected applicant will also be expected to identify, and as appropriate, establish relationships with other NOAA program offices that may benefit from, or collaborate in, the work conducted under the cooperative agreement.

DATES: Complete applications must be received by the National Climatic Data Center no later than 4 p.m. May 22, 2003. Final selection is anticipated to be completed by approximately June 15, 2003. The anticipated start date is September 1, 2003.

ADDRESSES: Signed proposals, with two copies, should be submitted to: National Climatic Data Center; 151 Patton Avenue, Room 476, Asheville, NC 28801–5001. Proposals should cite this Notice and be sent to the attention of Linda Statler.

FOR FURTHER INFORMATION CONTACT: Administrative questions, Linda Statler, (828) 271–4657, *Linda.S.Statler@noaa.gov.* Technical point of contact is Marc Plantico, (828) 271–4765, *Marc.Plantico@noaa.gov.*

SUPPLEMENTARY INFORMATION: *Funding Instrument:* The selected recipient will enter into a 4-year cooperative agreement to support the development of a cooperative research program with NOAA's National Climatic Data Center and Coastal Services Center in the area of climate and weather impacts on society and the environment (including severe climate weather impacts in North and South Carolina).

Authority: Statutory authority for these programs is provided under 49 U.S.C. 44720; 33 U.S.C. 883d; 15 U.S.C. 2907; 16 U.S.C. 1451 *et seq.*; the Global Change Research Act, 15 U.S.C. 2921–2961; and the National Climate Program Act, 15 U.S.C. 2901–2908.

Catalog of Federal Domestic Assistance (CFDA): This program is listed in the Catalog of Federal Domestic Assistance under the Number 11.440, Environmental Sciences, Applications, Data, and Education.

Funding Availability: Funding for the first year (FY 2003) is anticipated to be approximately $375,000. Each additional year is anticipated to be approximately $400,000 per year thereafter for the term of the agreement. However, funding is contingent upon availability of appropriations and is at the sole discretion of NOAA. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Cost Sharing: Applicant will be required to contribute at least 5 percent (from non-Federal funds) of the total amount contributed by NOAA each year if the application is approved. This should be shown in the budget.

Eligibility Criteria

Eligible organizations are limited to U.S. institutions. Eligible organizations are universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes. Multiple organizations may collaborate in submitting a single proposal, but the award will be made to a single organization with the primary responsibility for administration and execution of the agreement.

Program Description

The primary purpose of establishing a cooperative agreement is to bring together the resources of a research-

oriented university or institution, the National Climatic Data Center, and the Coastal Services Center to collaborate on cooperative research and applications activities and to enhance the public benefits to be derived from these activities. NOAA envisions a sharing of expertise between the National Climatic Data Center, the Coastal Services Center, and the recipient in the areas of climate system variability impacts on regional scales; advanced observing and modeling of regional coastal ecosystem processes that are influenced by climate and weather; and the response of natural, economic, and social systems to climate variability. The geographic area for impacts is the region bordering the South Atlantic Bight, from the coastal areas to the mountain environment.

Program Priorities

Primary collaboration will be with the National Climatic Data Center located in Asheville, NC, and the Coastal Services Center located in Charleston, SC. Proposals should respond to the following research priorities:

(1) Climate System Variability Impacts on Regional Scales: Including, but not limited to, detecting global climate modes, trends, and variability; understanding downscaling, mechanisms and forcing of regional climate variability, particularly in coastal and near-coastal areas; and predicting protracted and abrupt coastal climate changes and the associated development of extreme events; improving the understanding of climate and weather influences on severe events; and helping to identify the data sets and tools needed for management applications to address these impacts in order to improve the resilience of coastal and in-land communities.

(2) Advanced Observing and Modeling of Regional Coastal Ecosystem Processes Influenced by Climate and Weather: Including, but not limited to, developing new measurement, data assimilation and management, and modeling techniques to characterize the state of the coastal ocean and atmosphere; advancing the understanding of the coastal zone processes that modulate regional climate and weather; and providing input for the prediction of severe events such as hurricanes, land-falling winter storms, and coastal storm surge and inland flooding.

(3) Response of Natural, Economic, and Social Systems to Climate and Weather Variability: Including, but not limited to, developing new tools to accurately measure indicators of change; creating new prognostic models capable of forecasting the response of ecosystems, such as mountains, piedmont lakes, estuaries, and coastal communities to climate variability and severe weather events; and developing new tools to enhance the resilience of natural, economic, and social systems to perturbations. Identify and design applications and models that improve the use and visualization of spatial and time-series data for the purpose of enhancing the delivery, utility, and content of information needed by emergency managers, coastal resource managers, business interests, and other users.

The cooperative agreement is meant to be an integral component in a coordinated research effort to produce the best possible deterministic and probabilistic information and projections of climate and weather variability and change, and related impacts on the environment and human systems. Research results will provide quality information that is socially and economically useful to decision makers at local, State and regional levels, both private and public. The cooperative agreement will promote and support research efforts designed to understand and apply learning in: (1) Atmospheric weather and climate systems and all associated parameters, *e.g.,* surface air temperature and pressure, precipitation amount and type, relative humidity, wind speed and direction, and cloud cover; (2) coastal oceanic weather and climate systems parameters, *e.g.,* sea surface temperature, ocean satellite altimetry, incident radiation, ocean satellite color (phytoplankton biomass, suspended material and colored dissolved material), scatterometer winds, phytoplankton primary productivity, coastal sea level, living marine resources, and nutrients; (3) terrestrial weather and climate systems parameters, *e.g.,* soils, soil moisture content, distribution of habitat (vegetation type, terrain type, elevation and percent water), hydrology, including lake water levels and river discharge, nutrients, and topography; and (4) socioeconomic impact data, *e.g.*, direct losses to human life, property, agricultural products, cleanup and response costs, disruptions to energy and transportation, and indirect losses due to temporary unemployment and business disruptions resulting from physical damage.

The applicant should identify a primary user base for the activities to be pursued, and the results to be obtained, under the agreement. The applicant should identify how members of this user community will be engaged, as appropriate, in the determination of research priorities, the communication of results, and the design and use of products.

Application Requirement

Standard Forms—Original Signed Copy

- SF–424—Application for Federal Assistance
- SF–424A—Budget Information—Non-Construction Program
- SF–424B—Assurances—Non-Construction Program
- CD–511—Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying
- SF-LLL—Disclosure of Lobbying Activities (submit only if engaged in lobbying activities)

These forms and additional information are available on the NOAA Grants Homepage: *http://www.ofa.noaa.gov/~grants/index.html.*

Proposal Format: The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines will result in proposals not being considered.

Proposals, a signed original and two copies, must be received by the National Climatic Data Center at the address identified in the **ADDRESSES** section of this notice no later than the time and date indicated in the **DATES** section of this Notice. Facsimile transmissions and electronic mail submissions will not be accepted. Late applications will not be considered. All proposals must include the sections identified below and total no more than 50 pages, including the title page, detailed budget, investigator(s) curriculum vitae, and all appendices. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. Proposals should be submitted in double-space, 12-point format.

Proposals should provide a concise description of the proposed work. Proposals should provide a detailed description of the resources and capabilities of the host institution, specifically scientific expertise, specialized facilities, ongoing research activities, cost sharing abilities, and educational and training programs. The proposal should include the following elements:

(1) *Signed Title Page.* Cooperative Agreement for Climate and Weather Impacts on Society and the Environment (CWISE) (suggested name), the lead Principal Investigator, Partner names(s) (if any) and their respective affiliations, complete addresses, telephone, FAX, and e-mail information. The title page will also provide the total proposed cost, broken down on an

annual basis for the four-year period. The title page should be signed by the Principal Investigators (PI(s)) and the institutional representative of the PI's organization.

(2) *Goals and Objectives:* Identify broad research goals and their relevance to the Program Priorities listed above, and a general description of how the applicant proposes to achieve those goals.

(3) *Technical Approach:* Describe the specific approach the applicant proposes to accomplish the identified purposes of the agreement. Describe plans to ensure ease and effectiveness of communication between applicant and NOAA partners.

(4) Project Partners and Co-Investigators: Identify project partners and/or co-investigators, their respective roles, and their contributions and/or relationships to the proposed effort. Outline the respective roles of the applicant and NOAA.

(5) Milestones, Time Lines, Outcomes, and Beneficiaries: List target milestones, time lines, and desired outcomes (in multi-year proposed efforts, by year). Identify the intended beneficiaries of the work, with specificity, and show the potential value of the proposed work to the needs of the targeted audience. Identify any obstacles to accomplishing the milestones and outcomes.

(6) Qualifications and Relevant Experience: Identify the qualifications and relevant experience of the applicant (and partners) that relate to accomplishing the Program Priorities listed above.

(7) Vitae: An abbreviated Curriculum Vitae for the PI and any co-investigators should be included. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(8) Summary of the applicant's relevant current or recently completed (limit to past five years) research activities that should be considered in the selection process.

(9) Detailed Statement of Work: The proposal should provide a detailed four-year plan for climate and weather research and applications conducted to understand, and provide the basis for, improved public and private assessment of environmental, economic, and social impacts. The following areas must be addressed:

(a) Statement of the problem and the needed research.

(b) Proposed methodology and justification for the development and implementation of appropriate research needed to accomplish the goals and address the Program Priorities. Identify the expected results, including products and applications from the work, how the proposed work will significantly address identified science and management needs, and the benefits of the proposed work to the general public, the scientific community, coastal managers, and the decision makers.

(c) Procedures for dissemination and presentation of research results to the intended beneficiaries, and any training needed for users to make full use of the results.

(d) Measures to track research and applications performance.

In addition, the applicant should document: The readiness of needed infrastructure; the nature, ease, and effectiveness of interaction with scientists at the National Climatic Data Center and the Coastal Services Center, and other NOAA programs as appropriate; the status of any ongoing efforts by the applicant and partners to address the proposed scientific goals and objectives; and the results from related projects previously and presently supported by NOAA.

(10) Budget: Applicants must submit a budget description and a brief narrative justification of the budget. The budget should be prepared using the Standard Form 424A, Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Provide a detailed budget breakdown and a brief narrative to provide the basis for the budget and the contribution of the applicant.

(11) Current and Pending Federal Support: Each investigator should submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending Federal support.

Evaluation Criteria (With Weights)

Consideration for financial assistance will be given to those proposals that address the Program Priorities listed above and meet the following evaluation criteria. All proposals will be scored according to the following criteria:

(1) Scientific Merit (25 Points): Does the proposal document the intrinsic and exceptional scientific value of the proposed research, and applicability to the NCDC and the CSC as described in the Program Description and Program Priorities sections? Does the proposal show the ability to collaborate on research activities in the area of climate system variability impacts on regional scales; advanced observing and modeling of regional coastal ecosystem process; and response of natural and social systems to climate variability? Does the proposal show research abilities that will result in providing quality climate information that is socially and economically useful to decision makers at local, state, and regional levels, both public and private?

(2) Research Goals and Projects and Technical Approach (25 Points): Are the goals and objectives clearly articulated, relevant to the stated science and management need, and achievable within the proposed time frame? Are the research objectives quantifiable? Does the proposal describe how the applicant proposes to achieve the goals? Does the proposal display a sound methodology for both the research and applications agenda? Are the proposed specific research areas of exceptional scientific merit? What is the intrinsic scientific value of the proposed research?

(3) Ability to Build Coalitions and Partnerships (20 points): Does the proposal show the ability to build coalitions and partnerships with critical organizations and individuals (such as distinguished scientists, as well as potential researchers-in-training, universities, colleges, research institutions, state and local governments, and other public and private nonprofit organizations) and to facilitate collaboration and coordination to assure the accomplishment of the research goals? Does the proposal identify project partners, their respective roles, and their contributions/relationships to the proposed effort?

(4) Milestones, Time Lines, Outcomes, and Beneficiaries (15 Points): Does the proposal address target milestones, time lines, and desired outcomes? Is a user community clearly identified, and are members of the identified user community engaged in the design and execution of the project or its products? Does the proposal include an outreach and education component that will ensure the results are effectively applied to address the identified issues? Are there clear procedures for dissemination and presentation of the research results to the intended beneficiaries, including any training needed for users to make full use of the results? Does the proposal document the respective roles and responsibilities of the NCDC, the CSC, and the applicant for outreach and capacity building efforts?

(5) Budget (5 Points): Reasonableness of the proposed budget and time frame for the projects in relating to the work proposed. Does the proposal provide a detailed budget breakdown and a brief narrative to provide the basis for the budget?

(6) Qualifications and Relevant Experience (5 Points): Does the proposal identify the qualifications and relevant

experience of the applicant (and partners) that relate to the Program Priorities? Are the proposers capable of conducting a project of the scope and scale proposed (*i.e.,* scientific, professional, facility, and resources/capabilities)? Will appropriate partnerships be employed to achieve the highest quality content and maximum efficiency?

(7) Innovation (5 Points): Does the collaborator propose to develop novel concepts, approaches, measures or methods in basic research that will address the Program Priorities? Are they original and innovative?

Selection Procedures

All proposals will be evaluated in accordance with the above evaluation criteria by an independent peer review panel which may consist of both NOAA and non-NOAA Federal experts. The panel will review and discuss each proposal and make a consensus recommendation of the most meritorious and relevant proposal to the Selecting Officials.. The selecting officials are the Directors of the National Climatic Data Center and the Coastal Services Center.

The Selecting Officials may accept the proposal recommended by the review panel, or may select another proposal based on the following program policy factors: (a) Duplication of on-going Federal support; (b) ease and effectiveness of interaction with applicant; (c) history of institutional commitment to related endeavors. The successful proposal will be forwarded to the NOAA Grants Officer for action. The final budget may be negotiated after selection is made.

Other Requirements/Information

(1) Disposition of Unsuccessful Proposals. Proposals will be held in the Program Office until an award is made to the selected applicant and then destroyed.

(2) Federal Policies and Procedures Applicable to this announcement:

(a) The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(b) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance. Telephone Device for the Deaf (TDD) capabilities are available through the National Climatic Data Center at 828–271–4010 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0340, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget control number.

Executive Orders 12866 and 12372

This notice has been determined to be not significant for purposes of E.O. 12866. Applications under this program are not subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for rules relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Dated: April 15, 2003.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–9857 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet May 16, 2003.

DATES AND TIMES: The meeting is scheduled as follows: May 16, 2003, 9 a.m.–12 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 10:30 a.m.

ADDRESSES: The meeting will be held in Room 4527 of Silver Spring Metro Center Building III (SSMC III) in Silver Spring, Maryland. SSMC III is located at 1315 East-West Highway. It is located near the Silver Spring Metro Station on the Red Line. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with section 552b(c)(1) of Title 5, United States Code, that the portions of this meeting which involve briefings on the ongoing review and implementation of commercial space policy relating to the National Security Presidential Directive-15 and the national security and foreign policy considerations for NOAA's licensing decisions may be closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such *Executive Order.*

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will discuss initial findings, the development of its work plan, and will receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact

Timothy Stryker, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Tahara Moreno at (301) 713–2024 ext. 202, fax (301) 713–2032, or e-mail *Tahara.Moreno@noaa.gov.*

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before May 12, 2003, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, NOAA/NESDIS International and Interagency Affairs, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Timothy.Stryker@noaa.gov,* or Douglas Brauer at telephone (301) 713–2024 x213, e-mail *Douglas.Brauer@noaa.gov.*

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–9856 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041603B]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) and its Ad-Hoc Magnuson-Stevens Act Reauthorization Act Committee; Executive Committee; Squid, Mackerel, Butterfish Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole will hold a public meeting.

DATES: The meetings will be held on Tuesday, May 6, through Thursday, May 8, 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Westin Hotel New York at Times Square, 270 West 43rd Street, New York, NY; telephone: 212–201–2700.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, May 6, the Ad-Hoc Magnuson-Stevens Act Reauthorization Committee will meet from 1 p.m. to 4 p.m. The Executive Committee will meet from 4 p.m. to 5 p.m. On Wednesday, May 7, the Squid, Mackerel, Butterfish Committee will meet from 8 a.m. to 9:30 a.m. The MAFMC will meet from 9:30 a.m. until 5 p.m. On Thursday, May 8, the MAFMC will meet from 8 a.m. until 1 p.m.

Agenda items for the Council's committees and the Council itself are: review most recent Council Chairmen's position on Magnuson-Stevens Act, review most recent MAFMC's position on Magnuson-Stevens Act, review input received on Magnuson-Stevens Act; the Executive Committee will review status of Council Request for Proposal (RFP) re audit of 1999, 2000, and 2001 operations; the Squid, Mackerel, Butterfish Committee will discuss implications of limited access in herring fishery, discuss limited access system for Atlantic mackerel, discuss possible coordination mechanisms for joint approach to limited access; the Council will review staff's recommendations regarding adoption of public hearing document for Amendment 9 to the Squid, Mackerel, Butterfish Fishery Management Plan (FMP), and approve public hearing document for adoption of Amendment 9; presentation of NOAA Environmental Hero Award to Phil Ruhle; discuss and approve actions to be included in Framework 3 to the Summer Flounder, Scup, and Black Sea Bass FMP, discuss Amendment 14 possibilities, discuss and develop a MAFMC position regarding the Atlantic States Marine Fisheries Commission's (ASMFC) Addendum VIII, and discuss previous Council motion regarding vessel/power upgrade; hear a presentation on the NMFS Northeast Fisheries Science Center Observer Program; receive and discuss organizational and committee reports including Protected Resources, Executive Committee actions, New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; South Atlantic Council's report; and, Highly Migratory Species (HMS) issues. Act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 16, 2003.

Matteo J. Milazzo,

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

[FR Doc. 03–9929 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations Under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

April 16, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined that certain knitted outer fusible material with a fold line that is knitted into the fabric (as described in the attached Annex I, item (1 and a knitted inner fusible material with an adhesive (thermoplastic resin) coating (as described in the attached Annex I, item (2, both classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States

(HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9819.11.24 or 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Richard P. Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the Caribbean Basin Trade Partnership Act (CBTPA), amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On December 12, 2002 the Chairman of the Committee received a petition from Levi Strauss and Co. alleging that the waistband fabrics described in Annex I, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. On December 19, 2002, the Committee requested public comments on the petition (67 FR 244). On January 5, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On January 5, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. On January 23, 2003, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabric set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On February 10, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

The Committee hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from a knitted outer-fusible material with a fold line that is knitted into the fabric (as described in the attached Annex I, item1) and a knitted inner-fusible material with an adhesive (thermoplastic resin) coating (as described in the attached Annex I, item2), both classified under HTSUS subheading 5903.90.2500, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country. An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

ANNEX I

1. A knitted outer-fusible material with a fold line that is knitted into the fabric. The fabric is a 45mm wide base substrate, knitted in narrow width, synthetic fiber based (made of 49% polyester / 43% elastomeric filament / 8% nylon with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn), stretch elastomeric material with an adhesive (thermoplastic resin) coating. The 45mm width is divided as follows: 34mm solid, followed by a 3mm seam allowing it to fold over, followed by 8mm of solid.
2. A knitted inner-fusible material with an adhesive (thermoplastic resin) coating that is applied after going through a finishing process to remove all shrinkage from the product. The fabric is a 40mm synthetic fiber based stretch elastomeric fusible consisting of 80% nylon type 6/20% elastomeric filament with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn.

[FR Doc.03–9824 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities/ Government Performance and Results Act (GPRA); Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2005, which begins October 1, 2004, and about its draft strategic plan, to be submitted to Congress September 30, 2003, pursuant to the Government Performance and Results Act (GPRA). Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2005, and strategic plan will become part of the public record.

DATES: The hearing will begin at 10 a.m. on June 9, 2003. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than May 27, 2003. Persons desiring to make oral presentations at this hearing must submit a written text of their

presentations not later than June 2, 2003.

ADDRESSES: The hearing will be in room 420 of the Bethesda Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned ''Agenda, Priorities and Strategic Plan'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the strategic plan (available May 5, 2003), or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments. In addition, section 306(d) of the Government Performance and Results Act (GPRA) (5.U.S.C. 306(d)) requires the Commission to seek comments from interested parties on the agency's proposed strategic plan. The strategic plan is a GPRA requirement. The plan will provide an overall guide to the formulation of future agency actions and budget requests.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 2005, which begins on October 1, 2004. This budget request must reflect the contents of the agency's strategic plan developed under GPRA.

Accordingly, the Commission will conduct a public hearing on June 9, 2003 to receive comments from the public concerning its draft GPRA strategic plan, and agenda and priorities for fiscal year 2005. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the draft strategic plan developed under GPRA.

Persons who desire to make oral presentations at the hearing on June 9, 2003, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–6833, telefax (301) 504–0127, not later than May 27, 2003. Persons who desire a copy of the draft strategic plan (available May 5, 2003) may call or write Rockelle Hammond, Office of the Secretary CPSC, Washington, DC 20207, telephone (301) 504–6833, telefax (301) 504–0127, e-mail: *rhammond@cpsc.gov*, or *cpsc-os@cpsc.gov.*

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 2, 2003. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 9, 2003 and will conclude the same day.

Written comments on the Commission's draft strategic plan, and agenda and priorities for fiscal year 2005, should be received in the Office of the Secretary not later than May 27, 2003.

Dated: April 17, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9954 Filed 4–21–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 22, 2003.

Title and OMB Number: Office of Priority Telecommunications Customer Satisfaction Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Response: 100.

Average Burden Per Response: 15 minutes.

Average Burden Hours: 25.

Needs and Uses: The National Communications Service (NCS), Office of Priority Telecommunications, is proposing to conduct surveys to better understand customer expectations and preferences regarding the NCS Telecommunications Service Priority (TSP) program. An electronic survey will be used in the data collection. Two subsets of customers will be surveyed, vendors and users. Vendors represent telecommunications organization that provide TSP services. Users represent organizations that support either a national security or emergency preparedness mission, including Federal users and non-Federal users, such as State and local governments, foreign governments, and private industry.

Affected Public: Business or other for-profit; Federal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9836 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001, at 10 a.m. on Thursday, May 15, 2003. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20422–0001, telephone (202) 761–1448.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9837 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting of the DIA Joint Military Intelligence College Board of Visitors

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, June 3, 2003, 8 a.m. to 5 p.m.; and Wednesday, June 4, 2003, 8 a.m. to 12 p.m.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9838 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 14, 2003, the Department of Education published an emergency and 30-day public comment period notice in the **Federal Register** (page 17928, column 1) for the information collection, ''Preparing Tomorrow's Teachers to Use Technology.'' The abstract has been amended to read, ''PT3 grants will be awarded for three years to prepare future teachers to use advanced learning technologies. These grants will use funds for two specific activities, while also permitting some project-specific activities. Funds must be used for projects that: (1) Create one or two programs that prepare prospective teachers to use advanced technology to prepare all students to meet challenging state and local academic content and student academic achievement standards; (2) evaluate the effectiveness of the projects; and (3) provide project-specific activities that support the purposes of the program to ensure equal access to advanced technology and qualified teachers for all students.'' The Leader, Regulatory Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.*

Dated: April 16, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–9846 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is

this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 16, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.

Frequency: One time.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 263,000.

Burden Hours: 263,000.

Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2265. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his e-mail *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9847 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 22, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 17, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions.

Type of Review: Revision.

Title: Application for Grants under English Language Acquisition: National Professional Development Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 2,550.

Abstract: The Department needs and uses this information to make grants. The respondents are institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2264. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9878 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The International Research and Studies Program

AGENCY: Department of Education.

ACTION: Publication of the year 2002 annual report.

SUMMARY: The Secretary announces the publication of the annual report listing the books and research materials produced with assistance provided under Section 605 of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: Section 605 of the HEA authorizes the International Research and Studies Program. Under this program, the Secretary awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in modern foreign languages, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs supported under Title VI of the HEA by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Evaluation of the extent to which programs assisted under Title VI that address national needs would not otherwise be offered;

(d) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(e) Research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(f) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists;

(g) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs;

(h) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the education community, including elementary and secondary schools; and

(i) Research on applying performance tests and standards across all areas of foreign language instruction and classroom use.

2002 Program Activities

In fiscal year 2002, 20 new grants ($2,421,480) and 22 continuation grants ($2,782,520) were awarded under the International Research and Studies Program. These grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

A number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. These are:

Title	Author/location
The Language Without Borders: Developing the U.S. National Business Spanish Examination.	Steven Loughrin-Sacco, San Diego State University, 5250 Campanille Drive, San Diego, CA 92182–1934.
A Humanities Approach to Chinese History: A Three-Unit Curriculum Package for Secondary and Community Colleges.	Linda S. Wojtan, Social Science Education Consortium, 1965 North 57th Court, Suite 106—P.O. Box 21270, Boulder, CO 80308–4270.
Nahuatl Learning Environment Dictionary, Reference Grammar and Structured Database Lexicon and Hypertext Search for Online Presentation.	Jonathan D. Amith, Yale University, Council on Latin American and Iberian Studies, P.O. Box 208206, New Haven, CT 06520–8206.
A National Survey of Assessments of Foreign Language Teachers	D. Kenyon and V. Malabonga, Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016.
Computer-Assisted Polish Pronunciation Tutor	Waldemar Walczynski, Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016.
The Making of Modern Burma CD–ROM	Michael Aung-Thwin, University of Hawaii at Manoa, School of Hawaiian, Asian And Pacific Studies, Monroe Hall 416, 1890 East-West Road, Honolulu, HI 96822.
Communicating in Khmer: An Interactive Intermediate Level Khmer Course.	Chhany Sak-Humphry, University of Hawaii at Manoa, Center for Southeast Asian Studies—Sakamaki D200, 2530 Dole Street, Honolulu, HI 96822.
Emerging Economies Teaching Website	Michael Radnor, Northwestern University, Kellogg Graduate School of Management, 633 Clark Street, Evanston, IL 60208–1110.
Building a New Europe: Political and Economic Reconstruction After the Cold War.	Lowell Turner, Schools of Industrial and Labor Relations, Cornell University, Ithaca, NY 14853–3901.
Assessing a Japanese Program Over Time: Preparation and Articulation.	G. Richard Tucker, Carnegie Mellon University, Department of Modern Languages, Baker Hall 160, Pittsburgh, PA 15213–3890.

To obtain a copy of a completed study, contact the author at the given address.

FOR FURTHER INFORMATION CONTACT: For a copy of the 2002 annual report and further information regarding the International Research and Studies Program, write to Jose L. Martinez, Program Officer, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8521. Telephone: (202) 502–7635.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document or the 2002 annual report referred to in this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**

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at the following site: *http://www.ed./gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO); toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1125.

Dated: April 17, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–9882 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.345A]

Office of Postsecondary Education—Underground Railroad Educational and Cultural Program; Notice Inviting Applications for Grants for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Underground Railroad Educational and Cultural program will provide grants to nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Eligible Applicants: Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Applications Available: April 22, 2003.

Deadline for Transmittal of Applications: June 2, 2003.

Deadline for Intergovernmental Review: August 1, 2003.

Available Funds: $2,235,375.

Estimated Range of Awards: $100,000 to $750,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 2–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Statute and Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99 and

(b) Other activities as required by section 841 of the Higher Education Amendments of 1998, Public Law 105–244, 20 U.S.C 1153.

Special Requirements: Each nonprofit educational organization awarded a grant under this program must enter into an agreement with the Department. Each agreement must require the organization—

(1) To establish a facility to house, display, and interpret the artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree;

(2) To demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government;

(3) To create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility;

(4) To establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States, if these satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources;

(5) To establish the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad; and

(6) To submit, for each fiscal year for which the organization receives funding under this program, a report to the Department that contains—

(a) A description of the programs and activities supported by the funding;

(b) The audited financial statement of the organization for the preceding fiscal year;

(c) A plan for the programs and activities to be supported by the funding, as the Secretary may require; and

(a) An evaluation of the programs and activities supported by the funding, as the Secretary may require.

For Applications and Further Information Contact: Jay Donahue, U.S. Department of Education, 6th Floor, 1990 K Street, NW., room 6162, Washington, DC 20006–8544. Telephone: (202) 502–7507 or via Internet: *Jay.Donahue@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice or the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under *For Applications and Further Information Contact.*

However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: Section 841 of the Higher Education Amendments of 1998, Pub. L. 105–244, 20 U.S.C. 1153.

Dated: April 16, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–9883 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from October 1, 2002 through December 31, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the

Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2002 through December 31, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B

Assistance for Education of All Children With Disabilities, Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Distribution of Funds Provided to the Secretary of the Interior

- Letter dated December 17, 2002 to Washington Department of Social and Health Services Indian Policy Advisory Committee Chair Marilyn M. Scott, clarifying that under current law the State and the Bureau of Indian Affairs each have certain responsibilities regarding the provision of early intervention and special education and related services to Native American children with disabilities residing on reservations.

Topic Addressed: Use of funds

- Letter dated November 7, 2002 to Minnesota Department of Education Director of Accountability and Compliance Norena Hale, listing regulations that apply to the use of State set-aside funds under sections 611 and 619 for monitoring.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated October 9, 2002 to Beth L. Sims, Esq., clarifying that the IDEA, as amended, and its implementing regulations do not obligate a school district receiving a special education student from another State to accept the evaluation results, eligibility determinations, and individualized education program (IEP) decisions made in another State, but do obligate a local educational agency (LEA) to provide a free appropriate public education (FAPE), in accordance with State education standards, to all eligible students.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated October 17, 2002 to Florida Bureau of Instructional Support and Community Services Chief Shan Goff, regarding improvement activities required to address areas of noncompliance in the provision of speech-language services as a related service to children with disabilities, identified during the Office of Special Education Program's monitoring activities.

Topic Addressed: Methods of Ensuring Services

- Letter dated November 6, 2002 to South Carolina Department of Education Director of Programs for Exceptional Children Susan D. Durant, regarding requirements to obtain parent consent under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA) in order to access Medicaid or public insurance benefits.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Eligibility Determinations

- Letter dated October 9, 2002 to Minneapolis Public Schools Executive Director of Special Education Colleen Baumtrog, regarding requirements for evaluating and identifying children with specific learning disabilities and clarifying that neither the IDEA nor the Part B regulations require the use of intelligence quotient tests as part of an initial evaluation or a reevaluation.

Topic Addressed: Individualized Education Programs

- Letter dated November 21, 2002 to U.S. Congressman Dennis Moore, regarding issues related to the graduation of a student with a disability, including transition planning, transition services, reevaluations and procedural safeguards.

Section 615—Procedural Safeguards.

Topic Addressed: Independent Educational Evaluations

- Letter dated October 9, 2002 to individual, (personally identifiable information redacted), clarifying that to avoid unreasonable charges for independent educational evaluations (IEEs) a school district may establish maximum allowable charges, but the school district must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that is more expensive; and if the school district disagrees with the parents' justification, it must bring a hearing to demonstrate that the IEE did not meet the agency's cost criteria and that unique circumstances do not justify the higher rate.

Topic Addressed: Notice to Parents

- Letter dated October 9, 2002 to NEA Professional Associate for Special Needs Patti Ralabate, clarifying (1) that if an IEP meeting does not result in a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to their child, prior notice is not required, (2) that one method public agencies could use to meet the requirement for reporting the information on IEP goals required by 34 CFR 300.347(a)(7)(ii)(A) and (B) to parents would be to include that information on the periodic report cards that report grading information to all students, and (3) how the language needs of a child with a disability who has limited English proficiency must be addressed in the child's IEP based on the individual needs of the child.

Part C

Infants and Toddlers With Disabilities

Section 637—State Application and Assurances

Topic Addressed: Prohibition Against Supplanting

- Letter dated November 12, 2002 to Louisiana Department of Education Assistant Superintendent Rodney Watson, discussing the non-supplanting

requirements for Part C funds and indicating that the total State and local expenditures should be considered, and not just lead agency funds.

Section 643—Allocation of Funds.

Topic Addressed: Administration of Part C Funds

• Letter dated November 20, 2002 to New Mexico Department of Health Program Manager Andrew Gomm, clarifying that the Education Department General Administrative Regulations require recipients of IDEA part C Federal grant awards to have a restricted indirect cost rate.

Other Letters Relevant to the Administration of Idea Programs

Topic Addressed: Child with a Disability

• Letter dated November 8, 2002 to U.S. Congressman Ken Lucas, regarding the circumstances under which a child with asthma may be eligible under the IDEA or under section 504 of the Rehabilitation Act of 1973 or both.

Topic Addressed: Applicability of Regulations

• Letter dated October 29, 2002 to Dr. Perry A. Zirkel regarding application of the requirements of the IDEA, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act to overseas schools.

Topic Addressed: Free Appropriate Public Education

• Letter dated October 22, 2002 to Chief State School Officers, regarding implementation of the No Child Left Behind Act and the importance of identifying schools in need of improvement to ensure that every child learns.

Topic Addressed: Procedural Safeguards

• Letter dated November 19, 2002 to Dr. Perry A Zirkel clarifying that neither the IDEA nor its implementing regulations address interlocutory appeals and that whether these appeals are allowed is a State decision subject to the timeline provisions of 34 CFR 300.512.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: April 17, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9941 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5044]

Avondale Mills, Inc.; Notice of Authorization for Continued Project Operation

April 16, 2003.

On April 2, 2001, Avondale Mills, Inc., licensee for the Sibley Mill Project No. 5044, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 5044 is located on the Augusta Canal in the City of Augusta, Richmond County, Georgia.

The license for Project No. 5044 was issued for a period ending March 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 5044 is issued to Avondale Mills, Inc. for a period effective April 1, 2003, through March 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Avondale Mills, Inc. is authorized to continue operation of the Sibley Mill Project No. 5044 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9899 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–100]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

April 16, 2003.

Take notice that on April 1, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective April 1, 2003:

First Revised Sheet No. 859
First Revised Sheet No. 860
First Revised Sheet No. 862
First Revised Sheet No. 864
First Revised Sheet No. 883
Original Sheet No. 891

CEGT states that the purpose of this filing is to reflect implementation of a new negotiated rate transaction, and terminated or expired existing negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and 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. 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: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9907 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–149–001]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

April 15, 2003.

Take notice that on April 9, 2003, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 223A, proposed to be effective May 9, 2003.

Trunkline states that this filing is being made to comply with the Commission's Letter Order dated March 25, 2003, in Docket No. RP03–149–000 which directed Trunkline to file actual tariff sheets, consistent with the pro forma tariff sheet filed on November 27, 2002, in the subject docket.

Trunkline states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''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: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9816 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–341–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes to FERC Gas Tariff

April 16, 2003.

Take notice that on April 14, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point), formerly Cove Point LNG Limited Partnership, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached as Appendix A to the filing, to become effective May 1, 2003 and June 1, 2003.

Dominion Cove Point states that the purpose of the filing is to reflect Dominion Cove Point's name change.

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 385.314 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. 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: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9904 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–000]

Enbridge Pipelines (Louisiana Intrastate) L.L.C.; Notice of Extension of Time

April 16, 2003.

On April 10, 2003, Enbridge Pipelines (Louisiana Intrastate) L.L.C. (Louisiana Intrastate) filed a motion for an extension of time for the filing of comments, protests, and interventions, in the above-docketed proceeding. The proceeding concerns a Louisiana Intrastate petition for rate approval under Section 311 of the Natural Gas Act and the Commission's rules. The petition was filed on March 19, 2003. Louisiana Intrastate's current motion for extension of time states that certain cost information contained in that filing was incorrect or incomplete and that an amendment containing new information will be filed that will supercede the petition currently on file. The motion also states that requiring parties to review and respond to a flawed and incomplete filing would be a waste of resources. Further, the motion states that an extension of time will allow for a more efficient administration of this proceeding.

Upon consideration, notice is hereby given that the extension of time for filing comments, interventions, or protests is granted. The new deadline for the filing of comments, interventions, or protests will be established in a subsequent Notice of

Revised Filing to be issued when Louisiana Intrastate amends its March 19, 2003 filing.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9901 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–256–002]

Honeoye Storage Corporation; Notice of Compliance Filing

April 16, 2003.

Take notice that on April 11, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, Third Revised Sheet No. 96 and First Revised Sheet No. 96A, with an effective date of April 1, 2003.

Honeoye states that this filing is being made in response to a letter order dated March 28, 2003, which was issued by the Commission in Honeoye Storage Corporation's Docket Nos. RP03–256–000 and RP03–256–001. In that letter order, the Commission stated that it would accept Honeoye's proposed tariff modifications subject to the condition that Honeoye's right to impose carrier liens on defaulting shippers' gas in storage is limited by applicable law.

Honeoye states that its revised tariff sheet, Third Revised Sheet 96 conditions Honeoye's right to impose carrier liens in accordance with the letter order, and First Revised Sheet 96A makes a pagination change.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

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: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9902 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–084]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 15, 2003.

Take notice that on April 11, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective June 1, 2003:

First Revised Sheet No. 26P
Third Revised Sheet No. 26).01
First Revised Sheet No. 26P.02

Natural states that the purpose of this filing is to terminate, effective June 1, 2003, an existing negotiated rate transaction between Natural and Dynegy Marketing and Trade, Inc. under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

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 385.314 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. 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: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9820 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–237–013]

New England Power Pool; Notice of Filing

April 14, 2003.

Take notice that on April 7, 2003, the New England Power Pool (NEPOOL) Participants Committee (NPC) and ISO New England Inc. (ISO–NE) jointly filed for acceptance revisions to a report of an audit previously filed Docket No. OA97–237–012 on April 24, 2002. NPC and ISO–NE state that the audit report is submitted in compliance with the requirement of a settlement agreement approved by the Commission by Order dated July 30, 1999, 88 FERC •161,140, that an audit of the charges for regional network service (RNS) under the formula rate provisions of the NEPOOL Tariff for charges in effect for the NEPOOL rate years June 1, 1997, through May 31, 2000, be performed by or under the direction of ISO–NE, and that the results of the audit be submitted to the Commission as an informational filing. NPC and ISO–NE indicate that the revised report reflects the outcome of efforts to resolve certain disputes regarding the initial audit report.

The NPC states that copies of these materials were sent to the New England state governors and regulatory commissions, the NEPOOL Participants, the parties to the settlement agreement and the intervenors as identified in this subdocket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9812 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–343–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC. Gas Tariff

April 16, 2003.

Take notice that on April 14, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 14, 2003:

Seventh Revised Sheet No. 252
Third Revised Sheet No. 253
First Sheet No. 253A
Fourth Revised Sheet No. 297

Northern is proposing changes to Section 26 (Request for Throughput Service) and Section 52 (Right of First Refusal) of the General Terms and Conditions of its tariff to establish a provision regarding the reservation of capacity for future expansion projects and extension rights for interim shippers.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 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. 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: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9906 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–12–000]

Overland Trail Transmission, LLC.; Notice of Petition for Rate Approval

April 15, 2003.

Take notice that on April 1, 2003, Overland Trail Transmission, LLC (OTTCO) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

OTTCO requests that the Commission approve as fair and equitable a maximum System-wide transportation rate of $0.4574 per MMBtu plus pro rata fuel, effective April 1, 2003. In addition, OTTCO requests approval of its new Wapiti Service transportation rate of $0.0591 per MMBtu plus pro rata fuel. OTTCO will offer both System-wide Service and Wapiti Service on both a firm and interruptible basis. Furthermore, OTTCO requests an effective date for its respective firm service options of May 1, 2003, for transportation services performed under section 311(a)(2) of the NGPA.

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 in the docket number field to access the document. For assistance, 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: April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9814 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–87–000]

Overthrust Pipeline Company; Notice of Application

April 15, 2003.

Take notice that on April 7, 2003, Overthrust Pipeline Company, (Overthrust) tendered for filing an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and 18 CFR 157.7 and 157.18, requesting authority to: (1) Abandon the firm service obligation to transport 42,000 Dth per day for Colorado Interstate Gas Company (CIG) and 98,600 Dth per day for Natural Gas Pipeline Company of America (NGPL) and (2) abandon Overthrust's Original Volume No. 1 FERC Gas Tariff effective January 1, 2003.

Overthrust indicates that, by letters dated December 7, 2001, and November 5, 2001, CIG and NGPL, respectively, gave notice of their election to terminate all rights and obligations under their Rate Schedule T service agreements with Overthrust effective January 1, 2003, and requested that Overthrust seek abandonment authority from the Commission.

Overthrust requests authority to abandon the firm-transportation service obligations of CIG and NGPL established pursuant to their service agreements. Since all service under Original Volume No. 1 is proposed to be abandoned, Overthrust will no longer provide service under this tariff.

Overthrust further requests the Commission make its approval to abandon Overthrust's Original Volume No. 1 FERC Gas Tariff effective January 1, 2003.

Overthrust states that it does not propose to abandon, retire or modify any facilities as a result of the Commission granting the requested abandonment authorization.

Overthrust states that it will continue to provide transportation service under its First Revised Volume No. 1–A FERC Gas Tariff as approved by the Commission pursuant to 18 CFR part 284, subparts B and G.

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 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 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: May 6, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9811 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–039]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 15, 2003.

Take notice that on April 11, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Eighth Revised Sheet No. 15 and Original Sheet No. 21B, with an effective date of April 11, 2003.

GTN states that these sheets are being filed to reflect the implementation of one Negotiated Rate Agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 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. 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: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9821 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–342–000]

Questar Pipeline Company; Notice of Tariff Filing

April 16, 2003.

Take notice that on April 14, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective May 12, 2003:

Fifth Revised Sheet No. 84
Second Revised Sheet No. 85
Second Revised Sheet No. 86
Fourth Revised Sheet No. 87
Third Revised Sheet No. 88
Second Revised Sheet No. 88A
Original Sheet No. 88B
Original Sheet No. 88C

Questar states that its filing updates the Measurement section of its tariff to comport with current industry measurement standards and practices.

Questar further states that a copy of this filing has been served upon its customers, the Public Service

Commission of Utah and the Public Service Commission of Wyoming.

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 385.314 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. 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: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9905 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–13–000]

Saltville Gas Storage Company, L.L.C.; Notice of Petition for Rate Approval

April 15, 2003.

Take notice that on April 4, 2003, Saltville Gas Storage Company, L.L.C. (Saltville) filed, pursuant to section 284.123(b)(2) of the Commission's regulations and its blanket certificate, a petition for rate approval for storage services rendered pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Saltville states that it proposes to offer a menu of firm service options, interruptible storage, and park and loan service. Saltville further states that it is an intrastate pipeline company.

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 below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 in the docket number field to access the document. For assistance, 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: April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9815 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–324–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 15, 2003.

Take notice that on April 10, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star Central) tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, Substitute Original Sheet No. 6 through 9, containing system maps as required by 18 CFR 154.160 of the Commission's Regulations, to become effective April 30, 2003.

Southern Star Central states that this filing is a supplement to the filing it made on March 31, 2003 in Docket No. RP03–324–000 where Southern Star Central filed a complete new tariff under its new name. Southern Star Central states that the instant filing includes system maps that were not available in time for the March 31, 2003 filing. Southern Star Central has marked each tariff sheet found in Appendix A as ''Non-Internet Public'' in accordance with guidelines related to the Final Rule on Critical Energy Infrastructure (CEII). An April 30, 2003, effective date is requested in order to allow all tariff sheets in the FERC Gas Tariff, Original Volume No. 1 to go into effect concurrently with the tariff filed on March 31, 2003.

Southern Star Central further states that only copies of the transmittal letter excluding Appendix A are being mailed to Southern Star Central's jurisdictional customers and interested State commissions at this time.

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: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9817 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–339–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 16, 2003.

Take notice that on April 11, 2003 Southern Star Central Gas Pipeline, Inc.

(Southern Star Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 214 to become effective May 15, 2003.

Southern Star Central states that the purpose of this filing is to apply right-of-first-refusal provisions to maximum rate service agreements and to remove the five-year term matching cap from the right-of-first-refusal provisions of the Southern Star Central Gas Pipeline, LLC Tariff consistent with the Commission's Order on Remand in Docket No. RM98–10–011.

Southern Star Central further states that copies of the transmittal letter and appendices are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 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. 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: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9903 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–340–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

April 15, 2003.

Take notice that on March 31, 2003 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 40P, Original Sheet No. 40P.01, Original Sheet No. 40P.02, Original Sheet No. 40P.03 and Original Sheet No. 40Q, with an effective date of May 1, 2003.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the incremental recourse rates for Phase I of the Momentum firm transportation service anticipated to commence May 1, 2003.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed by 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 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.

Comment Date: April 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9818 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–030]

Transwestern Pipeline Company; Notice of Refund Report

April 15, 2003.

Take notice that on April 9, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing a compliance refund report.

Transwestern states that it filed a stipulation and agreement (Settlement) in the above referenced dockets resolving all issues pending in these proceedings. Transwestern further explains that the Federal Energy Regulatory Commission (Commission) issued a letter order dated January 31, 2003 (Order) accepting the Settlement as fair and reasonable and in the public interest. Transwestern states that the Order directed Transwestern to make refunds consistent with the Settlement, and to file with the Commission a compliance refund report within thirty days of making such refund.

Transwestern states that it made the refunds to shippers in accordance with the Settlement on March 14, 2003, and that it is filing the compliance refund report pursuant to the Commission's January 31 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed 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. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9819 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–076, et al.]

New York Independent System Operator, Inc., et al. Electric Rate and Corporate Filings

April 16, 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 Nos. ER97–1523–076, OA97–470–068 and ER97–4234–066]

Take notice that on April 14, 2003, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a compliance report, pursuant to the Commission's March 13, 2003 Order issued in the above-captioned proceedings, describing the steps it intends to take to ensure that Thunderstorm Alert-related costs are directly assigned to load serving entities in the New York City area.

The NYISO states that it has served a copy of this filing upon all parties listed on the official service lists in the above-captioned proceedings and on all market participants that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or its Market Administration and Control Area Services Tariff, and to the electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment Date: May 5, 2003.

2. Entergy Services, Inc.

[Docket No. ER02–2014–014]

Take notice that on April 14, 2003, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a compliance filing in response to the Commission's March 13, 2003, Order On Amended Generator Operating Limits Filing (March 13 Order) Entergy Servs., Inc., 102 FERC § 61,281. Entergy states that the compliance filing implements revisions to Attachment Q to the Entergy Open Access Transmission Tariff that were required by the March 13 Order and contains Entergy's status report on implementation of Attachment Q.

Comment Date: May 5, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–404–002]

Take notice that on April 14, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the provisions of PJM Open Access Transmission Tariff filed January 10, 2003, in Docket No. ER03–404–000 providing standard terms and conditions for independent system companies to operate within PJM in compliance with the Commission's March 14, 2003 Order.

PJM states that copies of this filing were served upon all parties of the Commission's Service List, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 5, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–323–002]

Take notice that on April 14, 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 March 13, 2003, Order Accepting Mitigation Measures Subject to Modifications and Ordering Technical Conference (March 13 Order), 102 FERC § 61,210. The Midwest ISO has requested an effective date on the later of December 1, 2003 or the first operation day of the Midwest ISO's ''Day 2,'' Day-Ahead Energy Markets consistent with the Commission's March 13 Order.

In addition, the Midwest ISO has indicated that it has electronically served a copy of this filing, without 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, Midwest ISO states that 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. The Midwest ISO states it will provide hard copies to any interested parties upon request.

Comment Date: May 5, 2003.

5. Florida Power & Light Company

[Docket No. ER03–735–000]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG). FPL states that Termination of the IOA has been mutually agreed to by FPL and CPVG. FPL requests that the termination be made effective March 14, 2003, as mutually agreed by the parties.

FPL states that is has served copies of this filing to CPVG, the Florida Public Service Commission and the Commission's Service List.

Comment Date: May 2, 2003.

6. CAM Energy Products, LP

[Docket No. ER03–736–000]

Take notice that on April 11, 2003, CAM Energy Products, LP (CAM Energy) petitioned the Commission for acceptance of CAM Energy's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CAM Energy states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. CAM Energy also states that it is not in the business of generating or transmitting electric power. CAM Energy indicates that it is an independent electricity marketer with a sole purpose of buying and selling electricity in the wholesale electricity market.

Comment Date: May 2, 2003

7. Allegheny Power

[Docket No. ER03–738–000]

Take notice that on April 11, 2003, The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; Atlantic City Electric Company; Delmarva Power & Light Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Potomac Electric Power Company; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc., (PJM Transmission Owners) tendered for filing pursuant to Section 205 of the Federal Power Act a new Schedule 12 to the PJM Open Access

Transmission Tariff (PJM Tariff), providing for the collection of charges that are established to recover costs of transmission enhancements or expansions ordered pursuant to PJM's Regional Transmission Expansion Planning Protocol (RTEPP).

The PJM Transmission Owners state that this filing is a necessary complement to PJM's March 20, 2003 compliance filing in Docket RT01–2–006, intended to incorporate economic upgrades into the PJM regional transmission expansion planning process and to create a cost recovery vehicle for all RTEPP-ordered enhancements under the PJM Tariff. The filing by the PJM Transmission Owners state that the filing provides the transmission rate component for the PJM Tariff mechanism. The PJM Transmission Owners are requesting an effective date 60 days after the date of filing, on June 10, 2003.

The PJM Transmission Owners states that copies of the filing have been served on PJM, all members of PJM, and all state electric utility regulatory commissions in the PJM region.

Comment Date: May 2, 2003.

8. El Dorado Irrigation District

[Docket No. ER03–739–000]

Take notice that on April 14, 2003, the El Dorado Irrigation District (EID) tendered for filing pursuant to 18 CFR 385.205, an Application for Order Accepting Rate Schedule, Granting Authorizations and Blanket Authority and Waving Certain Requirements.

EID states that it intends to engage in wholesale electric power and energy sales as a marketer. EID also states that it is a California Irrigation District providing water, wastewater and recycled water services within its service area located in the western slope of the Sierra Nevada in the county of El Dorado.

Comment Date: May 5, 2003.

9. PSEG Energy Technologies Inc.

[Docket ER03–740–000]

Take notice that on April 14, 2003, PSEG Energy Technologies Inc., (PSEG ET), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its market-based rate tariff currently on file with the Commission and a request to waive any Commission regulations necessary to permit the cancellation to take effect immediately. PSEG ET states that it wishes to discontinue sales of power at market-based rates in interstate commerce.

Comment Date: May 5, 2003.

10. Northwestern Wisconsin Electric Company

[Docket No. ER03–741–000]

Take notice that on April 14, 2003, Northwestern Wisconsin Electric Company (NWEC), tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. NWEC states that the proposed changes would decrease revenues from jurisdictional sales by $8,139.78 based on the 12 month period ending April 30, 2003. NWEC states it is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. NWEC indicates that the service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1. NWEC requests this Rate Schedule Change become effective May 1, 2003.

NWEC states that copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment Date: May 5, 2003.

11. RMKG, LLC

[Docket No. ER03–742–000]

Take notice that on April 14, 2003, RMKG, LLC, submitted for filing a Petition for Acceptance of Initial Rate Schedule, FERC No. 1. RMKG states it will engage in wholesale electric power and energy transactions as a marketer. RMKG requests that the rate schedule be effective sixty days after filing, or the date the Commission issues an order accepting the rate schedule, whichever occurs first.

Comment Date: May 5, 2003.

12. Virginia Electric and Power Company

[Docket No. ER03–743–000]

Take notice that on April 14, 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) between Dominion Virginia Power and CPV Cunningham Creek LLC (CPV) modifying certain definitions and the milestone dates in Appendices F and G. Dominion Virginia Power respectfully requests that the Commission accept the Revised Interconnection Agreement to allow it to become effective on April 15, 2003, the day after filing.

Dominion Virginia Power states that copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: May 5, 2003

13. Entergy Services, Inc.

[Docket No. ER03–744–000]

Take notice that on April 14, 2003, Entergy Services, Inc., on behalf of Entergy Operating Companies (Operating Companies) submitted a filing seeking approval of two life-of-unit power purchase agreements (the subject PPSs) between Entergy Louisiana, Inc., (ELI) as purchaser and Entergy Arkansas, Inc., (EAI) and Entergy Gulf States, Inc., (EGSI) as sellers.

Entergy Operating Companies states that copies of this filing have been served on the Arkansas Public Service Commission, the Mississippi Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, and the Council of the City of New Orleans.

Comment Date: May 5, 2003.

14. Reliant Energy Bighorn, LLC

[Docket No. ER03–745–000]

Take notice that on April 14, 2003, Reliant Energy Bighorn, LLC (Reliant Bighorn) petitioned the Federal Energy Regulatory Commission (Commission) to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting Reliant Bighorn's FERC Electric Rate Schedule No. 1. Reliant Bighorn requested that the Commission approve its application on an expedited basis by May 21, 2003.

Comment Date: May 5, 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 field 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. 03–9896 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–121–004, et al.]

Occidental Chemical Corporation., et al.; Electric Rate and Corporate Filings

April 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company

[Docket No. EL02–121–004]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff to comply with the directives issued by the Federal Energy Regulatory Commission in its March 12, 2003 order in this proceeding (Occidental Chem. Corp. v. PJM Interconnection, L.L.C., 102 FERC § 61,274 (2003)).

PJM states that copies of this compliance filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding, all members of PJM, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 12, 2003

2. Arizona Public Service Company, Pinnacle West Capital Corporation, Pinnacle West Energy Company, APS Energy Services

[Docket Nos. ER99–4124–001, ER00–2268–003, ER00–3312–002 and ER99–4122–004]

Take notice that on April 11, 2003, Arizona Public Service Company (APS) tendered for filing a revised Market Power Study for: APS FERC Electric Tariff, Volume No. 3; Pinnacle West Capital Corporation under Rate Schedule FERC No. 1; Pinnacle West Energy Corporation under PWEC FERC Electric Tariff Volume No. 1; and APS Energy Services under Rate Schedule FERC No. 1.

APS states that a copy of this filing has been served to all parties on the Service List attached to the April 11, 2003 filing.

Comment Date: May 2, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–405–002]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C., (PJM) tendered for filing a revised page of the PJM Open Access Transmission Tariff (PJM Tariff). PJM states that the proposed change is submitted to comply with the Commission's Order in this proceeding dated March 12, 2003.

PJM states that copies of this filing were served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Comment Date: May 2, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–406–002]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C., (PJM) submitted for filing in compliance with the Commission's Order of March 12, 2003, revisions to certain provisions of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement relating to PJM's annual Financial Transmission Right auction process.

PJM states that copies of this filing were served upon each person designated on the official service list of the Commission in this proceeding, all PJM members, and each state electric utility commission in the PJM region.

Comment Date: May 2, 2003.

5. California Independent System Operator Corporation

[Docket No. ER03–407–002]

Take notice that on April 11, 2003, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's March 12, 2003 ''Order Conditionally Accepting Tariff Amendment For Filing, as Modified, Granting Waiver of Notice, and Directing Compliance Filing,'' 102 FERC § 61,268 issued in Docket No. ER03–407–000.

The ISO states that copies of this filing have been served upon all entities that are on the official service list for Docket No. ER03–407–000.

Comment Date: May 2, 2003.

6. Florida Power & Light Company

[Docket No. ER03–716–001]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Withdrawal of FPL's March 28, 2003 filing of: (1) A Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG); and (2) a Notice of Withdrawal of a revised IOA filed on February 14, 2003, in Docket No. ER03–535–000. FPL states that the Notice of Withdrawal has been mutually agreed to by FPL and CPVG.

FPL states that this filing has been served upon CPVG, the Florida Public Service Commission and all parties on the Commission's Service List.

Comment Date: May 2, 2003.

7. Phelps Dodge Energy Services, LLC

[Docket No. ER03–568–001]

Take notice that on April 11, 2003, Phelps Dodge Energy Services, LLC filed additional information to supplement and amend its February 27, 2003 request to amend its market-based rate tariff, FERC Electric Rate Schedule No. 1, and its Code of Conduct to permit sales to its affiliates without making a separate filing under Section 205 under the Federal Power Act.

Comment Date: May 2, 2003.

8. Florida Power & Light Company

[Docket No. ER03–726–000]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered for filing fully executed, revised service agreements with Duke Energy Trading and Marketing, L.L.C., for Long-Term Firm Transmission Service under FPL's OATT. FPL requests that these service agreements become effective on June 1, 2003.

FPL states that it has served this filing to Duke, the Florida Public Serivce Commission and the Commission's Service List.

Comment Date: May 2, 2003.

9. Texas-New Mexico Power Company

[Docket No. ES03–33–000]

Take notice that on April 8, 2003, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term, unsecured debt in an amount not to exceed $100 million.

Comment Date: May 6, 2003.

10. Portland General Electric Company

[Docket No. ES03–34–000]

Take notice that on April 11, 2003, Portland General Electric Company submitted an application pursuant to

section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $550 million.

Comment Date: May 6, 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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9895 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 233–081]

Pacific Gas and Electric Company, California; Notice of Public Meetings for Discussion of the Draft Environmental Impact Statement for the Pit 3, 4, 5 Project

April 15, 2003.

On March 14, 2003, the Commission staff mailed the Pit 3, 4, 5 Hydroelectric Project Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

The DEIS was noticed in the **Federal Register** on March 21, 2003 (68 FR 13911), and comments are due by May 21, 2003. The DEIS evaluates the environmental consequences of the relicensing and subsequent operation of the existing 325-megawatt Pit 3, 4, 5 Project located on the Pit River, in Shasta County, California. The project occupies 746 acres of land of the United States administered by the Forest Supervisors of the Shasta-Trinity and Lassen National Forests. It also evaluates the environmental effects of implementing the applicant's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative.

The Commission will hold three public meetings on the DEIS. At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS. The meetings will be recorded by a stenographer and all comments and recommendations received will become part of the formal record for this Commission proceeding. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of the meetings. The meetings will be held as follows.

Date	Time	Location
April 29, 2003	10 a.m.–noon.	Holiday Inn, 1900 Hilltop Drive, Redding, California.
April 29, 2003	7–9 p.m.	Burney Community Center, 37477 Main Street, Burney, California.
April 30, 2003	1–3 p.m.	Veterans Hall, 508 South Main Street, Alturas, California.

For further information, please contact John Mudre, at (202) 502–8902, or *john.mudre@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St., NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9813 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–57–000]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bondad Expansion Project and Request for Comments on Environmental Issues

April 16, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of a proposal by El Paso Natural Gas Company (El Paso) to replace certain facilities at its Bondad Compressor Station in La Plata County, Colorado.[1] These facilities consist of the replacement of 3 gas-fired turbines with increased horsepower units, installation of a new boiler and modifications to related equipment at the facility. All work and modifications would take place within the existing facility and no additional land would be necessary. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

El Paso proposes to replace certain compression facilities at its Bondad Compressor Station, located in Township 33 North, Range 9 West, La Plata County, Colorado. El Paso is seeking to replace 3 existing Solar

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

Centaur simple cycle gas turbine engines at the Bondad Compressor Station with a combined horsepower of 10,740 with two Solar Centaur 50–T6100L simple cycle gas turbine engines and one Solar Centaur 50S–T6100 simple cycle gas turbine engine, with appurtenances, which have a combined horsepower rating of 18,390 (ISO). The Solar Centaur 50S–T6100 simple cycle gas turbine engine is equipped with air emission-lowering SoloNox technology. El Paso would also restage the 3 existing compressor units at the Bondad Compressor Station. The compressors would be disassembled and the single stage aerodynamic assembly of each compressor would be removed and exchanged with a two stage assembly.

Minor modifications to the station skids, panel units, and inlet air systems would be required in order to accommodate the new turbines. Project activities would also include upgrading existing lube oil cooler units associated with each turbine to accommodate increased oil heat load and upgrading discharge aftergas cooling system. Additionally, El Paso would install a new 0.25 million British thermal units per hour natural gas-fired fuel heater and associated miscellaneous plant yard piping.

All work would take place within the existing Bondad Compressor Station. No nonjurisdicitonal facilities are involved.

Land Requirements for Construction

The project area encompasses a total of approximately 2.8 acres of land within the existing fenced area of the Bondad Compressor Station. This fenced area was previously disturbed by leveling, grading, and excavation associated with construction of the existing facilities. The project would not affect previously undisturbed areas and no access roads will be constructed to complete the proposed project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the proposed abandonment project under these general headings:

1. Soils
2. Cultural Resources
3. Air Quality and Noise
4. Public Safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

- Water resources, fisheries, and wetlands,
- Vegetation and wildlife,
- Geology,
- Socioeconomics,
- Hazardous waste & PCB contamination, and
- Land use.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–57–000
- Mail your comments so that they will be received in Washington, DC on or before May 16, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *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 and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''Intervener.'' Interveners play a more formal role in the process. Among other things, Interveners have the right to receive copies of case-related Commission documents and filings by other Interveners. Likewise, each Intervener must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an Intervener you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 1).[2] Only Interveners have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted Intervener status upon showing good cause by stating that they have a clear and direct interest in this proceeding

[2] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

which would not be adequately represented by any other parties. You do not need Intervener status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all residents adjacent to the proposed facilities. By this notice we are also asking governmental agencies, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of the application and supplemental filings by El Paso, and formal documents issued by the Commission, such as orders, notices, and rulemakings.

Please *see* directions for eSubscription (Appendix 2).

Magalie R. Salas,

Secretary.

[FR Doc. 03–9894 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 16, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No:* 1025–054.

c. *Date filed:* March 14, 2003.

d. *Applicant:* Safe Harbor Water Power Corporation.

e. *Name of Project:* Safe Harbor Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Marshall Kaiser, 1 Powerhouse Rd., Contestoga, PA 17516, (717) 872–5441.

i. *FERC Contact:* Hillary Berlin at 202–502–8915.

j. *Deadline for filing comments, motions to intervene and protest:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee is requesting authorization for the York Water Company to withdraw 12 million gallons-per-day from Lake Clarke on the Susquehanna River for a municipal water supply. The proposal includes constructing intake and pumping facilities in York County within the project boundary, approximately 7 miles upstream from the Safe Harbor Dam. The licensee has consulted with the appropriate resource agencies, and their application includes approvals from the Pennsylvania Department of Environmental Protection and the Susquehanna River Basin Commission, and comments from the U.S. Fish and Wildlife Service.

l. The filings are 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9897 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1988–040]

Notice of Application for Amending Minimum Flow Requirement at Dinkey Creek and Soliciting Comments, Motions To Intervene, and Protests

April 16, 2003.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Request to amend article 402 minimum flow requirement.

b. *Project No.:* 1988–040.

c. *Date Filed:* February 28, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Haas-King Project.

f. *Location:* North Fork Kings River near the towns of Centerville, Fresno, and Sanger, in Fresno County, California. The project occupies about 113 acres of Federal lands, a portion of which are within the Sierra National Forest.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steve Nevares, Pacific Gas and Electric Company, Mail Code: N11D, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: diana.shannon@ferc.gov

j. *Deadline for filing motions to intervene, protests, comments:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The applicant seeks approval to change the required minimum flow release from the Dinkey Creek Siphon to a release of 10 cfs from June 1 through October 31. Article 402 of the license requires a minimum flow of 10 cfs from June 1 through November 30 and 15 cfs from December 1 through May 31 during normal and wet years, and 15 cfs year round during dry years. The licensee has consulted with the resource agencies and the U.S. Forest Service and the California Department of Fish and Game have concurred with the licensee's proposal.

l. The 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the project number (P–1988–040) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings. All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9898 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8535–038]

Notice of Application for Transfer of License and Solicitation of Comments, Motions to Intervene, and Protests

April 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 8535–038.

c. *Date Filed:* March 18, 2003.

d. *Applicants:* Virginia Hydrogeneration and Historical Society, LC (VHHS) and Greenwood Hydro, LC (Greenwood).

e. *Name of Project:* Battersea Dam.

f. *Location:* On the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h.*Applicants Contacts:* Chriswell Perkins, c/o Bryan Brothers, Inc., 1802 Bayberry Court, Suite 301, Richmond, VA 23226 (VHHS) and Joshua Greenwood, 8606 Pine Glade Lane, Richmond, VA 23237 (Greenwood).

i. *FERC Contact:* Tom Papsidero, (202) 502–6002.

j. *Deadline for filing comments and/or motions:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* VHHS requests approval to transfer its project license to Greenwood.

l. 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicants' addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant(s) specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9900 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0063; FRL–7486–3]

Agency Information Collection Activities; Submission of EPA ICR No. 0168.08 (OMB No. 2040–0057) 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: NPDES and Sewage Sludge Management State Programs. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 22, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; e-mail address: *faulk.jack@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 January 10, 2003, (68 FR 1454), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0063, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to OW–*Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 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: NPDES and Sewage Sludge Management State Programs (OMB Control Number 2040–0057, EPA ICR Number 0168.08). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. These governments have the option of acquiring authority to issue general

permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add Federal facilities, or general permit authority. In addition, as federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements.

States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations.

Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction.

The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA.

When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations.

There are three categories of reporting requirements that are covered by this ICR. The first category, ''State Program Requests,'' includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, ''State Program Implementation,'' includes the activities that approved States must complete to implement an existing program, such as certification of EPA-issued permits by non-NPDES States. The third category, ''State Program Oversight,'' includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight.

The information collected by EPA is used to evaluate the adequacy of a State's NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate State requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

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 50.3 hours per response for each state activity. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories, and American Indian Tribal Entities.

Estimated Number of Respondents: 613.

Frequency of Response: Semi-annually, quarterly, on occasion, every 5 years, on-going.

Estimated Total Annual Hour Burden: 966,966 hours.

Estimated Total Annual Cost: $30,169,349, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 173,828 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the applicant respondent and NPDES-authorized state burden is due primarily to a significant cleanup of the database used to track NPDES permittees.

Dated: April 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–9912 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7485–4]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption for its Low-Emission Vehicle amendments (LEV II Amendments) to its Low-Emission Vehicle (LEV) program. By letter dated May 30, 2001, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its LEV II Amendments and its 1999 zero-emission vehicle amendments (1999 ZEV Amendments), which primarily: Impose more stringent passenger car exhaust emission standards on most sport utility vehicles, pick-up trucks, and mini-vans; create lower tailpipe standards for all light- and medium-duty vehicles; establish more stringent requirements for phasing in cleaner vehicles; establish more stringent evaporative emission standards; and include new mechanisms for the generation of ZEV credits. CARB submitted subsequent letters to EPA which initially requested EPA to confirm CARB's determination that its 1999 and 2001 ZEV amendments are within the scope of waivers EPA had previously granted; ultimately CARB withdrew its requests regarding the 1999 and 2001 ZEV amendments. Today's decision does not address CARB's 1999 or 2001 ZEV amendments.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this rulemaking are contained in Docket No. A–2002–11. The docket is located at The Air Docket, room B–108, 1301 Constitution Avenue, NW., Washington,

DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (*http://www.epa.gov/OTAQ*). Users can find these documents by accessing the OTAQ website and looking at the path entitled, ''Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA–AIR*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–9256. Fax: (202) 565–2057. E-Mail address: *Dickinson.David@epa.gov.*

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of federal preemption pursuant to section 209(b) of the Act for the LEV II Amendments [1] to its LEV program. As explained further in EPA's Decision Document for today's decision, CARB had originally submitted a request for a waiver of federal preemption for amendments made to its ZEV program (1999 ZEV Amendments). CARB subsequently sought a ''within the scope of previous waivers'' confirmation from EPA for its 1999 ZEV Amendments. Subsequently, CARB also initially sought a within the scope of previous waivers confirmation for its 2001 ZEV Amendments when they were adopted. As explained in EPA's notice dated September 26, 2002 (67 FR 60680), CARB withdrew its requests for any EPA consideration of its 1999 and 2001 ZEV Amendments. By today's decision EPA makes no findings regarding such Amendments.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that its LEV II Amendments do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its LEV II Amendments are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject LEV II Amendments. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its LEV II Amendments are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's LEV II Amendments are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that

[1] As set forth in the August 5, 1999 adoption of or amendments to Title 13, California Code of Regulations (CCR), section 1961, the incorporated ''California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,'' and, with respect to HEVs (hybrid-electric vehicles), the incorporated ''California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes'' (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1900; section 1960.1 (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), the incorporated ''California Non-Methane Organic Gas Test Procedures,'' ''California Exhaust Emission Standards and Test Procedures for 1988 through 2000 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' and ''California Non-Methane Organic Gas Test Procedures'' (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), and, with respect to HEVs, ''California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes'' (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1965 and the incorporated ''California Motor Vehicle Emission Control and Smog Index Label Specifications''; section 1968.1; 1976 and the incorporated ''California Evaporative Emission Standards and Test Procedures for 1978 through 2000 Model Motor Vehicles'' and the new ''California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles'' (EPA's decision applies to CARB's evaporative emission standards and test procedures only for 2004 and later model years); sections 2037, 2038, 2062 and the incorporated ''California Assembly-Line Test Procedures for 1998 through 2000 Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' and ''California Assembly-Line Test Procedures for 2001 and Subsequent Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles''; section 2101 and the incorporated ''California New Vehicle Compliance Test Procedures''; and sections 2106, 2107, 2110, 2112, 2114, 2119, 2130, 2137–2140, and 2143–2148. EPA also includes CARB's ''LEV II follow-up amendments'' in today's waiver determination. These amendments, adopted December 27, 2000, were to section 1961 and the ''California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' and as explained below, have the effect of not allowing a manufacturer to certify a ''California-only'' vehicle family to California exhaust emission standards that are less stringent than the federal standards to which an equivalent federal model is certified—in such case the model sold in California must meet the federal exhaust emission standards to which the federal model is certified. CARB's waiver request did not include nor does today's waiver determination include other provisions of the LEV II follow-up amendments such as the California emission standards for heavy-duty Otto-Cycle engines that were harmonized with standards adopted by EPA and are found at section 1956.8.

this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by June 23, 2003. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: April 11, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–9910 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7486–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 311(c); Request for Applications (RFA)—Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On April 22, 2003, the Environmental Protection Agency (EPA) will begin to accept proposals from non-profit organizations and educational institutions for grants to support research on improving meaningful non-Federal stakeholder involvement in decisions concerning the cleanup of hazardous waste at Federal facilities. EPA believes meaningful stakeholder involvement in the cleanup decision making process has resulted in significantly reducing costs, increasing effectiveness, and promoting decisions which reflect the diverse interests of those responsible for or affected by Federal facilities.

DATES: Please submit applications on or before June 23, 2003.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (mailing address); Crystal Gateway (1st Floor), 1235 Jefferson Davis Highway, Arlington, VA 22202 (building address); *http://epa.gov/swerffrr/index.htm* (Web site address).

FOR FURTHER INFORMATION CONTACT: Sean M. Flynn with EPA's Office of Solid Waste and Emergency Response, Federal Facilities Restoration and Reuse Office: (703) 603–0080 or *flynn.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

Instructions for Submitting a Proposal (See *http://www.epa.gov/ogd/grants/how_to_apply.htm.*)

EPA will accept proposals either postmarked or received by EPA via registered or tracked mail by 12 PM (Eastern) on (60 days after date of publication). Copies of Standard Form 424 (SF 424), Application for Federal Assistance may be obtained by following the links to standard forms on the following Web site: *http://www.gsa.gov/forms.* Applicants should send one (1) original (clearly labeled as such) and five (5) copies of their proposal to Sean M. Flynn, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (5106G), Washington, DC 20460, RE: RFA #03–OSWER–001.

Applicants must clearly mark any information in their proposal that they consider confidential. EPA will make final confidentiality decisions in accordance with Agency regulations found at 40 CFR part 2, subpart B.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 311(c) authorizes EPA to use appropriated Superfund money to fund research projects for the conduct and dissemination of scientific, socioeconomic, institutional, and public policy related to the effects, risks, and detection of hazardous substances in the environment, including that found on current or former Federal facilities.

As required by statute, all research must relate to hazardous substances. Furthermore, available funding is restricted to ''research'' as defined at 40 Code of Federal Regulations (CFR) 30.2(dd). EPA has interpreted ''research'' under CERCLA section 311(c) to include study that extends to socioeconomic, institutional, and public policy issues, as well as the ''natural'' sciences.

Background: This solicitation is targeted at non-profit organizations and educational institutions interested in researching ways to improve meaningful non-Federal stakeholder participation in the discussion and resolution of issues concerning hazardous waste contamination caused, generated, or managed by Federal agencies and departments. Historically, most of EPA's work in the Federal facilities program has been focused on addressing hazardous waste contamination at DoD and DOE sites on the National Priorities List (NPL) and at Base Realignment and Closure (BRAC) properties. Greater attention, however, is increasingly being given to contamination at other Federal agency/department sites, including properties formerly owned or operated by the Federal government.

In order to promote citizen involvement, EPA's Federal Facilities Restoration and Reuse Office (FFRRO) collaborates with States and tribes, local governments, environmental and community groups, labor organizations, and universities to provide the maximum possible level of stakeholder involvement in decision making and priority setting for the cleanup of Federal facilities. This collaboration is often accomplished via the award of grants and cooperative agreements to outside parties. Such is the purpose of this solicitation.

The research grants resulting from this solicitation will directly benefit non-Federal stakeholders in the Federal facility cleanup process. The research is not meant to directly benefit EPA or other Federal agencies, although EPA and other Federal agencies may derive indirect benefits. Grants, unlike cooperative agreements, provide for little or no involvement on the part of the Federal government. By awarding a grant, EPA does not expect to have any substantial involvement in the research process. Nevertheless, EPA will be in contact with the grant recipients periodically via phone, e-mail, and, as appropriate, site visits.

For Federal fiscal year '04, EPA anticipates awarding between one and three grants and will consider funding requests up to a maximum of $150,000 per grant. Furthermore, the anticipated project period is September 2003—August 2004.

Eligibility for Funding: Interested non-profit organizations and educational institutions must structure their research in a way that generates recommendations for use by non-Federal stakeholders, rather than by EPA, DoD, DOE, or another Federal agency or department. Projects which provide services for the direct use or

benefit of Federal agencies are not eligible for funding.

The term ''non-profit'' is defined in U.S. Office of Management and Budget (OMB) Circular A–122, while ''educational institution'' refers to colleges and universities subject to OMB Circular A–21. Groups of two or more eligible applicants may choose to form a coalition and submit a single application in response to this solicitation. However, one applicant will be accountable to EPA for proper expenditure of funds. Furthermore, any financial transactions between coalition members must comply with 40 CFR part 30.

Per section 501(c)(4) of the Internal Revenue Code, non-profit organizations that engage in lobbying activities—as defined in Section 3 of the Lobbying Disclosure Act of 1995—are not eligible to apply for or be part of a coalition. Non-profit organizations and educational institutions are not required to provide matching funds for grants awarded under section 311(c).

Evaluation of Proposals: EPA will conduct the competition consistent with EPA Order 5700.5, Policy on Competition for Assistance Agreements (9/12/02). EPA will assemble a review panel consisting of members familiar with the Federal facilities program and non-Federal stakeholder involvement in the cleanup process. The review panel will use a point system to rank applications and make recommendations to FFRRO's Office Director, who will then make the final selections.

Successful and unsuccessful applicants will be notified of their award status in writing. Disputes will be resolved in accordance with 40 CFR 30.63. EPA anticipates awarding grants within sixty (60) calendar days of the application deadline.

EPA reserves the right to reject all applications and make no awards.

Proposal Contents: Proposals must be clear and decisive, strictly follow the specified criteria, and provide sufficient detail in order for the panel members to compare the merits of each and decide which proposal best supports the intent of the research. Vague descriptions and unnecessary redundancy may reduce the chance of a favorable rating. Proposals providing the best evidence of a quality project and appropriate use of funds will have the greatest chance of being recommended by the panel. Each proposal must include the following sections, all of which are described in detail further below:

Cover page (1 page)
Overview (1page)
Budget (1 page)
Responses to Threshold Criterion (½ page)
  Eligibility
Responses to Evaluation Criteria (up to 12 pages)
  Familiarity with Subject Matter
  Technical Approach
  Past Performance on Other Grants
  Leveraging Other Resources

To ensure fair and equitable evaluation of the proposals, do not exceed the single-sided page limitations referenced above. There is no guarantee that pages submitted beyond the limitations will be reviewed by the evaluation panel. In addition, all materials included in the proposal (including attachments) must be printed on letter-sized paper with font sizes no smaller than 12 points. Furthermore, all materials must be printed double-sided on paper with a minimum recycled content of at least 35%.

Cover Page: This page is intended to introduce the applicant and identify a primary point of contact for communication with EPA. The cover page should be a single page and include the following information. Applicants are free to use any format they choose:

- Applicant identification—the name of the main implementor of the project.
- Contact—the name of the person who is responsible for the proposal.
- Mailing address/telephone/fax/e-mail of the point of contact for the proposal.
- Submittal date.

Overview: Briefly summarize your approach to undertaking the necessary research and how you envision the findings will be applied.

Budget: Present a clear and detailed budget for the project. The following budget categories may be useful: salaries, fringe benefits, indirects, other direct, travel, equipment, supplies, printing, administrative, and contracts. EPA defines ''equipment'' as any item which costs $5,000 or more. Items less than $5,000 are considered supplies. Allowable expenses include direct costs related to the research and any indirect costs authorized under the applicable OMB Circular.

Threshold Criterion: The applicant must satisfy the following threshold criterion in order for the proposal to be considered:

- Eligibility: All applicants must demonstrate that they are either an eligible non-profit organization or an educational institution.

Evaluation Criteria: An applicant's response to each of the following criteria will be the primary basis upon which EPA rates the proposal. The evaluation panel will review each proposal carefully and assess the responses based on how well they address the criteria. A point system will be used to evaluate the proposals. Listed next to the title of each evaluation factor below is the maximum number of points that can be earned for that particular criterion (out of a maximum possible score of 100).

1. Familiarity With Subject Matter (35 Points)

- Describe your experience with environmental cleanups, especially those conducted at Federal facilities (*e.g.*, Former Used Defense Sites (FUDS), BRAC sites, NPL sites).
- Describe your experience with public participation, especially with regard to Federal programs.
- Describe your experience conducting research and disseminating the results.
- What do you consider to be the greatest challenge(s) currently facing the Federal facilities cleanup program, and how would enhanced non-Federal stakeholder involvement better assist the process?
- What do you consider to be ''meaningful'' stakeholder involvement?

2. Technical Approach (35 Points)

- What, specifically, do you propose to research (*e.g.*, certain issues, certain sites, etc.) and why?
- Describe which research methods you propose to use and why.
- What difficulties do you expect to encounter and how might they be overcome?
- What will be the deliverables/end products?
- How and to whom will the findings be disseminated?
- How do you envision the findings will be applied?
- What measures will you use to determine the success of the project?
- What role will environmental justice play in your research?

3. Past Performance on Other Grants (25 Points)

- Describe your performance history administering grants or cooperative agreements for EPA, other Federal agencies, and/or state/local/tribal regulatory agencies; provide contact information so that the evaluation panel members can obtain additional information as necessary.
- You must also demonstrate satisfactory past performance conducting research; you may include evaluation results from previous projects, as well as letters of commendation.

4. Leveraging Other Resources (5 Points)

• Although EPA does not require cost sharing for CERCLA section 311(c) research proposals submitted in response to a solicitation, describe any plans you have to obtain additional financial or in-kind support for your efforts in performing this research.

Pre-application Assistance: EPA will offer pre-application assistance by answering all questions posted on the following Web site: *http://clu-in.org/fracrock/proposal.* All questions and answers will be posted.

Terms and Reporting: Grants will include programmatic and administrative terms and conditions. These terms and conditions will describe what is expected from the grant recipient.

The grantee will be required to submit quarterly progress reports. The grantee should only report on activities funded (in whole or in part) via the grant. The narrative should include descriptions of all action items resulting from meetings, site visits, and other activities, as well as milestones achieved and any challenges encountered. The reports should include lists of action items and corresponding milestone dates (*e.g.*, a toolkit to be developed, a letter sent to DoD, or a meeting scheduled to address citizen concerns). In addition, all quarterly reports must be internally reviewed and approved for quality assurance purposes prior to submission. Costs incurred in complying with reporting requirements are an eligible expense under CERCLA section 311(c).

Dated: April 14, 2003.

James E. Woolford,

Director, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response.

[FR Doc. 03–9911 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 22, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0066.

Title: Application for Renewal of Instruction Television Fixed Station (ITFS) and/or Response Station(s) and Low Power Relay Station(s) License.

Form No: FCC Form 330–R.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 75.

Estimated Time Per Response: 3 hours.

Frequency of Response: Upon renewal—every 10 years.

Total Annual Burden: 225 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 330–R is used by licensees of Instruction Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. The Commission is amending the form to include the FCC Registration Number (FRN) which is approved under OMB Control Number 3060–0728. The data is used by FCC staff to ensure that the licensee continues to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station. The information submitted on channel mapping/loading will permit the Commission to verify that programming aired outside the traditional school day is, in fact, directed to legitimate educational needs.

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 151.

Estimated Time Per Response: .50–50 hours.

Frequency of Response: On occasion, one-time, and annual reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 1,193 hours.

Total Annual Cost: $140,000.

Needs and Uses: On February 5, 2003, the Commission released a Report and Order (R&O) and Notice of Proposed Rulemaking (NPRM) in IB Docket No. 01–185 and 02–364, FCC 03–15. The decisions adopted in the R&O result in new and modified information collection requirements that are necessary to facilitate the Commission's rules addressed in parts 2 and 25 of 47 CFR. The purposes of the new or modified information collections are for the Commission to license commercial satellite services in the U.S.; obtain the legal and technical information required to facilitate the integration of Ancillary Terrestrial Components (ATCs) into the MSS networks in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; and to ensure that the licensees meet the Commission's legal and technical requirements to develop and maintain MSS networks while conserving limited spectrum for other telecommunications services.

OMB Control No.: 3060–0850.

Title: Quick Form Application for Authorization in the Ship, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 175,000.

Estimated Time Per Response: .44 hours.

Frequency of Response: On occasion, every five and ten years reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 77,000 hours.

Total Annual Cost: $2,538,000.

Needs and Uses: The FCC Form 605 is a multi-purpose form used to apply for an authorization to operate radio stations and perform a variety of other miscellaneous tasks in the Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services. The form is being revised to incorporate additional data fields in accordance with the recommendation in International Maritime Organization (IMO) Assembly Resolution A.887(21) submitted by the National GMDSS Implementation Task Force (charted by the United States Coast Guard); to change certain certification statements into questions giving applicants the option to clarify if a license is required; and to clarify existing instructions for the general public. The Commission uses the information on the form to determine whether the applicant is legally, technically, and financially qualified to obtain a license. Information on the form will also be used to update the database and to provide for proper use of the frequency spectrum as well as enforcement purposes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9827 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 9, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0483.

Title: Section 73.687, Transmission System Requirements.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6.

Estimated time per response: 1.0 hours.

Total annual burden: 6 hours.

Total annual costs: $0.

Needs and Uses: 47 CFR 73.687(e)(3) requires TV broadcast stations operating on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. FCC uses the data to ensure proper precautions have been taken to protect land mobile stations from interference. It will also both increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9829 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–54–A (Auction No. 54); DA 03–1128]

Closed Broadcast Auction Scheduled for July 23, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of construction permits for Auction No. 54 scheduled to begin on July 23, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before April 25, 2003 and reply comments are due on or before May 2, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction54@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* Kenneth Burnley, Legal Branch at (202) 418–0660, Lyle Ishida, Operations Branch at (202) 418–0660 or Linda Sanderson, Operations Branch at (717) 338–2888. *Audio Division:* Lisa Scanlan at (202) 418–2700. *Video Division:* Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 54 Comment Public Notice* released on April 11, 2003. The complete text of the *Auction No. 54 Comment Public Notice*, including the attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 54 Comment Public Notice* may also be purchased from the Commission's duplicating contractor,

Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

1. By the *Auction No. 54 Comment Public Notice*, the Media Bureau (''MB'') and the Wireless Telecommunications Bureau (''WTB'') (collectively, the ''Bureaus'') announce the auction of construction permits for one full power television (TV), two low power television (LPTV), and four FM stations (Auction No. 54) scheduled to commence on July 23, 2003. A list of the locations of these stations is included as Attachment A of the *Auction No. 54 Comment Public Notice*. These new broadcast stations are the subject of pending, mutually exclusive applications for construction permits for the referenced broadcast services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), participation in Auction No. 54 will be limited to those applicants identified in Attachment A of the *Auction No. 54 Comment Public Notice*. Applicants will be eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or 346.

2. Attachment A of the *Auction No. 54 Comment Public Notice* sets forth all mutually exclusive applicant groups (''MX Groups'') on a service-by-service basis, accompanied by their respective minimum opening bids and upfront payments. All MX Groups identified in Attachment A of the *Auction No. 54 Comment Public Notice* have been subject to competition through the opening and closing of the relevant period for filing competing applications, either through two-step cut-off list procedures or through an application filing window. All applications within an identified MX Group are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 54 Comment Public Notice*.

3. The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' The Bureaus therefore seek comment on the following issues relating to Auction No. 54.

II. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureaus propose to award all construction permits included in Auction No. 54 in a simultaneous multiple round auction. This methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureaus seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

5. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 54, the Bureaus propose to make the upfront payments equal to the minimum opening bids, which, as described in section III.B, are established based on various factors related to the efficiency of the auction and the potential value of the spectrum. The specific upfront payment for each construction permit is set forth in Attachment A of the *Auction No. 54 Comment Public Notice*. The Bureaus seek comment on this proposal.

6. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's ''maximum initial eligibility.'' Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 54 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder may place bids on multiple construction permits, if those construction permits were selected on its previously filed FCC Form 301 or 346, as long as the total number of bidding units associated with those construction permits does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that permit. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureaus seek comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate.

8. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. A bidder's activity will be the sum of the bidding units associated with the construction permit upon which it places a bid during the current round, or the construction permit upon which it is the standing high bidder. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, possibly eliminating it from the auction. The Bureaus seek comment on this proposal.

D. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

10. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding

round in which a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers remaining; or (ii) bidders eligible to bid on more than one construction permit override the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder that is eligible to bid on only one construction permit has no activity rule waivers available, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one construction permit has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

11. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the ''reduce eligibility'' function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

13. The Bureaus propose that each bidder in Auction No. 54 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 54, the Bureaus propose that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

15. The Commission will conduct Auction No. 54 over the Internet. Telephonic Bidding will also be available, and the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection will be provided in the public notice announcing details of auction procedures.

16. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will also be included in the qualified bidders public notice.

17. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureaus seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

19. In light of the Balanced Budget Act's requirements, the Bureaus propose to establish minimum opening bids for Auction No. 54. For Auction No. 54, the proposed minimum opening bid prices were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 54 is set forth in Attachment A of the *Auction No. 54 Comment Public Notice.* Comment is sought on this proposal.

20. If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

21. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid for that permit will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a construction permit, the minimum acceptable bid for that permit will be equal to the standing high bid plus the bid increment.

22. Once there is a standing high bid on the construction permit, the FCC Automated Auction System will

calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

23. For Auction No. 54, the Bureaus propose to use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10). The Bureaus will round the result using our standard rounding procedure for minimum acceptable bid calculations: results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

24. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if they determine the circumstances so dictate. The Bureaus seek comment on these proposals.

25. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the percentage increment, rounded, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment)[rounded]—(minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

26. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus seek comment on these proposals.

D. High Bids

27. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' A ''standing high bid'' will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

28. In the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids), the Bureaus propose to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the construction permit.

E. Information Regarding Bid Withdrawal and Bid Removal

29. For Auction No. 54, the Bureaus propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal procedure.

30. In the *Part 1 Third Report and Order,* 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 54, however, aggregation of construction permits will not be possible because of the pre-established MX Groups. Accordingly, for this auction, the Bureaus propose that bidders not be permitted to withdraw bids in any round. The Bureaus seek comment on this proposal.

F. Stopping Rule

31. The Bureaus have the discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 54, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain open until bidding closes simultaneously on all construction permits.

32. Bidding will close simultaneously on all construction permits after the first round in which no new acceptable bids or proactive waivers are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

33. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 54:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds.

34. The Bureaus propose to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example,

increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

IV. Due Diligence

35. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

36. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 are strongly encouraged to continue such research during the auction.

37. Potential bidders for the new television facility should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order,* 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the *Class A Report and Order,* the winning bidder in Auction No. 54, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television station proposed in this auction. Information about the identity and location of Class A television stations is available from the Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mb)* and on the Media Bureau's Class A television web page: *http://www.fcc.gov/mb/video/files/classa.html.*

38. Potential bidders for the new television facility are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

V. Conclusion

39. Comments are due on or before April 25, 2003, and reply comments are due on or before May 2, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureaus require that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction54@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 54 Comments. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

40. In addition, the Bureaus request that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

41. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–10000 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–10; FCC 03–80]

Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization To Provide In-Region, InterLATA Service in Nevada

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., (Nevada Bell) for authority to enter the interLATA telecommunications market in Nevada. The Commission grants Nevada Bell's application based on its conclusion that it has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Arluk, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1471 or via the Internet at *parluk@fcc.gov.* The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–10, FCC 03–80, adopted April 14, 2003, and released April 14, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/*

Wireline_Competition/in-region_applications.

Synopsis of the Order

1. *History of the Application.* On January 14, 2003, Nevada Bell filed an application pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Nevada.

2. *The State Commission's Evaluation.* The Nevada Public Utilities Commission (Nevada Commission), following an extensive review process, advised the Commission that Nevada Bell has taken the statutorily required steps to open its local markets to competition. Consequently, the Nevada Commission recommended that the Commission approve Nevada Bell's in-region, interLATA entry in their evaluation and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation on February 21, 2003, recommending approval of the Nevada Bell application. The Department of Justice concludes that opportunities are available for competitive carriers to serve business customers, and also concludes that Nevada Bell has fulfilled its obligations to open its markets to residential competition. Accordingly, the Department of Justice recommends approval of Nevada Bell's application for section 271 authority in Nevada.

Primary Issues in Dispute

4. *Complete-As-Filed Waiver.* The Commission's ''complete-as-filed'' requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. The Commission waives the complete-as-filed requirement pursuant to Nevada Bell's request to consider its late-filed Track A evidence. The Applicant submitted additional evidence to respond quickly and positively to concerns raised in the record as to whether Cricket Communications' broadband Personal Communications Service (PCS) offering satisfied the requirements of Track A. Because the evidence was filed on day 31, the Bureau had sufficient time to place the evidence on public notice and request comments specific to the evidence submitted. Under these circumstances, the Commission believes that consideration of Nevada Bell's additional evidence better serves the Commission's interest in ensuring a fair and orderly 271 process than restarting the 90-day clock, and that a grant of this waiver will serve the public interest.

5. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Nevada Bell demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Nevada. The record shows that Nevada Bell relies on interconnection agreements with Advanced Telecom Group, WorldCom, and Cricket Communications in support of this showing. The Commission finds that Advanced Telecom Group and WorldCom each serve more than a de minimis number of business end users predominantly over their own facilities and represent ''actual commercial alternatives'' to Nevada Bell for business telephone exchange services. The Commission further finds that, Cricket Communications, a PCS provider, serves more than a de minimis number of residential users over its own facilities and, for purposes of section 271 compliance, represents an actual commercial alternative to Nevada Bell for residential telephone exchange services.

6. First, the Commission determines that Cricket Communications' residential broadband PCS offering in Nevada is a ''telephone exchange service'' for purposes of Track A. The Commission further concludes that the evidence submitted by Nevada Bell adequately demonstrates that more than a de minimis number of Cricket customers use their service in lieu of wireline telephone service. The evidence shows that Cricket's marketing efforts stress that its product is a substitute for residential local telephone service. In addition, the Commission concludes that Nevada Bell's survey also demonstrates that Cricket customers use Cricket service in lieu of wireline telephone service. The Commission finds that the survey was random, and contains statistical analysis of sufficient quality to allow the Commission to rely on it for the purpose of showing compliance with Track A.

7. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Nevada Bell has provided ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2.

8. *Pricing of Unbundled Network Elements.* Based on the record, the Commission finds that Nevada Bell's UNE rates in Nevada are just, reasonable and nondiscriminatory as required by section 251(d)(1). The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either ''basic TELRIC principles are violated or the state commission makes clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.'' The Nevada Commission conducted extensive pricing proceedings to establish wholesale rates for UNEs. It approved recurring rates by using a Nevada specific version of the HAI model advocated by AT&T. Competitive LECs agreed to the vast majority of the nonrecurring rates. The Nevada Commission concluded that Nevada Bell's UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and satisfy the requirements of checklist item two. No party alleges that Nevada Bell's rates are inconsistent with TELRIC, or that the Nevada Commission committed TELRIC errors. Based on this record, the Commission finds that Nevada Bell has met its burden to show that its prices for UNEs satisfy the statutory mandate.

9. *Operations Support Systems (OSS).* Based on the record, the Commission finds that Nevada Bell provides ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2. The Commission further finds that Nevada Bell provides persuasive evidence that the OSS in California are substantially the same as the OSS in Nevada and, therefore, evidence concerning the OSS in California is relevant and should be considered in our evaluation of the OSS in Nevada. Accordingly, when volumes in Nevada are too low to yield meaningful information concerning Nevada Bell's compliance with the competitive checklist, the Commission examines data reflecting Pacific Bell's performance in California.

10. Pursuant to its analysis, the Commission finds that Nevada Bell provides non-discriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Nevada Bell regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering,

provisioning, maintenance and repair, and billing, as well as change management), Nevada Bell provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Nevada Bell does or, if no appropriate retail analogue exists within Nevada Bell's systems, in a manner that permits competitors a meaningful opportunity to compete. In addition, regarding specific areas where the Commission identifies issues with Nevada Bell's or Pacific Bell's OSS performance, these problems are not sufficient to warrant a finding of checklist noncompliance.

Other Checklist Items

11. *Checklist Item 4—Unbundled Local Loops.* Based on the evidence in the record, the Commission concludes that Nevada Bell provides unbundled local loops in accordance with the requirements of section 271 and our rules. The Commission also notes that no commenter challenges Nevada Bell's showing on this checklist item or the California evidence that it relies upon. The Commission's conclusion is based on Nevada Bell's performance (and Pacific Bell's performance in California where Nevada volumes are low) for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Nevada Bell's processes for line sharing and line splitting.

12. *Checklist Item 1—Interconnection.* Based on the Commission's review of the record, it concludes that Nevada Bell complies with the requirements of checklist item 1. In reaching this conclusion, the Commission examined Nevada Bell's performance with respect to collocation and interconnection trunks, as the Commission has done in prior section 271 proceedings. For the one performance measure that the Commission noted that Nevada Bell failed four of the five-month data period, the failures were not sufficient to warrant a finding of checklist noncompliance.

13. *Remaining Checklist Items (3, 5–14).* In addition to showing that it is in compliance with the requirements discussed above, an application under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (local switching unbundled from transport), item 7 (911/E911 access and directory assistance/operator services), item 8 (white pages directory listings), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, the Commission concludes that Nevada Bell demonstrates that it is in compliance with these checklist items in Nevada. It notes that no party objects to Nevada Bell's compliance with these checklist items.

14. *Section 272 Compliance.* Based on the record, the Commission concludes that Nevada Bell has demonstrated that it will comply with the requirements of section 272. Significantly, Nevada Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Nevada as it does in California.

15. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Nevada today are open to competition. The Commission further finds that the record confirms our view, as noted in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

16. *Section 271(d)(6) Enforcement Authority.* Working with the Nevada Commission, the Commission intends to closely monitor Nevada Bell's post-approval compliance to ensure that Nevada Bell continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Nevada.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9825 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1089]

Audit of Operational Status of Certain 220–222 MHz Band Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (Bureau) announces a license audit of the operational status of certain site-specific licenses operating in three commercial radio services in the 220–222 MHz band. To prepare for the audit, the Bureau is encouraging licensees to verify their mailing addresses on record for each license held and, where appropriate, update the information. In addition, the Bureau is asking each licensee to ensure it has registered with the Commission Registration System (CORES) to receive its FCC Registration Number (FRN) and has associated with the FRN with each license held. The purpose of the audit is to promote intensive use of the spectrum in 220 MHz.

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Commercial Wireless Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice*, DA 03–1089, released on April 9, 2003. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The Federal Communications Commission's (FCC) Wireless Telecommunications Bureau (Bureau) will be conducting a license audit of the operational status of certain licenses operating in the 220–222 MHz (220 MHz) band in the following radio services: ''QT''—non-nationwide 5-channel trunked systems, ''QD''—non-nationwide data, and ''QO''—non-nationwide other. Every licensee in these radio services must respond to the audit letter and certify that its authorized station(s) has not discontinued operations for one year or more. The Bureau is performing the audit to promote intensive use of the radio spectrum by updating and increasing the accuracy of the Commission's licensing database.

2. To prepare for the audit, the Bureau strongly encourages licensees in these

three radio services to verify the mailing address for each license held prior to May 9, 2003. Licensees can verify the accuracy of the Commission's information by accessing the *License Search* function in the Universal Licensing System (ULS) at *http://wireless.fcc.gov/uls*. If the information is incorrect, the licensee should use ULS to electronically file an *Administrative Update* application.

3. Another important step a licensee should take to prepare for the audit is to ensure that it has registered in CORES, received an FRN, and associated the FRN with all licenses held. This should be done by May 9, 2003.

4. The Bureau will send letters to all licensees operating in the QT, QD, and QO radio services inquiring about the operational status of each license held. The letters will be mailed during the week of May 12, 2003. Each letter will include the call signs of the licensee's authorizations involved in this audit and will be directed to each licensee at its address of record. A licensee will receive only one audit letter if the licensee has, by May 9, 2003, verified the address is listed correctly in ULS, obtained its FRN, and associated its call signs with the FRN. If the licensee has not performed these activities by May 9, 2003, the Bureau will attempt to include all of a licensee's call signs subject to this audit in one letter, but may issue more than one letter for an entity due to slight variations in licensee name or address in the Commission's licensing records. If a licensee receives multiple letters, the licensee must respond to each letter in order to account for all its call signs that are part of this audit. If a licensee holds authorizations in one of these radio services and does not receive an audit letter, the licensee may still be required to respond to the audit. In order to determine if a particular license is a part of the audit, licensees should use Audit Search at *http://wireless.fcc.gov/licensing/audits/220* after the audit letters have been mailed (scheduled for the week of May 12, 2003). If the search shows an audit letter was mailed, the licensee is required to respond to the audit using the audit reference number. For instructions on how to proceed in this instance, licensees can call the Commission at 717–338–2888 or 888–CALLFCC (888–225–5322) and select option 2.

5. A response to the audit letter is mandatory. The process for responding to the audit and the internet site will be included in the audit letter. Each licensee is required to submit its response electronically within thirty (30) calendar days of the date on the audit letter. Failure to provide a timely response may result in the Commission presuming that the station has been non-operational for one year or more, and thus the license may be presumed to have automatically cancelled. Failure to provide a timely response may also result in an enforcement action, including monetary forfeiture, pursuant to section 503(b)(1)(B) of the Communications Act and 47 CFR 1.80(a)(2).

Federal Communications Commission.

William W. Kunze,

Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–9828 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01—M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–785]

Media Bureau Implements New Equal Employment Opportunity Forms, Mandatory Electronic Filing of FCC Form 396–A

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the mandatory electronic filing of the FCC broadcast Equal Employment Opportunity Form 396–A. The Commission suspended the previous version of this form and adopted the current version with a new EEO rule. Paper version of the form will not be accepted after deadline date unless accompanied by request for waiver.

FOR FURTHER INFORMATION CONTACT: Roy Boyce, Policy Division, Media Bureau, (202) 418–1450.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice (''*PN*''), DA 03–785, adopted and released March 18, 2003. The complete text of this *PN* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Synopsis of Public Notice

1. By this *PN* the Media Bureau announces mandatory electronic filing for FCC Form 396–A, Broadcast Equal Employment Opportunity Model Program Report (February, 2003 Edition).

2. Mandatory electronic filing commenced on March 10, 2003. Paper versions of these forms will not be accepted for filing after March 10, 2003, unless accompanied by an appropriate request for waiver of the electronic filing requirement. Users can access the electronic filing system *via* the Internet from the Media Bureau's Web site at: *http://www.fcc.gov/mb.*

3. Pursuant to the *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes* (63 FR 70040, December 18, 1998), Report and Order (''*R&O*''), mandatory electronic filing was to commence six-months after a given form was made available for electronic use. The then Mass Media Bureau made FCC Form 396–A available for electronic use more than six months ago. The form was made available in connection with a broadcast Equal Employment Opportunity (''EEO'') rule adopted in February 2000 that was subsequently vacated as a result of a Court order. As a result of the Court's action, the Commission suspended the prior version of Form 396–A in January, 2001. The current version was adopted by the 2nd *R&O* (68 FR 00670, January 7, 2003), and Third Notice of Proposed Rule Making (3rd *NPRM*), (67 FR 77374, December 17, 2002), in MM Docket No. 98–204, which adopted a new broadcast EEO rule. It is substantially similar to the version adopted in February 2000 and is used in conjunction with other forms (*e.g.*, FCC Forms 301, 314, 315, and 340) that are already subject to mandatory electronic filing.

4. In the Streamlining *R&O*, which announced the Commission's electronic filing requirement, the Commission recognized the need for limited waivers of this requirement in light of the ''burden that electronic filing could place upon some licensees who are seeking to serve the public interest, with limited resources, and succeed in a highly competitive local environment.'' Such waivers will not be routinely granted and the applicant must plead with particularity the facts and circumstances warranting relief.

5. Instructions for use of the electronic filing system are available in the CDBS User's Guide which can be accessed from the electronic filing Web site. Special attention should be given to the details of the applicant account registration function, form filing function, and the fee form handling procedures, if a fee is required. Failure to follow the procedures in the User's Guide may result in an application

being dismissed, returned, or not considered as officially filed.

6. Internet access to the CDBS public access system at the Commission's Web site requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later.

7. For technical assistance using the system or to report problems, please contact the CDBS Help Desk at (202) 418–2MMB. To request additional information concerning specific broadcast applications, please call (202) 418–2700 (radio forms) or (202) 418–1600 (television forms).

8. The (2nd *R&O*) also adopted three other EEO forms—FCC Forms 396 (Broadcast EEO Program Report), 396–C (Multi-Channel Video Program Distributor EEO Program Annual Report), and 397 (Broadcast Mid-Term Report). These forms have been approved by the Office of Management and Budget (68 FR 10015, March 3, 2003) and were effective March 10, 2003. They are, however, not yet available for electronic filing because there is no immediate need to file them. An announcement will be made when they are available.

FCC Notice Required by the Paperwork Reduction Act

9. On February 14, 2003, the Commission received approval for the information collection contained herein pursuant to the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13). The OMB Control Number for the FCC Form 396–A is 3060–0120. The annual reporting burdens for this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data and completing and reviewing the collection of information, are estimated to be: 5,000 respondents, 1 hour per response per annum, for a total annual burden of 5000 hours; there are no annual costs. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number: 3060–0120, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *lesmith@fcc.gov* or call (202) 418–0217.

10. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. The OMB Control Number for this collection is 3060–0120. The forgoing Notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9826 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act; Meeting

TIME AND DATE: 10 a.m.—May 6, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–10041 Filed 4–18–03; 2:25 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Centra Ventures, Inc., St. Cloud, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Falcon National Bank, Foley, Minnesota, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank of the San Juans Bancorporation, Durango, Colorado; to become a bank holding company by acquiring up to 100 percent of the voting shares of Bank of the San Juans, Durango, Colorado.

Board of Governors of the Federal Reserve System, April 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9834 Filed 4–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

Government in the Sunshine; Meeting

TIME AND DATE: 11 a.m., Monday, April 28, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10073 Filed 4–18–03; 3:50 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC intends to conduct consumer research to examine: (1) How consumers search for and choose mortgages; (2) how consumers use and understand information about mortgages, including required disclosures; and (3) whether more effective disclosures are feasible. This research will be conducted to further the FTC's mission of protecting consumers and competition in the mortgage market. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 1600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to; *MortgageDS@ftc.gov* as; prescribed below. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Mortgage Disclosure Study—FTC File No. P025505.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Janis K. Pappalardo, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3387; e-mail *ipappalardo@ftc.gov.*

SUPPLEMENTARY INFORMATION: Recent deceptive lending cases at the FTC and elsewhere suggests that consumers who do not understand the terms of their mortgages can be subject to deception, that deception can occur even when consumers receive the disclosures required by the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.* (TILA), and that deception about mortgage terms can result in substantial consumer injury.

Despite a long history of mortgage disclosure requirements and many new legislative and regulatory proposals regarding disclosures, little empirical evidence exists to document the effect of current disclosures on consumer understanding of mortgage terms, consumer mortgage shopping behavior, or consumer mortgage choice.

The FTC proposes a research program designed to learn more about how consumers search for mortgages, what consumers understand or misunderstand about mortgage agreements, and how changes in the disclosure process might improve consumer understanding, consumer mortgage shopping, and consumers' ability to avoid deception. The research also may assist the targeting of the FTC's enforcement actions by identifying areas most prone to consumer misunderstanding and lender deception and may help refine disclosure remedies imposed on deceptive lenders.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections 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 collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the PRA (44 U.S.C. chapter 35, as amended).

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *MortgageDS@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

1. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct this study in two phases: (1) A qualitative research phase; and (2) a quantitative research phase. The qualitative research phase will include focus groups and in-depth interviews. The quantitative research will include copy tests of current and alternative disclosures. Results from the first phase will be used to refine the design of the second phase.

The project will begin with 2 focus groups. Each group will include 8–10 consumers who completed a mortgage transaction within the previous year. One group will be comprised of subprime borrowers. The second group will be comprised of prime borrowers. The purpose of the focus groups is to examine how well consumers understand mortgage terms, how consumers shop for mortgages, if consumers recognize features of a mortgage offer that may significantly increase the cost of the loan, and whether consumers use and understand required disclosures. Subprime and prime borrowers will be examined separately to examine possible differences between these groups of consumers.

The focus group research will be followed by a series of approximately 36 individual, in-depth interviews with a different group of borrowers. Respondents will have completed a mortgage transaction within the previous two months and will be asked to bring their loan documents to the interview. The purpose of the interviews is to gain in-depth knowledge of the extent to which consumers use, search for, and understand mortgage information—including information about their own recent loans.

The last phase of the study will consist of copy test interviews of 800 consumers who entered into a mortgage transaction within the previous year. If possible, approximately half of the respondents will be subprime borrowers and half will be prime borrowers. The

purpose of the copy tests will be to examine whether alternative disclosures can improve consumer understanding of mortgage terms and help to reduce potential deception about mortgage offers. The findings from the focus groups and interviews will be used in developing the alternative disclosures used in the copy tests.

All information will be collected on a voluntary basis and consumers will receive usual and customary compensation for their participation. For the qualitative research the FTC has contracted with a consumer research firm to locate eligible borrowers, recruit respondents, moderate the focus groups, conduct the interviews, and write a report of the findings. For the quantitative research the FTC has also contracted with a consumer research firm to locate eligible borrowers and recruit respondents as well as to conduct the copy tests and write a brief methodological report. The results will assist the FTC in determining how required disclosures and other information affects consumers' ability to understand the cost and features of mortgages. This understanding will further the FTC's mission of protecting consumers and competition in this important market.

2. Estimated Hours Burden

Qualitative Research

The contractor will recruit 12 consumers for each focus group, with the expectation that each group will be comprised of 8–10 participants. Each focus group will take two hours. Thus, the focus group research will impose a burden of up to 40 hours (2 groups × 10 participants per group × 2 hours per participant). Approximately 36-one-hour long, in-depth interviews will be conducted. If all respondents are single decision makers, this would amount to a 36-hour burden. However, some of the interviews may include couples. Assuming that half of the interviews include couples (the upper bound offered by the contractor), the hours burden for the in-depth interviews would increase to 54 hours ((18 × 2 hours) + (18 × 1 hour)). The cumulative burden for the qualitative research will range from 76 hours to 94 hours.

Quantitative Research

Approximately 800 consumers who engaged in a mortgage transaction during the previous year will participate in the quantitative phase of the research. Each copy test interview will take roughly 20–30 minutes. The estimated hours burden for the quantitative research ranges from 267 hours (800 respondents × ⅓ hour per respondent) to 400 hours (800 respondents × ½ hour per respondent).

Total

The total estimated hours burden for both phases of the study ranges from 343 hours (76 hours + 267 hours) to 494 hours (94 hours + 400 hours).

3. Estimated Cost Burden

Participants will be compensated financially for their participation, as recommended and budgeted for by the contractor. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 03–9852 Filed 4–21–03; 8:45 am]

BILLING CODE 0750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—03/24/2003			
20030458	Fiserv, Inc	Bruce Christensen	Precision Computer Systems, Inc.
20030462	General Atlantic Partners 76, L.P	SSA Investor, LLC	SSA Global Technologies, Inc.
20030469	Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A.	Southeast Timber, Inc	Southeast Timber, Inc.
20030470	International Paper Company	Southeast Timber, Inc	Southeast Timber, Inc.
Transactions Granted Early Termination—03/25/2003			
20030421	Johnson & Johnson	Grunenthal Pharma GmbH & Co. KG	Gruenthal GmbH.
20030448	Philadelphia Suburban Corporation	DQE, Inc	AcquaSource Development Company. Aqua Source Operations, Inc. AquaSource Utility, Inc. The Reynolds Group, Inc.
Transactions Granted Early Termination—03/26/2003			
20021081	A. Jerrold Perenchio	Hispanic Broadcasting Corporation	Hispanic Broadcasting Corporation. Univision Communications, Inc.
20030419	Behrman Capital III, L.P	ILC Industries, Inc	ILC Industries, Inc.
20030457	Artal Group S.A	Florine Mark	The WW Group, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—03/27/2003			
20030375	L–3 Communications Holdings, Inc	Goodrich Corporation	Goodrich Aerospace Component Overhaul & Repair, Inc. Goodrich Avionics Systems, Inc. Goodrich FlightSystems, Inc.
Transactions Granted Early Termination—03/28/2003			
20030484	The Riverside Company	VS&A Communications Partners II, L.P	ExpoExchange, LLC.
20030488	MidMark Equity Partners II, L.P	Davis Industries, Inc	Davis Industries, Inc.
Transactions Granted Early Termination—04/01/2003			
20030471	Perry Ellis International, Inc	Salant Corporation	Salant Corporation.
20030475	Citigroup Inc	Worldspan, L.P	Worldspan, L.P
Transactions Granted Early Termination—04/02/2003			
20030452	Taylor & Francis Group plc	Information Holdings Inc	CRC Press (UK) LLC. CRC Press LLC. The Parthenon Publishing Group Inc.
20030459	Societe Wallonne de Gestion et de Participations, S.A.	Duferco Participation Holding Limited	Duferco U.S. Investment Corp.
20030464	Johnson & Johnson	Scios Inc	Scios Inc.
20030472	CBRE Holding, Inc	Insignia Financial Group, Inc	Insignia Financial Group, Inc.
20030476	Liz Claiborne, Inc	Pamela Skaist-Levy and Jeffrey Levy	Travis Jeans, Inc.
20030480	Blum Strategic Partners, L.P	CBRE Holding, Inc	CBRE Holding, Inc.
20030481	Blum Strategic Partners II, L.P	CBRE Holding, Inc	CBRE Holding, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–9853 Filed 4–21–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0192]

Pfizer Inc. and Pharmacia Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 14, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jex, FTC, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 14, 2003), on the World Wide Web, at ''http://www.ftc.gov/os/2003/04/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Pfizer Inc. (''Pfizer'') and Pharmacia Corporation (''Pharmacia'') which is designed to remedy the anticompetitive effects of the acquisition of Pharmacia by Pfizer. Under the terms of the proposed

Consent Agreement, the companies would be required to: (1) divest all of Pfizer's worldwide rights and assets relating to its overactive bladder drug, darifenacin, to Novartis AG; (2) divest Pfizer's worldwide rights and assets relating to its combination hormone replacement therapy, femhrt, to Galen Holdings plc; (3) return to Nastech Pharmaceutical Company, Inc. all rights to make, use, and sell Nastech's intranasal apomorphine product (''IN APO'') for the treatment of erectile dysfunction; (4) divest all of Pharmacia's rights and assets in the field of sexual dysfunction relating to its D2 dopamine receptor agonist, PNU–142,774, to Neurocrine Biosciences, Inc.; (5) renegotiate a 1999 license and supply agreement between Pharmacia and Novartis for Deramaxx, Novartis's canine arthritis drug, to enable Novartis to operate as an independent competitor, rather than a partner, of the merged entity; (6) divest all of Pfizer's U.S. rights and assets relating to its lactating cow and dry cow mastitis products to Schering-Plough Corporation; (7) divest all of Pharmacia's worldwide rights and assets relating to its over-the-counter hydrocortisone-based cream, Cortaid, to Johnson & Johnson (''J&J''); (8) divest all of Pfizer's U.S. and Puerto Rican rights and assets relating to its over-the-counter motion sickness product, Bonine, to Insight Pharmaceuticals Corporation; and (9) divest all of Pfizer's worldwide rights and assets relating to its Halls over-the-counter cough drop business to Cadbury Schweppes plc.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger dated July 13, 2002, between Pfizer and Pharmacia, Pfizer proposes to acquire 100 percent of the issued and outstanding shares of Pharmacia in a stock-for-stock transaction valued at approximately $60 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the markets for: (1) extended release treatments for overactive bladder; (2) combination hormone replacement therapy products; (3) treatments for erectile dysfunction; (4) treatments for canine arthritis; (5) treatments for lactating cow mastitis; (6) treatments for dry cow mastitis; (7) over-the-counter hydrocortisone creams and ointments; (8) over-the-counter motion sickness medications; and (9) over-the-counter cough drops. The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the merger in each of these markets.

Extended Release Treatments for Overactive Bladder

Extended release drugs for the treatment of overactive bladder (''OAB'') are used by over 2.4 million Americans. Extended release OAB drugs help to reduce or eliminate the three primary symptoms of OAB frequency, urgency, and urge incontinence to enable OAB patients to live normal, active lives. Extended release products, dosed at once or twice-a-day, offer a more convenient dosing schedule and fewer side effects than older, generic products that must be taken three-times-a-day. Annual sales of extended release OAB products total $760 million in the United States, and the market is growing rapidly.

The U.S. market for extended release OAB products is a duopoly. Pharmacia markets Detrol and Detrol LA, twice and once-a-day products, respectively. J&J markets Ditropan XL, the only other extended release OAB product available in the United States. Pfizer is seeking approval from the Food and Drug Administration (''FDA'') to market its own extended release product, darifenacin, and is one of the two best-positioned firms seeking to enter the market.

Entry into the market for extended release OAB products is difficult, time-consuming, and costly. De novo entry is estimated to take at least eight years and cost upwards of $375 million. Pfizer, along with one other company, Yamanouchi Pharma America (''Yamanouchi''), are the only two firms well-positioned to enter the market within the next two years. Other firms that have undertaken efforts to develop an extended release OAB product are well behind Pfizer and Yamanouchi.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for extended release OAB products by eliminating potential competition between Pfizer and Pharmacia. With only two firms currently marketing extended release OAB products to customers in this market (Pharmacia and J&J), the entry of Pfizer and Yamanouchi would likely increase competition and reduce prices for extended release OAB products. Accordingly, allowing Pfizer to control both the Pharmacia extended release OAB products and its own competing product would reduce the number of rivals in the future from four to three and likely force customers to pay higher prices for extended release OAB products. The proposed acquisition would also reduce competition in the research and development of extended release OAB products.

The proposed Consent Agreement therefore requires the parties to divest Pfizer's extended release OAB product, darifenacin, to Novartis AG no later than ten business days after the Pharmacia acquisition is consummated. Novartis is well-positioned to continue Pfizer's development efforts and poses no separate competitive concerns as an acquirer of the darifenacin assets. If the Commission determines that Novartis is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the darifenacin assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the darifenacin assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture is successful. Pfizer and Pharmacia are required to provide transitional services to the darifenacin buyer relating to regulatory approvals and manufacturing of darifenacin. Pfizer is required to continue contract manufacturing darifenacin until Novartis obtains the FDA approvals necessary to manufacture darifenacin independently from Pfizer. The proposed Consent Agreement also requires Pfizer and Pharmacia to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. For a period of 18 months from the date the assets are divested, Pfizer and Pharmacia will provide the darifenacin buyer an opportunity to enter into employment contracts with individuals who have experience relating to darifenacin. Pfizer and Pharmacia are also required to provide incentives to these individuals to accept employment with the darifenacin acquirer. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirer of the darifenacin assets who have responsibility related to darifenacin. Finally, Pfizer and Pharmacia must take steps to maintain

the confidentiality of certain information related to darifenacin.

Combination Hormone Replacement Therapies

Combination hormone replacement therapies (''HRT''), which consist of both estrogen and progestin, are used by women with intact uteri to control moderate to severe menopausal symptoms. Although recent safety concerns have been raised by the National Institutes of Health (''NIH'') about long term use of HRT, there are no effective substitute products available to control menopausal symptoms. Total sales of combination HRT products in the United States in 2002 were approximately $807 million.

The market for combination HRT is highly concentrated. There are three significant competitors in the combination HRT market: Wyeth, Pfizer, and Pharmacia. Post-acquisition, the top two competitors Wyeth and Pfizer would control almost 94 percent of the combination HRT market.

Entry into the market for combination HRT products is difficult, time-consuming, and costly. Additionally, because of the safety concerns raised by the NIH's Women's Health Initiative study, a new entrant into the combination HRT market may need to meet higher standards to receive FDA approval. The expected entry of generic competitors for combination HRT products is more than two years away.

The proposed acquisition would further concentrate the market for combination HRT products and eliminate competition between Pfizer and Pharmacia. The loss of Pharmacia as an independent competitor in the combination HRT market would likely result in higher prices and fewer product choices for consumers.

The proposed Consent Agreement preserves competition in the combination HRT market by requiring the parties to divest Pfizer's combination HRT product, femhrt, to Galen Holdings plc no later than ten business days after the Pharmacia acquisition is consummated. Galen is well-positioned to market femhrt because it is a company that specializes in marketing women's health products, including an oral contraceptive and an estrogen-only HRT product. However, if the Commission determines that Galen is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the femhrt assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the femhrt assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture of femhrt is successful by requiring the parties to divest all of Pfizer's rights and assets relating to femhrt, including all historical research and development data, sales and marketing materials, and intellectual property. For a period of six months from the date the assets are divested, Pfizer and Pharmacia will provide the femhrt buyer an opportunity to enter into employment contracts with individuals who have experience relating to femhrt. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirer of the femhrt assets who have responsibility related to femhrt. Pfizer and Pharmacia must also take steps to maintain the confidentiality of certain information related to femhrt. Finally, Pfizer would continue to package femhrt at its Puerto Rico facility until another packager is brought online by the acquirer of the femhrt assets.

Treatments for Erectile Dysfunction

Erectile dysfunction (''ED'') affects 30 million men in the United States and half of the male population between the ages of 40 and 70. Approximately 4 million men take prescription drugs to treat ED. The U.S. market for drugs to treat ED is valued at over $1 billion today and is expected to exceed $1.5 billion by 2005 as the population ages and as awareness of the condition increases.

Pfizer dominates the ED market with its well-known product, Viagra. Pfizer has a market share in the United States in excess of 95 percent. Pfizer also has a second-generation Viagra-like product in development for ED. Pharmacia currently has two products in clinical development for ED: IN APO and PNU–142,774.

With the exception of Pharmacia's two products in development, entry into the market for drugs to treat ED is unlikely. Pfizer owns an extensive patent portfolio which protects Viagra. Patent litigation initiated by Pfizer with the most significant potential entrants is likely to prevent entry in the next two years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for drugs to treat ED by eliminating potential competition between Pfizer and Pharmacia. Given Pfizer's position as a monopolist in the ED market, entry by Pharmacia would increase competition and reduce prices in the market. Accordingly, allowing Pfizer to acquire Pharmacia's two ED products in development would preserve Pfizer's monopoly in the ED market in the future.

The proposed Consent Agreement therefore requires Pharmacia to return all of its rights in one of its products, IN APO, to Nastech Pharmaceutical Company, Inc. and to divest all of its rights and interests in its other product, PNU–142,774, for the field of human sexual dysfunction to Neurocrine Biosciences, Inc., within ten business days after the Pharmacia acquisition is consummated. Both Nastech and Neurocrine have sufficient research and development expertise to continue development of the products that each is obtaining from Pharmacia.

The proposed Consent Agreement requires Pfizer and Pharmacia to ensure that the divestitures to Nastech and Neurocrine are successful. Pfizer and Pharmacia are required to provide Nastech and Neurocrine the opportunity to enter into employment contracts with individuals who have experience relating to IN APO or PNU–142,774. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirers of the IN APO or PNU–142,774 assets who have responsibility related to the products. Pfizer and Pharmacia must also take steps to maintain the confidentiality of certain information related to IN APO or PNU–142–774.

Treatments for Canine Arthritis

Canine arthritis affects an estimated 8.5 million of all dogs in the United States. Approximately 1.8 million arthritic dogs are treated with prescription canine arthritis drugs. Sales for prescription canine arthritis drugs in the United States in 2001 totaled approximately $81 million, and the U.S. market is expected to grow to over $110 million by the end of 2003.

The market for prescription canine arthritis drugs is highly concentrated. Pfizer markets Rimadyl, the leading product in the U.S. market that held a 70 percent market share in 2001. Wyeth, through its Fort Dodge Animal Health division, markets EtoGesic. Through a license and supply agreement with Pharmacia, Novartis launched its own canine arthritis product, Deramaxx, in February 2003.

Entry into the market of drugs to treat canine arthritis is difficult, costly, and time-consuming. Besides the safety and efficacy testing required for FDA approval of canine arthritis drugs, firms entering the market must develop palatable dosing formulations for use at home. Achieving a palatable delivery

mechanism for dogs is a difficult task and, if not done successfully, can compromise the success of a new drug.

Likely and timely entry is only possible by companies already in late stages of clinical development or awaiting regulatory approval. There are only two entities, Schering-Plough Corporation and a joint venture of Boehringer Ingelheim GmbH and Merial, that have prescription canine products approved in Europe and in late clinical development in the United States and are expected to enter in the U.S. market in the near future. Customers have stated that entry by these firms within the next year will not be sufficient to counter the anticompetitive effects posed by the acquisition of Pharmacia by Pfizer.

The proposed acquisition is likely to result in anticompetitive harm in the U.S. market for drugs to control the pain and inflammation associated with canine arthritis. Because of the license and supply agreement with Novartis, Pfizer, the leading company in the market, would have undue control over the supply of product needed by Novartis, and access to the competitively sensitive information of its competitor. As a result, Pfizer would be in a position to undermine the competitive position of one of only two competitors in the market for prescription drugs to treat canine arthritis.

The proposed Consent Agreement preserves competition in the market for prescription canine arthritis drugs by requiring Pharmacia to renegotiate its pre-existing license and supply agreement with Novartis to allow Novartis to operate as an independent competitor rather than a business partner. Specifically, the proposed Consent Agreement: (1) eliminates the control that Pfizer would have over Novartis's product; (2) restricts the type of information Pfizer would be able to obtain about Deramaxx; and (3) allows Novartis to compete with Pfizer in the development of a second generation canine arthritis product.

Treatments for Lactating Cow and Dry Cow Mastitis

Bovine mastitis, an infection of the udder of the cow, costs the U.S. dairy industry $2 billion annually. There are two different types of contagious bovine mastitis: (1) lactating cow mastitis; and (2) dry cow mastitis. Lactating cow mastitis occurs when the cow is producing milk, while dry cow mastitis occurs when the cow is not producing milk. Antibiotics used to treat lactating cow mastitis are different from those used to treat dry cow mastitis, and strict FDA regulations preclude the use of one product to treat the other type of infection. In the United States, $27 million worth of lactating cow mastitis antibiotic products and $25.5 million worth of dry cow mastitis antibiotic products are sold annually.

The U.S. market for bovine mastitis treatments is highly concentrated. There are only three significant competitors in the markets for lactating cow and dry cow mastitis antibiotics products Pharmacia, Wyeth, and Pfizer. Post-acquisition, Pfizer would account for 50 percent of the sales of lactating cow mastitis products and 55 percent of the sales of dry cow mastitis products. Wyeth would be the only other significant competitor in the markets for bovine mastitis treatments.

Entry into the markets for treatments for bovine mastitis is difficult, expensive, and time-consuming. Besides FDA approval of the drug, successful entry requires: (1) the ability to offer both lactating cow and dry cow products; (2) a dedicated veterinarian sales force experienced in selling and supporting dairy products; (3) a broad line of bovine health products other than mastitis treatments, such as parasiticides, vaccines, reproductive products, and antibiotics to treat other infections; and (4) a good reputation within the dairy community. Consequently, successful new entry into the market for bovine mastitis antibiotics treatments is not likely to occur in a timely fashion, if at all.

The proposed acquisition would further concentrate the market for antibiotics for the treatment of bovine mastitis in the United States. Post-acquisition, Pfizer and Wyeth would be the only significant suppliers. This is likely to lead to higher prices for drugs used to treat bovine mastitis.

The proposed Consent Agreement preserves competition in the market for antibiotics for the treatment of bovine mastitis by requiring Pfizer to divest all of its U.S. rights to its bovine mastitis antibiotic products to Schering-Plough Corporation no later than ten business days after the Pharmacia acquisition is consummated. Schering-Plough is well-positioned to replace Pfizer in the bovine mastitis treatment market because it is the fifth largest animal health company in the United States, has a veterinarian sales and support system, and already has established a good reputation in the dairy community. However, if the Commission determines that Schering-Plough is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest Pfizer's bovine mastitis assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the assets.

Over-the-Counter Hydrocortisone Creams and Ointments

Creams and ointments containing the active ingredient hydrocortisone are used to treat a variety of skin conditions, including chronic dry skin, seborrheic dermatitis, eczema, and psoriasis. Annual sales of over-the-counter (''OTC'') hydrocortisone creams and ointments in the United States are approximately $160 million.

The U.S. market for OTC hydrocortisone creams and ointments is highly concentrated. There are only two branded competitors in the market: (1) Pfizer, with its Cortizone brand; and (2) Pharmacia, with its Cortaid brand. Although private label OTC hydrocortisone creams and ointments also account for a significant share of the market, these products have limited competitive significance and virtually no impact on the pricing of the products sold by Pfizer and Pharmacia. Post-acquisition, Pfizer would account for 55 percent of the OTC sales of hydrocortisone creams and ointments, and would be left with no significant branded competitor in this market.

Entry into the market for OTC hydrocortisone creams and ointments is unlikely to deter or counteract the effects the proposed transaction will have on competition. A new entrant would have to invest a significant amount of time and money to achieve any meaningful competitive presence in this market. Because of the limited sales opportunities and the difficult task of convincing retailers to take shelf space away from established brands, it is unlikely that a new entrant could enter the market and achieve any significant market impact within two years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for OTC hydrocortisone creams and ointments by eliminating competition between Pfizer and Pharmacia. The loss of Pharmacia as an independent competitor in this market would likely result in higher prices for consumers.

The proposed Consent Agreement preserves competition in the market for OTC hydrocortisone creams and ointments by requiring Pharmacia to divest its Cortaid business to J&J no later than ten business days after the Pharmacia acquisition is consummated. J&J is a well-positioned purchaser because it currently markets many other well-known OTC products and has

established relationships with customers. However, if the Commission determines that J&J is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest Pharmacia's Cortaid business to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the assets.

Over-the-Counter Motion Sickness Medications

Motion sickness is an ailment that occurs when the components of the brain that gauge motion, such as the inner ear and the eyes, send conflicting messages to the brain. When this occurs, symptoms such as dizziness, headache, sweating, and vomiting can occur. OTC motion sickness medications treat this ailment by using certain antihistamines to block the conflicting messages sent to the brain. Annual sales of OTC motion sickness medications total approximately $45 million in the United States.

The U.S. market for OTC motion sickness medications is highly concentrated. Pfizer, with its Bonine product, and Pharmacia, with its Dramamine product, are the two leading suppliers in this market, with a combined market share of 77 percent. Even after several years on the market, the third leading brand name product, Marezine, has less than 5 percent of the market. The remainder of the market is accounted for by private label products that do not constrain the pricing of the branded products.

New entry into the market for OTC motion sickness medications is unlikely to be sufficient to counteract the anticompetitive effects of the proposed acquisition. The small size of the market, coupled with the significant investment needed to market and sell the products, make it unlikely that a new competitor will enter the market in the next two years.

Pfizer's proposed acquisition of Pharmacia would cause significant anticompetitive harm in the U.S. market for OTC motion sickness medications. The combined entity would account for 77 percent of all sales of OTC motion sickness medications, and the proposed acquisition is likely to lead to higher prices in this market.

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive harm in the U.S. market for OTC motion sickness medications by requiring Pfizer to divest its U.S. and Puerto Rican Bonine assets to Insight Pharmaceuticals Corporation no later than ten business days after the Pharmacia acquisition is consummated. Insight is a well-positioned purchaser of the Bonine assets because it already has a portfolio of more than fifteen OTC consumer healthcare products, including Allerest, Sucrets, Cepastat, Caldecort, Fiberall, N'Ice, and Nostrilla. Through these other brands, Insight already has significant experience in selling OTC medications and has strong relationships with drugstores, food stores, and mass merchandisers. However, if the Commission determines that Insight is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the Bonine assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the Bonine assets.

Over-the-Counter Cough Drops

Millions of people in the United States use cough drops to treat the coughing associated with colds or other ailments. Cough drops are hard, candy-like confectionary products that contain medications such as menthol or dextromethorphan. Annual sales of cough drops in the United States are about $240 million.

The OTC cough drop market is highly concentrated, with only two significant competitors with brand name products: (1) Pfizer, with its Halls brand; and (2) Pharmacia, with its Ludens brand. Private label products, once again, have little competitive significance and do not constrain the pricing of the branded products. After the acquisition, Pfizer would account for approximately 63 percent of the OTC cough drop market.

Entry into the market for the manufacture and sale of OTC cough drops is unlikely to occur. Entry requires the investment of extremely high sunk costs which would be difficult to justify given the relatively limited sales opportunities. Thus, entry is not likely to deter or counteract the effect of the proposed acquisition.

The proposed acquisition would eliminate competition between Pfizer and Pharmacia in the U.S. market for OTC cough drops. The loss of Pharmacia as an independent competitor in the OTC cough drop market is likely to lead to higher prices for consumers.

The proposed Consent Agreement effectively remedies the acquisition's anticompetitive effects in the U.S. market for OTC cough drops by requiring Pfizer to divest its Halls cough drop business to Cadbury Schweppes no later than ten business days after the Pharmacia acquisition is consummated. Cadbury is acquiring Pfizer's entire Adams Division, which markets Halls cough drops, as well as many other confectionary products. Cadbury is one of the world's leading beverage and confectionary companies and as such, is well-positioned to market the Halls brand of cough drops.

Interim Monitor

The Commission has appointed Francis J. Civille as Interim Monitor to oversee the asset transfers and to ensure Pfizer and Pharmacia's compliance with all of the provisions of the proposed Consent Agreement. Mr. Civille has over 33 years of experience in the pharmaceutical industry and is well-respected in the industry. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Pfizer and Pharmacia to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–9855 Filed 4–21–03; 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 022 3247]

Snore Formula, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jonathan Cowen or Jock Chung, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2533 or 326–2984.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 15, 2003), on the World Wide Web, at ''http://www.ftc.gov/os/2003/04/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Snore Formula, Inc., its officers Dennis H. Harris, M.D., and Ronald General, and Gerald L. ''Jerry'' Harris, also doing business as KJ Enterprises (''proposed respondents''). Proposed respondents market ''Dr. Harris' Original Snore Formula'' tablets, which are advertised to be taken by persons who snore.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that proposed respondents failed to have a reasonable basis for claims they made about Dr. Harris' Original Snore Formula tablets' efficacy in (1) preventing sleep apnea in adult and child users of the product who would otherwise develop sleep apnea, (2) treating the ''early stages'' of sleep apnea, and (3) eliminating, preventing, or significantly reducing snoring. Proposed respondents are also charged with failing to disclose or failing to disclose adequately that persons who have symptoms of sleep apnea should consult a physician because sleep apnea is a potentially life-threatening condition. Proposed respondents are further charged with making false claims that scientific testing establishes that the product can eliminate, prevent, or significantly reduce snoring in 86% of users. The complaint also alleges that Snore Formula, Inc., and its named officers provided the means and instrumentalities to others to disseminate false or deceptive claims about the product. Finally, the complaint alleges that Dr. Dennis H. Harris, M.D., misrepresented, by acting as an expert endorser for the product, that he had exercised his represented expertise in snoring treatment, in the form of an examination or testing of the product at least as extensive as an expert in the field would normally conduct.

Part I of the consent order requires that proposed respondents possess competent and reliable scientific evidence to substantiate representations that Dr. Harris' Original Snore Formula tablets or any other food, drug, device, service, or dietary supplement prevents sleep apnea in adult or child users who would otherwise develop sleep apnea; treats sleep apnea; or eliminates, prevents, or reduces snoring. It further requires that Dennis H. Harris, M.D., posses and rely upon competent and reliable scientific evidence and an actual exercise of his represented expertise to substantiate representations he makes as an expert endorser.

Part II of the order requires that, for any product or service that has not been shown to be effective in the treatment of sleep apnea, proposed respondents must affirmatively disclose, whenever they represent that a product is effective in eliminating, preventing, or reducing snoring, a warning statement about sleep apnea and the need for consultation with a physician or a specialist in sleep medicine.

Part III of the order requires scientific substantiation for any future claim about the effect of any food, drug, device, service, or dietary supplement on any disease, or about the effect of any food, drug, device, service, or dietary supplement on the structure or function of the human body, or about any other health benefit, or the safety, of any covered product or service. It further requires that Dennis H. Harris, M.D., posses and rely upon competent and reliable scientific evidence and an actual exercise of his represented expertise to substantiate representations he makes as an expert endorser.

Part IV prohibits Snore Formula, Inc., and its named officers from providing to any person or entity ''means and instrumentalities'' that contain any claim about the benefits, performance, efficacy, or safety of any food, drug, device, service, or dietary supplement, unless such claim is true and substantiated by competent and reliable scientific evidence. ''Means and instrumentalities'' is defined as any information, including but not necessarily limited to any advertising, labeling, or promotional materials, for use by distributors in their marketing or sale of Dr. Harris' Original Snore Formula or any other food, drug, device, service, or dietary supplement covered under the order.

Part V prohibits false claims about scientific support for any product or service.

Part VI requires Snore Formula, Inc., and its named officers to disseminate a notice (''Attachment A'') about the order to distributors who have purchased Dr. Harris' Original Snore Formula tablets from respondents or from one of respondents' other distributors on or after January 1, 2001. This notice

indicates that Snore Formula, Inc., has agreed to cease making challenged representations, and warns distributors that they may be terminated if they do not conform their representations to the requirements placed on Snore Formula, Inc. Part VII of the order requires dissemination of Attachment A to future distributors, and that Snore Formula, Inc., monitor their distributors, and terminate sales to distributors who make representations prohibited by the order.

The remainder of the proposed order contains standard requirements that proposed respondents maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements of the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance under the order; notify the Commission of any change in employment by the individual proposed respondents, and file one or more reports detailing their compliance with the order. Part XIV of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. 03–9854 Filed 4–21–03; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Application for Training (OMB No. 0920–0017)—Revision—The Public Health Practice Program Office (PHPPO), in conjunction with the Public Health Training, offers self-study, computer-based training, satellite broadcasts, video courses, web-casts, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The ''Application for Training'' forms are the official applications used for all training activities conducted by the CDC. The Continuing Education (CE) Program includes CDC's accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE), Certified Health Education Specialist (CHES), and Continuing Education Unit (CEU) for almost all training activities.

The estimated annualized burden is 2,548 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
National Laboratory Training Network Registration Form, Training Form 32.1	8,500	1	5/60
Registration for Training and Continuing Education, Form 36.5	20,000	1	5/60
Management for International Public Health Course Application Form	25	1	15/60
Student Information Form	5,000	1	2/60

Dated: April 16, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9858 Filed 4–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories.

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the Child Care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508), 42 U.S.C. 9858. The implementing regulations fior the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan, provides ACF and the public with a description of, and assurance about, the State's child care program. The ACF–118 is approved through February 29, 2004 making it available to States and Territories needing to submit Amendments through the end of the FY 2003 Plan Period. However, in July 2003, States and Territories will be required to submit their FY 2004–2005 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State and Territorial Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	162.57	4,552

Estimated Total Annual Burden Hours: 4,552.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L' Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: April 15, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–9832 Filed 4–21–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0141]

Guidance for Industry and FDA; Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA.'' This guidance document describes a means by which optical impression systems for the computer assisted design and manufacturing CAD/CAM of dental restorations may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to exempt the type device from premarket notification requirements and establish this guidance document as the special control for the type device. This guidance document is immediately in effect as the special control for optical impression systems for CAD/CAM, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 185.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance provides FDA's recommendations to manufacturers for evaluating and labeling optical impression systems for CAD/CAM of dental restorations. An optical impression system for CAD/CAM of dental restorations is a device used to record the topographical characteristics of teeth, dental impressions, or stone models by analog or digital methods for use in the computer assisted design and manufacturing of dental restorative prosthetic devices. Such systems may consist of a camera, scanner or equivalent type of sensor and a computer with software.

Following the effective date of the final rule exempting this type of device, manufacturers of optical impression systems for CAD/CAM of dental restorations will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting optical impression systems for CAD/CAM of dental restorations from the premarket notification requirements under section 510(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(m)) and establishing this guidance document as the special control for the device.

Section 510(m)(2) of the act provides that 1 day after the date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

Because of the limited timeframes established by section 510(m) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on optical impression systems for CAD/CAM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Electronic Access

To receive a copy of ''Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1203) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: April 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9870 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–03–088]

Rural Access to Emergency Devices (RAED) Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that of approximately $12,500,000 for fiscal year (FY) 2003 to provide grants for the purchase, placement and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. HRSA estimates that approximately 50 awards will be made to community partnerships, in collaboration with State Offices of Emergency Medical Services, for FY 2003. This is assuming one award per State. The project period will consist of three years, to include two non-competitive continuations for years two and three. All funding is subject to the availability of funds. These grants will be awarded under the authority of Pub. L. 106–505, Title IV—Cardiac Arrest Survival, Subtitle B—Rural Access to Emergency Devices, 42 U.S.C. 254c, note. The Office of Rural Health Policy will administer the Rural Access to Emergency Devices (RAED) Grant Program.

DATES: Applicants interested in applying for funding under this program are requested to fax or mail a letter of intent to the Office of Rural Health Policy by May 5, 2003, at fax number (301) 443–2803. Mailed letters of intent should be sent to Evan Mayfield, Office of Rural Health Policy, HRSA, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. A copy of this letter of intent should also be faxed or mailed to the appropriate State Office of Emergency Medical Services by this same date. The letter of intent need only include the lead applicant's organizational name, proposed number of AEDs requested and a proposed listing of those in their community partnership. The deadline for receipt of applications is June 18, 2003. Applications will be considered on time if they are either received on or before the deadline date in the HRSA Grants Application Center or postmarked on or before the deadline date.

ADDRESSES: To receive an application kit, applicants may telephone the HRSA Grants Application Center at (877) 477–2123 (877–HRSA–123) or the application forms can be downloaded via the Web at *http://www.ruralhealth.hrsa.gov/funding.htm.* The instructions for preparing the applications will be included with the grant guidance as part of the grant application kit. The RAED Grant Program uses PHS Forms 424 and 5161 for applications. Applicants must use the administrative code ''RAED,'' Catalog of Federal Domestic Assistance number 93.259 and HRSA Program Announcement number HRSA03–088 when requesting applications. The CFDA is a Government-wide compendium of enumerated Federal programs, projects, services and activities that provide assistance. All applications must be mailed or delivered to the Grants Management Officer, Office of Rural Health: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879: telephone (877) 477–2123.

FOR FURTHER INFORMATION CONTACT: Evan Mayfield, Office of Rural Health Policy, HRSA, email address *ruralems@hrsa.gov,* telephone number

(301) 443–0835 and fax number (301) 443–2803.

SUPPLEMENTARY INFORMATION:

(1) Program Background and Objectives

The Rural Access to Emergency Devices Act, 42 U.S.C. 254c, note, authorizes grants to community partnerships to provide for the purchase, placement and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. An applicant must be a multi-county, regional or State-wide consortium of rural community organizations applying as a community partnership. Each community partnership must have a designated lead applicant to apply as the grantee of record and act as a fiscal agent for the partnership. Funding preference will be granted to applications that are State-wide in scope. Preference moves those approved applicants carrying the preference ahead of approved applicants without the preference. A funding priority will be given to State-wide community partnerships that identify their State Office of Emergency Medical Services as the lead applicant and include as partners emergency first response entities (*e.g.*, EMS, law enforcement and fire departments) that are currently operating without AEDs. Priority gives an application additional points during the scoring process of approved applications. In order to qualify as a State-wide community partnership, not every eligible county within the State need apply. However, a State-level office must be the lead applicant. Selected locations for AED placement around the State should be identified by the lead applicant to achieve fair geographical, organizational (*e.g.*, first response versus public access placement) and resource allocation.

The State Office of Emergency Medical Services is a logical lead applicant to administer funding to individual entities within the partnership, given its role in medical direction and regulation. Other State-level offices eligible to accept these Federal grant funds include the State Office of Rural Health or a division within the Department of Health. The State Office of Rural Health is a valuable resource for consulting in public access AED placement for those areas that lack EMS services, or are located too far away to be of practical benefit to a community. Community partnerships that apply without their State Office of Emergency Medical Services as the lead applicant are required to work with the State Office of Emergency Medical Services on issues related to medical direction and integration and placement of AEDs into existing EMS systems. Furthermore, such community partnerships must still demonstrate how they are State-wide in scope.

(2) Eligible Applicants

Applicants must apply in the form of a community partnership. Interested eligible entities are encouraged to collaborate with a wide range of other providers in developing a broad-based consortium that will make up their community partnerships. These partnerships will include local first response entities (*e.g.*, EMS, law enforcement and fire departments). In addition, local for- and non-profit entities that have a demonstrated concern about cardiac arrest survival rates may be included such as, but not limited to, community hospitals or clinics, nursing homes and senior citizen day care facilities, governmental facilities, athletic facilities, faith based and community based organizations and schools.

All services provided by the community partnership must be provided in an eligible rural county or Rural-Urban Commuting Area zip codes. Each State-level office, acting on behalf of the community partnership(s) within its State, will be required to demonstrate how its services will be directed to the eligible rural areas. A complete listing of these eligible rural areas is available on the Web. Eligible rural counties can be found at *http://www.ruralhealth.hrsa.gov/ruralcoI.htm* and Rural-Urban Commuting Area zip codes can be found at *http://www.ruralhealth.hrsa.gov/ruralcoZIPII.htm.* Each is sorted by State.

(3) Review Criteria

Applications should be no longer than 40 pages. Incomplete applications, applications in excess of the page limitation, or applications otherwise non-responsive will be returned without further review. Applications that are responsive will be evaluated for technical merit by an objective review panel convened specifically for this solicitation and in accordance with HRSA grants management policies and procedures. Applications will be assessed using the following criteria:

(a) Need for AED equipment and training with documentation using any local standard enumerating average response and transport times (or include a plan on how these times will be recorded if there are no pre-existing records of such) noting mileage to stabilizing and/or definitive care and cardiovascular mortality prevalence rates for the proposed response area(s);

(b) Plan for a need-based placement of AEDs and accessibility plan for those AEDs;

(c) Reasonableness of the proposed budget, including estimated AED purchasing, training and maintenance costs (include maintenance schedule);

(d) How the grant award will be distributed within the community partnership, with identified names of who will receive funding for each entity within the partnership;

(e) A listing of identified and approved CPR and AED training entities;

(f) A listing of who will use the AEDs, and a reference to State laws regulating AED usage;

(g) Integration into local EMS systems ensuring medical direction for documented protocols of care and legal oversight; and

(h) A well-defined data collection and reporting mechanism via their State Office of Emergency Medical Services or the State Office of Rural Health should the former be unable to participate.

A further explanation of these criteria will be included in the grant application guidance.

Use of Funds: RAED grant program funding shall be used to: (1) Purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration; and (2), provide defibrillator and basic life support training in automated external defibrillator usage through the American Heart Association, the American Red Cross, or other nationally recognized training courses.

Paperwork Reduction Act: The application form for the RAED Grant Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (Form–424). Should any of the data collection activities associated with this fall under the purview of the Paperwork Reduction Act of 1995, OMB clearance will be sought.

Public Health System Impact Statement: This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized of proposed health services grant applications submitted by community-

based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to their local or State health authority, or State Office of Emergency Medical Services as appropriate, no later than the Federal application receipt due date of June 18, 2003:

(a) A copy of the face page of the application (SF 424)

(b) An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served,

(2) The proposed number of AEDs to be purchased and how many people will be trained within the community partnership,

(3) A description of the coordination planned with the appropriate State agencies (ranging from required notification of AED placement to such agency agreeing to being the lead applicant and/or fiscal agent of a State-wide community partnership should they choose to).

Executive Order 12372

This grant program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate State and local officials as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. All SPOC recommendations should be submitted to Darren Buckner, Office of Grants Management, HIV/AIDS Bureau, 5600 Fishers Lane, Room 11A–16, Rockville, Maryland 20857, (301) 443–1913. The due date for State process recommendations is 60 days after the application deadline of June 18, 2003, for competing applications for the RAED Grant Program. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. See part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.

Dated: February 4, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–9872 Filed 4–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank: Change in User Fees

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a seventy-five cent decrease in the fee charged to entities authorized to request information from the National Practitioner Data Bank (NPDB) for all queries. The new fee will be $4.25. There will be no change to the $10.00 self-query fee.

DATES: The new fee is effective on July 1, 2003.

FOR FURTHER INFORMATION CONTACT: John Heyob, Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, 7519 Standish Place, Suite 300, Rockville, Maryland 20857. Tel: (301) 443–2300. Email: *policyanalysis@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The current fee structure ($5.00 per name) was announced in the **Federal Register** on July 11, 2001 (66 FR 36289) and became effective October 1, 2001. All entity queries are submitted and query responses received through the NPDB's Integrated Query and Reporting Service (IQRS) and paid via an electronic funds transfer or credit card.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12 (b) of the regulations, as well as allowable costs pursuant to Title II, Division G, Labor, Health and Human Services, Education, and Related Agencies Appropriation of the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, enacted on February 20, 2003. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

''The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees, (2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used, (3) Postage—actual cost, and (4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.''

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is reducing all the entity query fees by $0.75 per name. The practitioner self-query fee remains at $10. This price decrease is justified after an evaluation of the Data Bank's operational costs. The implementation of the Data Bank's all-electronic process for querying, reporting, and payment, the Web-based IQRS system, has resulted in a decrease in the Data Bank operating expenditures. In keeping with the Act, and pursuant to the requirements of § 60.2 of the regulations, there are sufficient funds to recover the full costs of operating the Data Bank with a decrease in the user fee.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate fee will be $4.25 multiplied by the number of individuals about whom information is being requested. For examples, see the table below.

Query method	Fee per name in query	Examples
Entity query (Via Internet with electronic payment)	$4.25	10 names in query. 10 × $4.25 = $42.50.
Practitioner self-query	10.00	One self-query = $10.00.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Dated: April 9, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–9871 Filed 4–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Change in User Fees

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In accordance with final regulations at 45 CFR part 61, implementing the Healthcare Integrity and Protection Data Bank (HIPDB), the department is authorized to assess a fee on all requests for information, except requests from Federal agencies. In accordance with § 61.13 of the HIPDB regulations, the department is announcing an adjustment from $5 to $4.25 in the fee charged for each query submitted by authorized entities to access the data bank. There will be no change to the current $10 self-query fee.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

User Fee Amount

Section 1128E(d)(2) of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing information from the Healthcare Integrity and Protection Data Bank (HIPDB). Final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act also requires that the department recover the full costs of operating the HIPDB through such user fees. In determining any changes in the amount of the user fee, the department employs the criteria set forth in § 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- Direct and indirect personnel costs;
- Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- Agency management and supervisory costs;
- Costs of enforcement, research and establishment of regulations and guidance;
- Use of electronic data processing equipment to collect and maintain information, *i.e.*, the actual cost of the service, including computer search time, runs and printouts; and
- Any other direct or indirect costs related to the provision of services.

The current fee structure of $5 for each separate query submitted by authorized entities was announced in a **Federal Register** notice on June 11, 2001 (66 FR 31245), and became effective on October 1, 2001. Based on the above criteria and our analysis of operational costs and the comparative costs of the various methods for filing and paying for queries, the department is now lowering the fee by 75 cents for each query submitted by authorized entities—from $5 to $4.25.[1]

When an authorized entity query is submitted for information on one or more health care practitioners, providers or suppliers, the appropriate total fee will be $4.25 multiplied by the number of individuals or organizations about whom information is being requested.

In order to minimize administrative costs, the department will accept queries submitted by authorized entities by credit card or electronic funds transfer. The department will continue to accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. To submit queries, registered entities (including law enforcement agencies) must use the HIPDB Web site at *www.npdb-hipdb.com.*

The department will continue to review the user fee periodically, and will revise it as necessary. Any future changes in the fee and its effective date will be announced through notice in the **Federal Register**.

Examples

Query method	Fee per name in query, by method of payment	Examples
Authorized Entity query	$4.25	10 names in query: 10 × $4.25 = $42.50.
Self-query	$10.00	10 self-queries: 10 × 10 = $100.

[1] As part of its obligations under the Privacy Act, the department previously announced a $10 fee for health care practitioners, providers or suppliers to self-query (64 FR 58851; November 1, 1999). The practitioner self-query fee will continue to remain at $10.

Dated: March 27, 2003.

Dennis J. Duquette,

Acting Principal Deputy Inspector General.

[FR Doc. 03–9873 Filed 4–21–03; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research.

Date: July 28, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9921 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Functional Heterogeneity of the Peripheral Pulmonary and Lymphatic Vessels.

Date: June 10–11, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David A. Wilson, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, MSC 7924, Bethesda, MD 20892, (301) 435–0929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9922 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Food and Nutrient Systems for Research.

Date: June 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9923 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Loan Repayment Program—MRDD.

Date: May 8, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9913 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify 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 General Medical Sciences Council.

Date: May 15–16, 2003.

Closed: May 15, 2003, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1, and E2, Bethesda, MD 20892.

Open: May 15, 2003, 10:30 a.m. to 5 p.m.

Agenda: For discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the council.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1, and E2, Bethesda, MD 20892.

Closed: May 16, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, PhD, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerna Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9914 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 Council on Aging.

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 Council on Aging.

Date: May 20–21, 2003.

Closed: May 20, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31/Conference Room 10, Bethesda, MD 20892.

Open: May 21, 2003, 8 a.m. to 2 p.m.

Agenda: Call to Order, Task Force on Minority Aging Research Report; Working Group on Program/Clinical Investigators Working Group/NNA Program Review reports; and HIPAA presentation.

Place: National Institutes of Health, Building 31/Conference Room 10, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9916 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/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 Council for Biomedical Imaging and Bioengineering.

Date: May 29–30, 2003.

Closed: May 29, 2003, 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D, Rockville, MD 20852.

Open: May 29, 2003, 1 p.m. to 4:30 p.m.

Agenda: The council will discuss various training concepts.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Training and Career Development Subcommittee.

Date: May 30, 2003.

Open: 8 a.m. to adjournment.

Agenda: Discussion of training and career development objectives.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Strategic Plan Development Subcommittee.

Date: May 30, 2003.

Open: 8 a.m. to adjournment.

Agenda: The subcommittee will discuss the strategic plan development.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room D, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9917 Filed 4–21–03; 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 commerical 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: May 19, 2003.

Open: 8:30 a.m. to 2 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P Sassaman, Ph.D, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. 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: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9918 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: May 22, 2003.

Open: 8 a.m. to 9:15 a.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F, Bethesda, MD 20892.

Closed: 9:15 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: May 22, 2003.

Open: 8 a.m. to 8:30 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Natcher Building, 45 Center Drive Conference Room E1/E2, Bethesda, MD 20892.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 22–23, 2003.

Open: May 22, 2003, 10:30 a.m. to 5 p.m.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program developments.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: May 23, 2003, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders, 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9919 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 the following meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training Subcommittee.

Date: May 21, 2003.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Information is also available on the Institute's/Center's Home page: *www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9920 Filed 4–21–03; 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion 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: June 18–19, 2003.

Time: June 18, 2003, 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 19, 2003, 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Scientific Review Adm., 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 Institues of Health, HHS.)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Fedearl Advisory Committee Policy.

[FR Doc. 03–9915 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of the Domain-Swapped Dimer of Cyanovirin (deltaQ50–CVN) in a Topical Microbicide To Prevent the Transmission of HIV and Other Sexually Transmitted Diseases

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in:

U.S. Patent Application, S/N 60/359,360, filed: 2/25/2002, entitled ''An Obligate Domain-Swapped Dimer of Cyanovirin with Enhanced Anti-viral Activity'' (PHS Reference No. E–096–2002)

to Biosyn, Inc., of Philadelphia, PA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 23, 2003, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5606; Facsimile: (301) 402–0220, e-mail: *hus@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The patent application describes a novel protein, obligate domain-swapped dimer of Cyanovirin-N (CVN), discovered by Dr. Carole A. Bewley at the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The obligate domain-swapped dimer of Cyanovirin-N (CVN) displays enhanced anti-HIV activity relative to the wild-type CVN monomer and offers a great advantage over wild-type CVN because it is extremely easy to purify large quantities to greater than 98% homogeneity. So, it may open the possibility that an effective drug treatment for the human immunodeficiency virus (HIV) could reach underdeveloped countries.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to compositions, devices and methods for the prevention of infection by HIV and other sexually transmitted pathogens, topically, but not systemically, utilizing the obligate domain-swapped dimer cyanovirin-N, anti-HIV mutants of the obligate domain-swapped dimer cyanovirin-N, and anti-HIV fragments of both, but excluding pegylated the domain-swapped dimer cyanovirin-N, pegylated anti-HIV mutants of the dimer cyanovirin-N and pegylated anti-HIV fragments of both.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9925 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Systemic In Vivo Use of the Domain-Swapped Dimer of Cyanovirin (DeltaQ50–CVN) as a Prophylactic or Therapeutic Against HIV and Enveloped Viruses That Cause Hemorrhagic Fever; the Ex Vivo Use of the Domain-Swapped Dimer of Cyanovirin (DeltaQ50–CVN) To Remove or Inactivate HIV in Fluid Samples

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in:

U.S. Patent Application, S/N 60/359,360, filed: 2/25/2002, entitled ''An Obligate Domain-swapped Dimer of Cyanovirin with Enhanced Anti-viral Activity'' (PHS Reference No. E–096–2002)

to OmniViral Therapeutics LLC, of Germantown, MD. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 23, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A.,

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5606; Facsimile: (301) 402–0220, e-mail: *hus@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The patent application describes a novel protein, obligate domain-swapped dimer of Cyanovirin-N (CVN), discovered by Dr. Carole A. Bewley at the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The obligate domain-swapped dimer of Cyanovirin-N (CVN) displays enhanced anti-HIV activity relative to the wild-type CVN monomer and offers a great advantage over wild-type CVN because it is extremely easy to purify large quantities to greater than 98% homogeneity. So, it may open the possibility that an effective drug treatment for the human immunodeficiency virus (HIV) could reach underdeveloped countries.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to:

1. Compositions, devices and methods for the prevention and treatment of HIV infection and infections caused by enveloped viruses causing hemorrhagic fever, systemically, but not topically, utilizing obligate domain-swapped dimer of Cyanovirin-N, anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N, and anti-HIV fragments of both;

2. Compositions, devices and methods for the ex vivo removal or inactivation of HIV from fluid samples, utilizing obligate domain-swapped dimer of Cyanovirin-N, anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N, and anti-HIV fragments of both;

but excluding pegylated obligate domain-swapped dimer of Cyanovirin-N, pegylated anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N and pegylated anti-HIV fragments of both.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9924 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), we, EP&R, announce the following committee meeting:

Name: National Urban Search and Rescue Response System Advisory Committee.

Date of Meeting: April 30–May 1, 2003.

Place: Holiday Inn Capital, 550 C Street, Apollo Room, Washington, DC 20024.

Time: April 30: 8 a.m.–4 p.m.

May 1: 8 a.m.–4 p.m.

Proposed Agenda: The Committee will receive a program update that will address the status of ongoing program activities, including recent training and exercises. The committee will consider current and future program requirements and will make recommendations for budget allocations and requests for Fiscal Years 2004 and 2005. The Committee will also discuss urban search and rescue task force operational status and transportation issues. The Committee will review the current status of proposed urban search and rescue regulations and system documentation revisions. Finally, the committee will review priorities for its subordinate working groups for the remainder of Fiscal Year 2003.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Michael Tamillow at 202–646–3498.

We will prepare minutes of the meeting and will make them available for public viewing at the Emergency Preparedness and Response Directorate, Preparedness Division, Urban Search and Rescue (US&R), 500 C Street, SW., Room 326, Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: April 15, 2003.

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–9868 Filed 4–21–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Agency Draft Recovery Plan for Five Freshwater Mussels—Cumberland Elktoe (*Alasmidonta atropurpurea*), Oyster Mussel (*Epioblasma capsaeformis*), Cumberlandian Combshell (*Epioblasma brevidens*), Purple Bean (*Villosa perpurpurea*), and Rough Rabbitsfoot (*Quadrula cylindrica strigillata*)—for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the agency draft recovery plan for five freshwater mussels—Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*). These species are endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Recent research has greatly increased our understanding of the ecology of these species. The agency draft recovery plan includes specific recovery objectives and criteria to be met in order to downlist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended (Act). We solicit review and comment on this agency draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the draft recovery plan on or before June 23, 2003.

ADDRESSES: If you wish to review this agency draft recovery plan, you may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258–3939), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html #plans.* If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the State Supervisor, at the above address.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address, or fax your comments to (828)258–5330.

3. You may send comments by e-mail to *bob_butler@fws.gov.* For directions on how to submit electronic filing of comments, *see* the ''Public Comments Solicited'' section.

Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Butler at the above address (Telephone 828/258–3939, Ext. 235).

SUPPLEMENTARY INFORMATION:

Background

We listed these five mussels as endangered species under the Act, on January 10, 1997. The five freshwater mussels are restricted to either the Cumberland River system (Cumberland elktoe), the Tennessee River system (purple bean and rough rabbitsfoot), or both of these river systems (oyster mussel and Cumberlandian combshell). They once existed in hundreds of stream miles and now survive in only a few relatively small, isolated populations in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Currently they are found in the Clinch River (Tennessee and Virginia), Duck River (Tennessee), Nolichucky River (Tennessee), Powell River (Tennessee and Virginia), Bear Creek (Alabama and Mississippi), Beech Creek (Tennessee), Buck Creek (Kentucky), Copper Creek (Virginia), Indian Creek (Virginia), Marsh Creek (Kentucky), Sinking Creek (Kentucky), Laurel Fork (Kentucky), Big South Fork (Kentucky and Tennessee), and several tributaries in the Big South Fork drainage (Rock Creek, in Kentucky; and the New River, Clear Fork, North Prong Clear Fork, Bone Camp Creek, Crooked Creek, North White Oak Creek, and White Oak Creek, all in Tennessee).

Habitat alteration continues to be the major threat to the continued existence of these species. This includes the negative effects of impoundments, channelization, mining, pollutants, sedimentation, and construction activities. Alien species (*e.g.,* the zebra mussel, *Dreissena polymorpha*) and genetic factors associated with increasingly small and isolated populations are also factors contributing to the continued imperilment of these five mussels.

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 endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires us to provide a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We developed a technical draft of this recovery plan and released it for review by the professional community in 1998. We incorporated received comments where appropriate into this subsequent agency draft recovery plan, which we are now making available for review by all interested agencies and parties, including the general public.

The objective of this draft plan is to provide a framework for the recovery of these five species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and they will be considered for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to final approval of the plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: April 4, 2003.

J. Mitch King,

Deputy Regional Director, Southeast Region, Fish and Wildlife Service.

[FR Doc. 03–9859 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of the Special Trustee for American Indians

Working Group on Land Consolidation Program: Call for Nominations

AGENCIES: Bureau of Indian Affairs, Interior, Office of the Special Trustee for American Indians, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior intend to assemble a working group to address the rapidly increasing fractionation of

ownership of Indian land. This fractionation is due to the system of allotments established by the General Allotment Act of 1887. The President's fiscal year (FY) 2004 Budget, which is now before Congress, incorporates a request for a significant increase for the Indian Land Consolidation program aimed at reducing the number of individual owners in parcels of Indian lands allotted to individuals. This notice serves as a call for nominations of Tribal officials to participate in a working group to discuss the issue of fractionation, problems caused by fractionation, and the universe of possible solutions.

DATES: All nominations must be postmarked within 30 days of the date of publication in the **Federal Register**. Final selections will be made by and served at the discretion of the Deputy Commissioner for Indian Affairs and the Special Trustee for American Indians.

FOR FURTHER INFORMATION CONTACT: You can obtain information and a copy of the Call for Nominations at the following offices: ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240, or ATTN: Donna Erwin, Acting Special Trustee, Office of the Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The allotment of Indian lands—dividing tribal lands into small parcels and allocating those parcels to individual Indians—became Federal policy in 1887 with the enactment of the General Allotment Act. By the 1930s, however, it was widely accepted that the policy was a failure and, in 1934, it was ended with passage of the first Indian Reorganization Act. Interests in these allotted lands started to ''fractionate'' as interests divided among the heirs of the original allottees, expanding rapidly with every generation.

Today, there are approximately four million owner interests in the 10 million acres of individually-owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually-owned trust and restricted lands. There are now single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.

Addressing this issue is critical to improving the management of trust assets. The Department of the Interior, the Department in which the BIA and OST are located, is bound by its trust obligations to manage each owner's interest, regardless of size. Reduction of fractional interests will increase the likelihood of more productive economic use of the land, reduce record keeping and large numbers of small dollar financial transactions, and decrease the number of interests subject to probate.

Starting in 2004, the BIA will oversee the National Indian Land Consolidation Program. The BIA and OST are now establishing a working group that will consist of Tribal leaders and Departmental personnel to discuss fractionation, the problems associated with fractionation, and possible solutions to problems. The BIA and OST are interested in receiving nominations of Tribal officials from Tribes with highly fractionated lands or other Tribal officials having a strong interest in resolving the problem of fractionation who would participate in this working group. Participants should be prepared to engage in serious dialog on all matters relating to the problem of fractionation of Indian lands. Nominees should be committed to spending a significant amount of time reviewing existing statutes and programs, discussing the issues within a diverse working group, and exploring creative solutions to the problems discussed. Participation should plan to meet approximately once per month from June through August 2003. Travel and per diem expenses will be provided.

Tribal officials who have been nominated to serve as a member of this working group must complete and submit the following information to the BIA or OST at the address listed above in the section titled **ADDRESSES AND FOR FURTHER INFORMATION CONTACT** within 30 days of publication of this Notice in the **Federal Register**:

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:
E. Home Phone:
F. Title/Position in Tribe:
G. Qualifications (*e.g.,* education, experience, or whether you are a Tribal official owning lands with fractionated interests):
H. Nominated by: Include Nominator's Name, Address and Telephone Number(s).
I. Date of Nomination.
J. A minimum of Two Letters of Reference.
K. A brief Summary or Explanation of Specific Methods, Conceptions, or Proposals That You Will be Prepared to Discuss With the Working Group Regarding Potential Solutions to Fractionation and Problems Associated with Fractionation.

Groups may nominate more than one person. If nominating more than one person, please indicate your preferred order of appointment selection.

Dated: April 11, 2003.

Richard V. Fitzgerald,

Trust Policy Manager.

Dated: April 15, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–9840 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Working Group on the Re-Engineering (''To-Be'') Process and Fiduciary Trust Improvement Efforts: Call for Nominations

AGENCIES: Bureau of Indian Affairs and Office of the Special Trustee for American Indians, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior (Department) are seeking to assemble a working group to provide input and comment on the re-engineering process and fiduciary trust improvement efforts. The department has worked extensively on examining the current fiduciary trust management practices and ways to improve and change how the Department manages the Indian fiduciary trust. The Trust Business Process Modeling Team completed numerous regional workshops allowing for the BIA, OST, Minerals Management Service, Bureau of Land Management, Office of Hearings and Appeals and Tribal entities to document their current fiduciary trust management practices (''As-Is'' process). During these workshop discussions, a baseline model for each core trust business process was closely reviewed, analyzed and commented on by Interior and Tribal staff responsible for performing the fiduciary trust functions. The information collected from these discussions will serve as the foundation for re-engineering the management of trust assets (''To-Be'' process). This notice serves as a call for nominations of Tribal officials to participate in a working group to discuss the processes and provide input and comments on potential alternatives on how the fiduciary trust process should be improved and administered.

DATES: All nominations must be postmarked within 30 days of the date of publication in the **Federal Register**. Final selections will be made by and served at the discretion of the Deputy Commissioner for Indian Affairs and the special Trustee for American Indians.

FOR FURTHER INFORMATION CONTACT: You can obtain information and a copy of the Call for Nominations at the following offices: ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240; or ATTN: Donna Erwin, Acting Special Trustee, Office of the Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Electronic Data Systems (EDS) Corporation, in its January 2002 Trust Reform Report, recommended that the Department develop an accurate, current state model to include business processes, internal controls, and associated information technology. The Department has been working extensively on documenting the business processes currently employed in managing the Indian fiduciary trust. Through this process, the Department established a comprehensive understanding of current trust business operations, identified needs and opportunities for improvement, and was able to understand the variances among geographic regions, and their causes.

After completing the ''As-Is'' phase review, detailed recommendations will be developed for adjusting business processes, where appropriate. The Department will integrate the final ''To-Be'' model porcesses with universal support and operational functions, and these reengineered business processes will be documented with appropriate policies, procedures, guidelines and handbooks.

The Department, through the BIA and OST, is now establishing a working group that will consist of Tribal officials and Departmental personnel to discuss the re-engineered processes. The working group will provide input and comment on potential alternatives on how the fiduciary trust process could be improved and administered. Participants should be prepared to engage in serious dialogue on all matters relating to the fiduciary trust management process. Nominees should be committed to spending a significant amount of time reviewing existing statutes and programs, discussing the issues within a diverse working group, and exploring creative solutions to the problems discussed. Participants should plan to meet approximately once per month from June through August 2003. Travel and per diem expenses will be provided.

Tribal officials who have been nominated to serve to this working group must complete and submit the following information to the BIA or OST at the address listed above in the section titled **FOR FURTHER INFORMATION CONTACT** within 30 days of publication of this Notice in the **Federal Register:**

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:
E. Home Phone:
F. Title/Position in Tribe:
G. Qualifications (*e.g.,* education, experience, or whether you are an individual or tribal account holder):
H. Nominated by: Include Nominator's name, address and telephone number(s).
I. Date of nomination:
J. Two or three Letters of Reference:
K. A brief summary or explanation of areas of expertise that you or your nominee will be prepared to discuss with the working group regarding fiduciary trust improvement efforts.

Groups may nominate more than one person. If nominating more than one nominee, please indicate your preferred order of appointment selection.

Dated: April 11, 2003.

Richard V. Fitzgerald,

Trust Policy Manager.

Dated: April 15, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–9839 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers and Beneficiary Countries

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the 2002 biennial report.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202–205–3228), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)), as amended, requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers, and on beneficiary countries. Section 215(b)(1) requires that the reports include, but not be limited to, an assessment regarding:

(1) The actual effect of CBERA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported from beneficiary countries under the Act; and

(2) The probable future effect of CBERA on the U.S. economy generally and on such domestic industries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The 16th report, covering calendar year 2002, is to be submitted by September 30, 2003.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the preparation of this 16th report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than the close of business on June 30, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Issued: April 16, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9851 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–482]

Certain Compact Disc and DVD Holders; Notice of Commission Decision Not To Review an Initial Determination Finding the Two Remaining Respondents in Default, and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') finding respondents Wah-De Electron Co., Ltd (''Wah-De'') and Dragon Star Magnetics, Inc. (''Dragon Star'') in default. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3105. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom (''DuBois'') against eight respondents, including Wah-De and Dragon Star. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, or sale within the United States after importation of certain compact discs and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. In previously-issued IDs (Orders Nos. 10 and 11), which the Commission determined not to review, the ALJ terminated the investigation as to the other six respondents in the investigation.

Neither Wah-De nor Dragon Star filed responses to the complaint, the notice of investigation, the ALJ's discovery order or the discovery requests from DuBois and the Commission investigative attorney (IA). On February 12, 2003, DuBois moved pursuant to section 337(g) and Commission rule 210.16(b) for issuance of an order directing those respondents to show cause why they should not be found in default. DuBois' motion also requested that, upon their failure to show cause, an ID be issued finding Wah-De and Dragon Star in default, and that a limited exclusion order be entered immediately against those respondents. On March 7, 2003, the IA filed a response supporting the request for a show cause order, and the entry of default findings if Wah-De and Dragon Star failed to respond to an order to show cause. On March 7, 2003, the ALJ issued Order No. 12, which ordered Wah-De and Dragon Star to show cause by March 18, 2003, why they should not be found in default. Wah-De and Dragon Star did not respond to the order to show cause. On March 21, 2003, the ALJ issued the subject ID finding Wah-De and Dragon Star in default. No petitions for review of the ID were filed.

Under Commission rule 210.16(b)(3), 19 CFR 210.16(b)(3), Wah-De and Dragon Star are deemed to have waived their right to appear, to be served with documents, and to contest the allegations at issue in this investigation. Section 337(g)(1), 19 U.S.C. 1337(g)(1) and Commission rule 210.16(c), 19 CFR 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, Wah-De and Dragon Star have been found in default and DuBois has requested issuance of a limited exclusion order that would deny entry to certain compact disc and DVD holders imported by Wah-De and Dragon Star. If the Commission decides to issue a limited exclusion order against Wah-De and Dragon Star, it must consider what the amount of the bond should be during the Presidential review period.

In connection with the final disposition of this investigation, the only potential remedy is the issuance of a limited exclusion order that could result in the exclusion from entry into the United States of certain compact disc and DVD holders imported by Wah-De and Dragon Star. Accordingly, the Commission is interested in receiving written submissions that address whether such an order should be issued against either or both respondents. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see* Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that a remedial order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues a limited exclusion order against Wah-De and/or Dragon Star, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bonds in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The

Commission is therefore interested in receiving submissions concerning the amount of the bonds that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed limited exclusion order for the Commission's consideration. The written submissions and proposed limited exclusion order must be filed no later than close of business on May 6, 2003. Reply submissions, if any, must be filed no later than the close of business on May 13, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.16 and 210.42 of the Commission's rules of practice and procedure, 19 CFR 210.16 and 210.42.

Issued: April 16, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9849 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1033 (Preliminary)]

Hydraulic Magnetic Circuit Breakers From South Africa

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1033 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from hydraulic magnetic circuit breakers from South Africa, provided for in subheadings 8535.21.00, 8535.29.00, and 8536.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 29, 2003. The Commission's views are due at Commerce within five business days thereafter, or by June 5, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 14, 2003, by Airpax Corp., Cambridge, MD.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 5, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than May 1, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has

testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 8, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 16, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9850 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of ''General Inquiries to State Agency Contacts.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 23, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and American Samoa (hereinafter referred to as the ''States'') in order to jointly conduct BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics—1220–0011
Local Area Unemployment Statistics—1220–0017
Occupational Employment Statistics—1220–0042
Employment and Wages Report—1220–0012
Annual Refiling Survey—1220–0032
Multiple Worksite Report—1220–0134
Mass Layoff Statistics—1220–0090
Annual Survey of Occupational Injuries & Illnesses—1220–0045
Census of Fatal Occupational Injuries—1220–0133

(This list of BLS/State cooperative statistical programs may change over time.)

To ensure the timely flow of data and to be able to evaluate and improve the programs, it is necessary to conduct ongoing communications between BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, or administrative issues, questions and dialogue are crucial to the successful implementation of these programs.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g., permitting electronic submissions of responses.*

III. Current Action

Office of Management and Budget (OMB) clearance is being sought for General Inquiries to State Agency Contacts. Information collected under this clearance is used to support the administrative and programmatic needs of jointly conducted BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Affected Public: State, local, or tribal government.

Total Respondents: 55.

Frequency: As needed.

Total Responses: 23,890.

Average Time Per Response: 40 minutes.

Estimated Total Burden Hours: 15,762 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 7th day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–9876 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term AFR Notice'' appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. Contact Barbara Barron at 202–693–9447.

Dated in Arlington, Virginia this 16th day of April, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2002–003–C.
FR Notice: 67 FR 11717.
Petitioner: Knott County Mining Company.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors to obtain under-voltage protection instead of using circuit breakers and to train all qualified persons who perform work on the equipment and circuits on safe maintenance procedures. This is considered an acceptable alternative method for the Mallet Branch Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low voltage power circuits serving three-phase alternating current equipment, other than portable and mobile equipment, located at the Mallet Branch Mine with conditions.

Docket No.: M–2002–005–C.
FR Notice: 67 FR 11718.
Petitioner: Cannelton Industries, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device on battery plug connectors on mobile battery-powered machines in lieu of a padlock to prevent the plug connector from accidentally disengaging while under load and provide a warning tag that states ''Do Not Disengage Under Load'' on all battery plug connectors. This is considered an acceptable alternative method for the Mine No. 130 and Shadrick Mine. MSHA grants the petition for modification for use at the Mine No. 130 and Shadrick Mine with conditions.

Docket No.: M–2002–006–C.
FR Notice: 67 FR 11718.
Petitioner: Point Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device on battery plug connectors on mobile battery-powered machines instead of using padlocks to prevent the plug connector from accidentally disengaging while under load, and to provide instructions to all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with the alternative method. This is considered an acceptable alternative method for the Campbells Creek No. 4 Mine. MSHA grants the petition for modification for use at the Campbells Creek No. 4 Mine with conditions.

Docket No.: M–2002–007–C.
FR Notice: 67 FR 13196.
Petitioner: Solid Rock Construction, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that use of padlocks to secure battery plugs would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for use at the No. 1 Mine with conditions.

Docket No.: M–2002–008–C.
FR Notice: 67 FR 13196.
Petitioner: Aaron Coal Company, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the No. 2 Mine. MSHA grants the petition for modification to permit the use of a spring-loaded device with specific fastening characteristics in lieu of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment for use at the No. 2 Mine with conditions.

Docket No.: M–2002–019–C.
Petitioner: White County Coal, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a round, eye-bolt snap spring-loaded locking device to secure screw caps in place on battery plugs of battery operated scoops and tractors in lieu of using its presently approved bolt

and nut padlock. This is considered an acceptable alternative method for the Pattiki II Mine. MSHA grants the petition for modification to permit the use of a round eye-bolt snap spring-loaded locking device with specific fastening characteristics in lieu of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment for use at the Pattiki II Mine with conditions.

Docket No.: M–2002–027–C.
FR Notice: 67 FR 14978.
Petitioner: Dakota Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to replace a low-voltage continuous miner with a 2,400-volt Joy 12CM27 machine. This is considered an acceptable alternative method for use at the No. 2 Mine. MSHA grants the petition for modification for the 2,400-volt continuous miners used throughout the No. 2 Mine with conditions.

Docket No.: M–2002–035–C.
FR Notice: 67 FR 19285.
Petitioner: Drummond Company, Inc.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to interrupt the low and medium voltage circuits by using under-voltage and grounded phase relays used in conjunction with fully rated contactors in lieu of using circuit breakers. The petitioner asserts that using this circuit arrangement on low and medium voltage power distribution circuits is necessary for belt conveyor operation. This is considered an acceptable alternative method for use at the Shoal Creek Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low and medium voltage power circuits serving three-phase alternating current equipment located in the Shoal Creek Mine with conditions.

Docket No.: M–2002–041–C.
FR Notice: 67 FR 31835.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to transfer 2,400-volt high-voltage equipment from one mine to another mine within the company. This is considered an acceptable alternative method for the White Oak Mine. MSHA grants the petition for modification for use at the White Oak Mine with conditions.

Docket No.: M–2002–042–C.
FR Notice: 67 FR 37443.
Petitioner: Rivers Edge Mining, Inc., (was Eastern Associated Coal Corp.).
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors instead of circuit breakers to provide under-voltage protection, ground fault, and ground monitor protection. This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low and medium-voltage power circuits serving three-phase alternating current equipment located in the Rivers Edge Mine with conditions.

Docket No.: M–2002–047–C.
FR Notice: 67 FR 45553.
Petitioner: Husky Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed, spring-loaded device on mobile battery-powered machine plug connectors, in lieu of a padlock, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with the difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine No. 12. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mine No. 12 with conditions.

Docket No.: M–2002–056–C.
FR Notice: 67 FR 49966.
Petitioner: Highland Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air from the belt haulage entries to ventilate active working places by installing a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Highland 9 Mine. MSHA grants the petition for modification for the use of air coursed through conveyor belt haulage entries to ventilate active working places at the Highland 9 Mine with conditions.

Docket No.: M–2002–063–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1100–2(a).
Summary of Findings: Petitioner's proposal is to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) 10-quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection at the Buck Mountain Slope Mine. This is considered an acceptable alternative method for the Buck Mountain Slope Mine. MSHA grants the petition for modification for use of firefighting equipment in the working section at the Buck Mountain Slope Mine with conditions.

Docket No.: M–2002–064–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined. This is considered an acceptable alternative method for the Buck Mountain Slope. MSHA grants the petition for modification for the Buck Mountain Slope with conditions.

Docket No.: M–2002–065–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months as currently required, and to update maps daily by hand notations. This is considered an acceptable alternative method for the Buck Mountain Slope. MSHA grants the petition for modification for the Buck Mountain Slope with conditions.

Docket No.: M–2002–067–C.
FR Notice: 67 FR 54676.
Petitioner: Border Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is use permanently installed, spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment the batteries serve. The purpose of the locking device is to

prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the No. 2 Mine. MSHA grants the petition for modification for use at the No. 2 Mine with conditions.

Docket No.: M–2002–075–C.
FR Notice: 67 FR 63166.
Petitioner: Knott County Mining Company.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Mallet Branch Mine, Hollybush Mine, and Mine No. 582. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mallet Branch Mine, Hollybush Mine, and Mine No. 582 with conditions.

Docket No.: M–2002–076–C.
FR Notice: 67 FR 63166.
Petitioner: Coemont Construction, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile batter-powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Coemont No. 1 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Coemont No. 1 Mine with conditions.

Docket No.: M–2002–080–C.
FR Notice: 67 FR 63166.
Petitioner: Kentucky May Mining.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile batter-powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Lakeview Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Lakeview Mine with conditions.

Docket No.: M–2002–083–C.
FR Notice: 67 FR 63167.
Petitioner: Debra Lynn Coals, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to construct a refuse pile over abandoned underground mine works in the Harlan coal bed, and to de-water rock drains from two existing mine adits within the abandoned mine works. Coarse refuse at the Johns Branch Refuse Area will cover the two sealed drift mine openings into the old Golden Glow Coals, Inc. mine in the Harlan coal seam, which dips toward the existing refuse site. This is considered an acceptable alternative method for the Liggett Preparation Plant and Johns Branch Refuse Area, I.D. No. 1211–KY07–07139–01. MSHA grants the petition for modification for the Liggett Preparation Plant and the Johns Branch Refuse Area with conditions.

Docket No.: M–2002–084–C.
FR Notice: 67 FR 66168.
Petitioner: H & M Coal Co.
Regulation Affected: 30 CFR 75.1400(c).
Summary of Findings: Petitioner's proposal is to use increased rope strength and secondary safety rope connections on a slope conveyance (gunboat) for transporting persons in lieu of using catches or other no less effective devices. This is considered an acceptable alternative method for the Rocky Top Mine. MSHA grants the petition for modification for the use of the hoist conveyance (gunboat) without safety catches at the Rocky Top Mine with conditions.

Docket No.: M–2002–088–C.
FR Notice: 67 FR 66169.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to construction a refuse pile over abandon mine openings, and to use an existing mine pit as a location for disposal of mine scalp rock. The related refuse are in the Calendonia Pit and the refuse from both the VICC #3 and VICC #8 Coastal Coal Company Mines will be used to fill the pit and reclaim the area that contains two abandoned Eastover Mine Company openings into the Jawbone coal seam. This is considered an acceptable alternative method for the VICC #3 Mine and VICC #8 Mine. MSHA grants the petition for modification for the VICC #3 Mine and VICC #8 Mine with conditions.

Docket No.: M–2002–102–C.
FR Notice: 67 FR 78821.
Petitioner: Mallie Coal Company, Inc.
Regulation Affected: 30 CFR 75.380(f)(4).
Summary of Findings: Petitioner's proposal is to use one ten pound or two five pound portable chemical fire extinguishers on each Mescher Jeep used for traveling in the primary escapeway at the Mine No. 6. This is considered an acceptable alternative method for the Mine No. 6. MSHA grants the petition for modification for Mescher three wheel tractors to be operated in the primary intake escapeway at the Mine No. 6 with conditions.

Docket No.: M–2002–103–C.
FR Notice: 67 FR 78822.
Petitioner: Mallie Coal Company, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal is to use a hand-held continuous multi-gas detector, which detects oxygen, methane, and carbon monoxide in lieu of a machine mounted methane monitor on three-wheel tractors used to load and haul coal from the mine faces. This is considered an acceptable alternative method for the Mine No. 6. MSHA grants the petition for modification for use at the Mine No. 6 with conditions.

Docket No.: M–2002–105–C.
FR Notice: 67 FR 78822.
Petitioner: Mears Enterprises, Inc.
Regulation Affected: 30 CFR 75.1000–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two fire extinguishers at all temporary electrical installations in lieu of using one portable fire extinguisher and 240 pounds of rock dust. This is considered an acceptable

alternative method for the Dora 8 Mine. MSHA grants the petition for modification for the temporary electrical installations, provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e), or one portable fire extinguisher with twice the minimum capacity specified in 75.1100–1(e) at each of the temporary electrical installations at the Dora 8 Mine.

Docket No.: M–2002–106–C and M–2002–107–C.
FR Notice: 67 FR 78822.
Petitioner: Highland Mining Company.
Regulation Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal is to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative to complying with the standard. This is considered an acceptable alternative method for the Highland No. 9 and Highland No. 11 Mines. MSHA grants the petition for modification for the use of deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles at the Highland No. 9 and Highland No. 11 Mines with conditions.

Docket No.: M–2002–110-C.
FR Notice: 67 FR 78823.
Petitioner: Coastal Coal-West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at the Upper Mercer Mine. This is considered an acceptable alternative method for the Upper Mercer Mine. MSHA grants the petition for modification for the use of 2,400-volt continuous miners at the Upper Mercer Mine with conditions.

Docket No.: M–2002–111–C and M–2002–112–C.
FR Notice: 67 FR 78823.
Petitioner: Black Energy Coal, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Mine #2 and Mine #3. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mine #2 and Mine #3, with conditions.

Docket No.: M–2001–078–C.
FR Notice: 66 FR 41891
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2,400-volt cables inby the last open crosscut at the working continuous miner section(s). This is considered an acceptable alternative method for the Vermillion Grove Mine. MSHA grants the petition for modification for the use at the Vermillion Grove Mine with conditions.

Docket No.: M–2001–093–C.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364(b)(4).
Summary of Findings: Petitioner's proposal is to establish designated check points and have a certified person examine the check points on a daily basis to monitor for methane and to ensure safe air passage in the six seals in 1 South of the intake air course where roof and rib conditions are deterioriating and unsafe to travel. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the Shoemaker Mine with conditions.

Docket No.: M–2001–095–C.
FR Notice: 66 FR 52156.
Petitioner: Leeco, Inc.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use a maximum nominal voltage of the belt conveyor drive and water pump circuit(s) not to exceed 995-volts for under-voltage protection, a nominal voltage of belt conveyor drive control and water pump control circuit(s) not to exceed 120-volts, vacuum contactors built into or permanently affixed to the transformer enclosure and properly separated and isolated from the other components of the unit, and provide under-voltage protection for belt drive(s) and water pump motors greater than 5 horsepower for vacuum contactors that have associated protective relays. This is considered an acceptable alternative method for the No. 68 and No. 78 Mines. MSHA grants the petition for modification for the use of contactors to provide under-voltage, grounded phase, and overload protection. This would also allow the petitioner to monitor the grounding conductors for 995-volt belt conveyor drive motors and water pump motors greater than 5 horsepower located in the No. 68 and No. 78 Mines with conditions.

Docket No.: M–2001–096–C.
FR Notice: 66 FR 52156.
Petitioner: Leeco, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to place refuse over previously abandoned and reclaimed mines. The petitioner amended its petition for modification on August 26, 2002, to clarify its alternate method concerning what method and material would be used and put in place to cover the mine openings. It was determined that the material that will be used to reclaim portal openings at the No. 7, and 5A seams has a permeability of 6.25×10^{-6} cm/sec so that it will be relatively impermeable and will prevent air flow from the mine. In addition, spoil that is at least 2 feet deep by 50 feet wide will be placed on top of, and in front of the mine openings. The spoil will be compacted to 90%. When compacted to 90%, the refuse will not spontaneously combust because the density and the compactness of the refuse will prevent infiltration of sufficient oxygen to result in spontaneous combustion. Further, since the No. 7 and No. 5 coal seams dip away from the refuse pile, the small valley where the coal seams are located will be completely filled in front of the mine openings so that the closest distance between the face of the slope of fill and the deep mine openings will be approximately 400 feet. At this distance, the water from the deep mine openings will not affect the stability of the pile. This is considered an acceptable alternative method for the No. 64 Mine. MSHA grants the petition for modification for the No. 64 Mine with conditions.

Docket No.: M–2001–105–C.
FR Notice: 66 FR 64993.
Petitioner: Oxbow Mining, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a No. 16 A.W.G. ground check conductor in a high-voltage cable. These cables would be flame-resistant Anaconda Type SHD+GC, Pirelli Type SHD-Center-GC, Tiger Brand Type SHD–CGC, and other brands of cable of identical

construction, and used on high-voltage system(s). This is considered an acceptable alternative method for the Elk Creek Mine. MSHA grants the petition for modification for the use at the Elk Creek Mine with conditions.

Docket No.: M–2001–110–C.
FR Notice: 66 FR 67550.
Petitioner: Apollo Coal Company.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).

Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The permanently installed spring-loaded locking devices would be used in lieu of padlocks to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 3 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the No. 3 Mine with conditions.

Docket No.: M–2001–111–C.
FR Notice: 66 FR 67551.
Petitioner: Straight Fork Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).

Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The permanently installed spring-loaded locking devices would be used in lieu of padlocks to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 3 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the No. 3 Mine with conditions.

Docket No.: M–2001–114–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal is to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Skidmore Slope Mine. The use of these fire extinguishers would replace existing requirements where rock dust, water cars, and other water storage equipped with three, 10-quart pails is not practical. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for firefighting equipment in the working section at the Skidmore Slope Mine with conditions.

Docket No.: M–2000–024–C.

FR Notice: 65 FR 19928.

Petitioner: Webster County Coal, LLC.

Regulation Affected: 30 CFR 75.333.

Summary of Findings: Petitioner's proposal is to use a temporary stopping in the return stopping line, outby the section tailpiece, for a short period of time prior to the section moving from entries to rooms in lieu of using a permanent type stopping. This is considered an acceptable alternative method for the Dotiki Mine. MSHA grants the petition for modification for use at the Dotiki Mine with conditions.

Docket No.: M–2000–109–C.

FR Notice: 65 FR 58819.

Petitioner: The American Coal Company.

Regulation Affected: 30 CFR 75.900.

Summary of Findings: Petitioner's proposal is to use a combination of suitable sized fuses or non-under-voltage release circuit breaker contactor, ground fault device, and three phase under-voltage relay, serving a three-phase low- or medium-voltage alternating current circuit. This modification is to apply to any or all low- or medium-voltage circuits. This is considered an acceptable alternative method for the Galatia Mine. MSHA has determined that the proposed alternative method would apply only to stationary belt drive power centers, stationary water pump power centers, and longwall hydraulic pump power centers. MSHA has limited the modification to those applications. In addition, MSHA determined that future power centers and dedicated electrical installation, may be safely designed and constructed to produce higher low or medium output voltages by using the same basic modification. MSHA grants the petition for modification for the use at the Galatia Mine with conditions.

[FR Doc. 03–9842 Filed 4–21–03; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–97]

Detroit Testing Laboratory, Inc. (DTL), Expiration of Recognition

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

ACTION: Notice.

SUMMARY: This notice announces that Detroit Testing Laboratory, Inc., recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, will expire on April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Detroit Testing Laboratory, Inc. (DTL), has voluntarily decided not to renew its recognition as a Nationally Recognized Testing Laboratory (NRTL). OSHA's current scope of recognition for DTL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/dtl.html.*

The only **Federal Register** notices published by OSHA for DTL's recognition covered its recognition as an NRTL, which became effective on April 27, 1998 (63 FR 20661).

The current address of the DTL facility (site) already recognized by OSHA is: Detroit Testing Laboratory, Inc., 7111 E. Eleven Mile, Warren, Michigan 48092.

General Background on the Expiration of Recognition

Appendix A to 29 CFR 1910.7 stipulates that a recognized NRTL may renew its recognition by filing a renewal request not less than nine months, nor more than one year, before the expiration date of its current recognition.

On June 18, 2002, OSHA sent DTL a reminder indicating that OSHA's recognition of Detroit Testing Lab, Inc. (DTL), as a Nationally Recognized Testing Laboratory (NRTL) would expire on April 28, 2003. DTL did not submit a renewal request within the stipulated time frame of less than nine months

before the expiration date of its current recognition. On July 29, 2002, DTL indicated it will not be renewing its recognition as an NRTL. DTL's recognition will expire on April 28, 2003.

In accordance with OSHA policy pertaining to expiration of recognition, the Agency only publishes one **Federal Register** notice without a comment period to note the expiration of DTL's recognition as an NRTL.

Signed in Washington, DC this 11th day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–9874 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Expansion of Recognition

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

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV Product Services GmbH for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7. Also, eight standards are granted interim approval subject to review.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by May 7, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by May 7, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by May 7, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2–92, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL2–92, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *www.osha.gov.* Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.,* social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

EFFECTIVE DATE: This recognition becomes effective on April 22, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while TUVPSG remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory (NRTL). TUVPSG's expansion covers the use of additional test standards. OSHA's current scope of recognition for TUVPSG may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvpsg.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

TUVPSG submitted its application to expand its recognition to use 46 additional test standards on June 28, 2002 (*see* Exhibit 7), and submitted an amended application on August 1, 2002 (*see* Exhibit 7–1), which added 11 more test standards to its original request. In the preliminary notice, we inadvertently identified the August 1 amendment as the original application but omitted the additional standards. We have included them as explained below. The NRTL Program staff determined that 2 of the 46 test standards originally requested could not be included in the expansion because they are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA is approving 44 of those test standards for the expansion, which are listed below. One of the test standards requested by TUVPSG, UL 3101–2–20, is listed below using its current designation, UL 61010A–2–020.

For purposes of the application, OSHA performed an onsite review of the NRTL in June 2002, in conjunction

with OSHA's regular audit of TUVPSG. In a memo, dated July 31, 2002 (*see* Exhibit 8), the OSHA assessor recommended granting the expansion request. OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 24, 2003 (68 FR 3564). The notice requested submission of any public comments by February 10, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for TUVPSG's recognition covered its initial recognition, which became effective on July 20, 2001 (66 FR 38032).

You may obtain or review copies of all public documents pertaining to the TUVPSG application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL1–2001, the permanent record of public information on the TUVPSG recognition.

The current address of the facility (site) that OSHA recognizes for TUVPSG is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

Interim Approval Subject to Review

As mentioned above, TUVPSG submitted an amendment to the expansion request to use 11 additional test standards. Three of the standards requested by TUVPSG were not ''appropriate'' because the standards developing organization (SDO) had withdrawn the standards. Therefore, OSHA is expanding the recognition of TUVPSG to include the 8 standards listed below, which require the same type of capabilities as other test standards approved for the expansion. This brings the total to 52 test standards approved for the expansion.

UL 298 Portable Electric Hand Lamps
UL 588 Christmas-Tree and decorative Lighting Outfits
UL 676 Underwater Lighting Fixtures
UL 1230 Amateur Movie Lights
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1598 Luminaries
UL 1786 Nightlights

Since these 8 standards were not included in the preliminary notice, the Agency will provide interested parties an opportunity to comment. Comments submitted by interested parties must be received no later than May 7, 2003. If we receive comments, OSHA will determine whether additional procedures are necessary.

Existing Condition

Currently, OSHA imposes a special condition on its recognition of TUVPSG. This condition is listed first under the ''Conditions'' section, which is the last section of this notice, and applies also to this expansion for additional test standards. As mentioned in previous notices, such a special condition applies solely to TUVPSG's NRTL operations, and it is in addition to any other condition that OSHA normally imposes in its recognition of any organization as an NRTL.

The condition makes reference to TUV America, Inc. (TUVAM), which is another NRTL organization recognized by OSHA.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that TUV Product Services GmbH has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVPSG, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 52 test standards, and OSHA has determined the standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

UL 197 Commercial Electric Cooking Appliances
UL 250 Household Refrigerators and Freezers
UL 298 Portable Electric Hand Lamps
UL 429 Electrically Operated Valves
UL 474 Dehumidifiers
UL 484 Room Air Conditioners
UL 499 Electric Heating Appliances
UL 588 Christmas-Tree and decorative Lighting Outfits
UL 676 Underwater Lighting Fixtures
UL 749 Household Dishwashers
UL 859 Household Electric Personal Grooming Appliance
UL 873 Temperature-Indicating and -Regulating Equipment
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 935 Fluorescent-Lamp Ballasts
UL 982 Motor-Operated Household Food Preparing Machines
UL 998 Humidifiers
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1230 Amateur Movie Lights
UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
UL 1310 Class 2 Power Units
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1431 Personal Hygiene and Health Care Appliances
UL 1492 Audio-Video Products and Accessories
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaries
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1786 Nightlights
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Shavers, Hair Clippers, and Similar Appliances
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010A–2–041 Electrical Equipment for

Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials and for Laboratory Processes

UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring

UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

OSHA's recognition of TUVPSG, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the test standards listed above, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (*e.g.,* UL 1026) for the standard, as opposed to the ANSI designation (*e.g.,* ANSI/UL 1026). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ''NSSN'' (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUVPSG must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Only TUV America, Inc. (TUVAM), or TUV Product Services GmbH (TUVPSG) may authorize the U.S. registered certification mark currently owned by TUV America, Inc. TUVPSG may authorize the use of this mark only at the facility recognized by OSHA;

OSHA must be allowed access to TUVPSG's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVPSG has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVPSG must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVPSG agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVPSG will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVPSG will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC this 11th day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–9875 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Intent to Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients, for Service Area OH–19 in Ohio, Beginning July 1, 2003

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2003 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, for service area OH–19 in Ohio, beginning July 1, 2003.

DATES: All comments and recommendations must be received on or before the close of business on May 22, 2003.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street, NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on January 13, 2003 (68 FR 8), LSC will award funds to Legal Services of Northwest Ohio, Inc. The grant amount is estimated to be $611,832 for the period July 1, 2003, through December 31, 2003. The funding amount is based on the 2000 census data as discussed in LSC Program Letter 02–8, and is subject to change.

This grant will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). An award will be made so that the service area is served, although the listed organization is not guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantee within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about July 1, 2003.

Dated: April 16, 2003.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 03–9877 Filed 4–21–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet April 25, 2003, from 10 a.m. until 12:30 p.m. and continue on April 26, 2003, at 9:30 a.m. until conclusion of the Board's agenda.

LOCATION: The Bishop's Lodge, Bishop's Lodge Road, Santa Fe, New Mexico.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c) (10)) and the corresponding provisions of the Legal Services Corporation's implementing regulation (45 CFR 1622.5(h)). A copy of the General

Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Election of Temporary Chair and Vice Chair.
3. Update by Randi Youells, LSC Vice President for Programs, on LSC's Performance Measurement Activities: The State Planning Evaluation Instrument and Activities to Assess the Desirability of Developing a System to Measure Outcomes for Clients.
4. Presentation by Randi Youells on LSC Reports on the Rural Issues and Delivery Conference, the Technology Initiative Grant Program, and the Trainer Training for the LSC Diversity Initiative.
5. Delivery of Legal Services in New Mexico: Panel presentation with Sarah Singleton, former co-chair of the State Bar of New Mexico's Legal Services & Programs Committee; John Arango, Executive Director, New Mexico Legal Aid; Olga Pedroza, Supervising Attorney, Migrant Program, New Mexico Legal Aid; Kathleen Brockel, Executive Director, Law Access; Felicia Sanchez, Intern Paralegal and former client, New Mexico Legal Aid; and Ann Burnham, Client Volunteer, New Mexico Legal Aid Santa Fe Office.
6. Serving the Navajo Nation in New Mexico: Presentation by Anna Marie Johnson, Executive Director, DNA-People's Legal Services.
7. Approval of the minutes of the Board's meeting of February 1, 2003.
8. Approval of the minutes of the Executive Session of the Board's meeting of February 1, 2003.
9. Approval of the minutes of the Board's telephonic meeting of March 10, 2003.
10. Approval of the minutes of the Board's 2002 Annual Performance Reviews Committee's meeting of January 31, 2003.
11. Approval of the minutes of the Provision for the Delivery of Legal Services Committee's meeting of January 31, 2003.
12. Approval of the minutes of the Operations & Regulations Committee's meeting minutes of January 31, 2003.
13. Approval of the minutes of the Finance Committee's meeting of January 23, 2003.
14. Approval of the minutes of the Finance Committee's meeting of January 31, 2003.
15. Remarks by Special Guests: Representative Tom Udall, U.S. House of Representatives; Justice Pamela B. Minzer, Supreme Court of New Mexico; Joyce Pullen, Office of Senator Pete Domenici; John D. Robb, Of Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Sarah Singleton, former co-chair of the State Bar of New Mexico's Legal Services & Program Committee; and Representatives from DNA-People's Legal Services' Board of Directors.
16. Chairman's Report.
17. Members' Report.
18. Acting Inspector General's Report.
19. President's Report.
20. Report by Mauricio Vivero, LSC Vice President for Governmental Relations & Public Affairs.
21. Report on LSC's Temporary Operating Budget, Expenses, and Other Funds Available through February 28, 2003.
22. Consider and act on the President's recommendation for FY 2003 Consolidated Operating Budget.
23. Comments of L. Jonathan Ross, Chairman of the ABA Standing Committee on Legal Aid and Indigent Defendants.
24. Consider and act on the Board's 2003 meeting schedule.

Closed Session

25. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
26. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

27. Consider and act on other business.
28. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: April 18, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–10065 Filed 4–18–03; 2:25 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of April 21, 28, May 5, 12, 19, 26, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 21, 2003

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m. Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of May 19, 2003—Tentative

There are no meetings scheduled for the Week of May 19, 2003.

Week of May 26, 2003—Tentative

Wednesday, May 28, 2003

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Thursday, May 29, 2003

9:30 a.m. Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248).

This meeting will be webcast live at the Web address—*http.//www.nrc.gov.*

2 p.m. Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: April 17, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–10008 Filed 4–18–03; 12:01 am]

BILLING CODE 759–01–M

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 8th, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov*.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail *LAB@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e. (1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement; and

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, Subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement with the Commission. Wisconsin law (Subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria''), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in Chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility (''unrestricted release''). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use (''restricted release''). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special ''decommissioning-possession only'' license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as

approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

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

Dated at Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, The Commission found on **[date]** that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Madison, Wisconsin this ** day of June, 2003.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–9604 Filed 4–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; Yucca Mountain, NV

Board Meeting: May 13–14, 2003—Washington, DC: The Nuclear Waste Technical Review Board will meet to discuss thermal aspects of the Department of Energy's regulatory design for Yucca Mountain, corrosion research, geophysical and hydrogeologic investigations of the Yucca Mountain site, performance confirmation plans, and a report by the Igneous Consequences Peer Review Panel.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, May 13, and on Wednesday morning, May 14, 2003, the U.S. Nuclear Waste Technical Review Board (Board) will meet in Washington, DC, to discuss how heat from the radioactive decay of nuclear waste will affect the U.S. Department of Energy's (DOE) design of a repository for disposing of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. Other technical and scientific issues related to the potential performance of such a repository also will be discussed. The meeting is open to the public, and opportunities for public comment will be provided. The Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Watergate Hotel; 2650 Virginia Avenue, NW.; Washington, DC 20037. The telephone number is 202–965–2300; the fax number is 202–337–7915. The

meeting sessions will begin at 8 a.m. on both days.

On Tuesday, the meeting will focus on the DOE's planned repository design and operating mode for Yucca Mountain. The Board has invited the DOE to describe clearly the thermal aspects of the repository design and operating mode, how the thermal aspects of the design and operating mode were analyzed for waste isolation, and the results of the analyses.

The half-day meeting on Wednesday will include discussions of other scientific issues related to a Yucca Mountain repository, including a presentation on corrosion research by a representative of the Center for Nuclear Waste Regulatory Analyses; a presentation on geophysical and hydrogeologic investigations by a representative of Inyo County, California; an update on the Yucca Mountain science and technology program; and a presentation by a representative of the Igneous Consequences Peer Review Panel. The session also will include a discussion of the DOE's performance confirmation plans.

Opportunities for public comment will be provided before adjournment on both days. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. If time permits, the questions will be addressed during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*. Beginning on June 16, 2003, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Watergate Hotel. A meeting rate is available for reservations made by April 21, 2003. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: April 17, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–9908 Filed 4–21–03; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934: Release No. 47683 and International Series Release No. 1268]

Order Regarding the Collateral Broker-Dealers Must Pledge When Borrowing Customer Securities

April 16, 2003.

Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') authorizes the Securities and Exchange Commission (''Commission''), by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

By this Order, the Commission will allow broker-dealers that borrow fully-paid [1] and excess margin [2] securities from customers to pledge a wider range of collateral than is currently permitted under paragraph (b)(3) of rule 15c3–3 (17 CFR 240.15c3–3). Most of the categories of permissible collateral added by this Order were selected based on their high quality and liquidity. The remaining categories, certain sovereign debt securities and foreign currencies, are being added because they may be pledged only when borrowing non-equity securities issued by entities (including the sovereign entity) from the same sovereign jurisdiction or denominated in the same currency, respectively. In these cases, market declines affecting the pledged collateral should be expected to have a related affect on the borrowed securities. By adding only highly liquid collateral or, with respect to two categories, collateral that is restricted in its use, the Order is consistent with the objectives of paragraph (b)(3) of rule 15c3–3, which is designed to ensure borrowings from customers remain fully collateralized.

The Commission took into account several considerations in deciding whether to provide this exemptive relief and designate additional categories of permissible collateral. For example, the Commission considered whether the risks of customer losses associated with permitting a new category of collateral were sufficiently small relative to the benefits the additional kinds of collateral will provide. Those benefits include adding liquidity to the securities lending markets and lowering borrowing costs for broker-dealers. In issuing this Order, the Commission is drawing on its experience in assessing the liquidity of markets in a variety of contexts including, for example, the net capital requirements for broker-dealers.

The rule currently requires that the collateral provided by a broker-dealer fully collateralize its obligation to a customer, and that the value of the loaned securities and the collateral be marked to market on a daily basis to meet this requirement. The Order requires, in addition to the rule's requirements, over-collateralization when the collateral is denominated in a different currency than the borrowed securities. The daily marking to market and over-collateralization should serve to buffer fluctuations in value.

The Commission finds that this exemption is appropriate in the public interest, and consistent with the protection of investors. The exemption will add liquidity to the securities lending markets and lower borrowing costs while maintaining the customer protection objectives of rule 15c3–3.

Accordingly, *it is ordered,* pursuant to section 36 of the Exchange Act, that, broker-dealers may pledge, in accordance with all applicable conditions set forth below and in paragraph (b)(3) of rule 15c3–3, the following types of collateral (in addition to those permitted under paragraph (b)(3) of rule 15c3–3) when borrowing fully paid and excess margin securities from customers:[3]

1. ''Government securities'' as defined in section 3(a)(42)(A) and (B) of the Exchange Act may be pledged when borrowing any securities.

2. ''Government securities'' as defined in section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations may be pledged when borrowing any

[1] As defined in rule 15c3–3, ''fully paid'' securities are securities carried by a broker-dealer for which the customer has paid the full purchase price in cash. 17 CFR 240.15c3–3(a)(3).

[2] As defined in rule 15c3–3, ''excess margin'' securities are securities carried by a broker-dealer that have a market value in excess of 140% of the amount the customer owes the broker-dealer. 17 CFR 240.15c3–3(a)(5).

[3] All prior staff interpretations and no-action positions concerning the types of collateral that may be pledged under paragraph (b)(3) of rule 15c3–3 are herewith withdrawn.

securities: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, and (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the U.S.—may be pledged when borrowing any securities: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

4. Mortgage-backed securities meeting the definition of a ''mortgage related security'' set forth in section 3(a)(41) of the Exchange Act may be pledged when borrowing any securities.

5. Negotiable certificates of deposit and bankers acceptances issued by a ''bank'' as that term is defined in section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a ''ready market'' as that term is defined in 17 CFR 240.15c3–1 (''rule 15c3–1''),[4] may be pledged when borrowing any securities.

6. Foreign sovereign debt securities may be pledged when borrowing any securities, *provided* that, (i) at least one nationally recognized statistical rating organization (''NRSRO'') has rated in one of its two highest rating categories either the issue, the issuer or guarantor, or other outstanding unsecured long-term debt securities issued or guaranteed by the issuer or guarantor; and (ii) if the securities pledged are denominated in a different currency than those borrowed,[5] the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 (100%) by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

7. Foreign sovereign debt securities that do not meet the NRSRO rating condition set forth in item 6 above may be pledged only when borrowing non-equity securities issued by a person organized or incorporated in the same jurisdiction (including other debt securities issued by the foreign sovereign); *provided* that, if such foreign sovereign debt securities have been assigned a rating lower than the securities borrowed, such foreign sovereign debt securities must be rated in one of the four highest rating categories by at least one NRSRO. If the securities pledged are denominated in a different currency than those borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

8. The Euro, British pound, Swiss franc, Canadian dollar or Japanese yen may be pledged when borrowing any securities, *provided* that, when the securities borrowed are denominated in a different currency than that pledged, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1%. Any other foreign currency may be pledged when borrowing any non-equity securities denominated in the same currency.

9. Non-governmental debt securities may be pledged when borrowing any securities, *provided* that, in the relevant cash market they are not traded flat or in default as to principal or interest, and are rated in one of the two highest rating categories by at least one NRSRO. If such securities are not denominated in U.S. dollars or in the currency of the securities being borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1% when the securities pledged are denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when they are denominated in any other currency.

The categories of permissible collateral identified above do not include securities that (i) have no principal component, or (ii) accrue interest at the time of the pledge at a stated rate equal to or greater than 100% per annum (expressed as a percentage of the actual principal amount of the security).

Broker-dealers pledging any of the securities set forth above must, in addition to satisfying the notice requirements already contained in paragraph (b)(3) of rule 15c3–3, include in the written agreement with the customer a notice that some of the securities being provided by the borrower as collateral under the agreement may not be guaranteed by the United States.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9845 Filed 4–21–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Certificates of deposit and bankers acceptances are deemed to have a ''ready market'' under rule 15c3–1 if, among other things, they are issued by a bank as defined in section 3(a)(6) of the Exchange Act that is (i) subject to supervision by a federal banking authority, and (ii) rated investment grade by at least two nationally recognized statistical rating organizations or, if not so rated, has shareholders' equity of at least $400 million.

[5] For the purposes of this Order, equity securities will be deemed to be denominated in the currency of the jurisdiction in which the issuer of such securities has its principal place of business.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47676; File No. SR–CBOE–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of the CBOE Hybrid System

April 14, 2003

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2002, April 2, 2002, May 17, 2002, January 16, 2003, and April 7, 2003, respectively, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and Amendments No. 1, 2, 3, and 4 to the proposed rule change,[3] as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement the CBOE Hybrid System, a revolutionary options trading platform that combines the best features of both open outcry and electronic trading systems. When operational, the CBOE Hybrid System will offer automatic executions of eligible electronic orders and still provide an open-outcry trading

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 4 supersedes the original filing and Amendments No. 1, 2, and 3 in their entirety.

environment for trades to occur on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts 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 hereby proposes the introduction of the CBOE Hybrid System (''Hybrid'' or ''Hybrid System''), a revolutionary trading platform that will alter the fundamental way in which the Exchange conducts business. When operational, Hybrid will combine the features of electronic trading with the benefits of open outcry, auction market principles to form the most dynamic trading platform in the options industry.

Hybrid merges the electronic and open outcry trading models while at the same time it offers market participants the ability to stream electronically their own quotes. Today, CBOE's disseminated quote represents, for the most part, the DPM's autoquote price and market makers are able to affect changes to that quote in open outcry (or by putting up manual quotes). Hybrid will offer market participants (which are defined as in-crowd market makers, in-crowd DPMs, and in-crowd floor brokers) the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.[4] Whereas there currently is only one autoquote price comprising the CBOE disseminated quote, Hybrid will allow for the introduction of multiple quotes in the quoting equation. Market makers will have the ability to stream quotes that reflect their individualized trading interest.

Incoming electronic orders from public customers and certain types of broker-dealers that execute against market participants' quotes will be allocated to the best quoters pursuant to a novel and unique trading algorithm. This ''Ultimate Matching Algorithm'' (''UMA'' or the ''Algorithm'') retains public customer priority and rewards those market participants pursuant to a formula that balances the concepts of quoting at the best price with providing liquidity at the best price. The result will be substantially enhanced incentives for market participants to quote competitively and substantially reduced disincentives to quote competitively.[5] Indeed, the ability to stream electronic quotes combined with the ability to receive electronic and instantaneous allocations of incoming orders will reward market participants that quote at the best price. The Exchange believes that Hybrid, with its ability to allow multiple quotes and instantaneous allocations, may have the attendant benefit of tightening the Exchange's best disseminated quote. Whereas the Exchange's current disseminated quote, which is comprised of only one electronic input, may be replaced by a disseminated quote that reflects multiple inputs, the Exchange expects that spread widths may decline and liquidity may increase.

Hybrid also retains the benefits inherent in a floor-based, open outcry exchange. Order entry firms will continue to have the ability to have their floor brokers walk into a trading crowd and request markets on behalf of their customers. Trading crowds, as is the case today, may continue to offer price improvement to orders of size, complex orders, and other orders that are exposed to the open outcry, auction market environment. The opportunity for market participants to offer price improvement is a concept that exists only in extremely limited instances on all-electronic exchanges. The CBOE Hybrid System will enhance the ability of order entry firms to satisfy their due diligence and best-execution obligations by providing them with a trading platform that provides efficient and instantaneous electronic executions when CBOE is the NBBO, along with the opportunity for price improvement.

Hybrid will also offer improved access to the broker-dealer community. In this respect, non-market maker broker-dealers will have the same access to the electronic execution feature of Hybrid that public customers will enjoy in designated classes. This will allow eligible broker-dealers to receive more automatic executions of the orders they route to CBOE. Additionally, the Hybrid rules for the first time allow for the ''opening of the book'' to certain types of broker-dealer orders. Accordingly, these broker-dealer orders will be eligible for placement into the electronic book against which they may be executed electronically. Finally, Hybrid also allows for the opportunity for broker-dealers to electronically access the limit order book (*i.e.,* buy or sell the book) in eligible classes. This feature will allow for the automatic execution of broker-dealer orders against resting limit orders in the book, whether they are public customer or broker-dealer orders in the book. Taken together, these features greatly enhance the handling of broker-dealer orders, thereby making the Exchange more broker-dealer friendly.

To implement Hybrid the Exchange proposes the adoption of several new rules (most notably CBOE Rules 6.13 and 6.45A) and the amendment of several existing rules. New CBOE Rule 6.13 replaces the Exchange's RAES Rule 6.8 for those classes in which Hybrid is operational and will govern the automatic execution of incoming electronic orders. Proposed CBOE Rule 6.45A is the new priority and allocation rule and codifies UMA. Together, these rules form the backbone of a trading system that will provide investors with deeper and more liquid markets, will provide market participants with substantially enhanced incentives to quote competitively, will greatly expand broker-dealer access, and will provide order entry firms with a trading platform CBOE believes is most conducive to satisfying their best execution and due diligence obligations.

This proposal will only apply to equity options. Accordingly, the Exchange proposes a rollout schedule that will see the introduction of equity option classes trading on Hybrid by May 30, 2003. New equity option classes will continue to be rolled out gradually as the Exchange and its membership become more familiar and acquainted with the operation of the system. The determination of which classes to roll

[4] In this respect, in-crowd floor brokers may represent orders on behalf of members, broker-dealers, public customers, and the firm's proprietary account. Pursuant to Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction shall be one to buy or sell. Floor brokers may not stream quotes.

[5] Subparagraph IV.B.h(i)(aa) of the Commission's September 11, 2000 Order (''Order'') requires the Exchange to ''adopt new, or amend existing, rules concerning its automated quotation and execution systems which substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively.'' Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

out, and when to roll them out, will be made by the Equity Floor Procedures Committee. The Exchange hopes to expand the rollout to the Top 200 classes by January 2004 and by the fourth quarter of 2004, to expand the rollout to the 500 most active equity options. The Exchange intends to implement Hybrid floor-wide in all classes by the fourth quarter of 2006.

Non-Hybrid Classes

For classes in which Hybrid is not yet operational, market makers will continue to be able to input manual quotes and receive allocations of incoming orders that execute against those quotes, as prescribed by existing CBOE Rule 6.8(d)(vi). Following is a descriptive summary of the new rules and the amended rules for the new Hybrid System.

Rule 6.13 CBOE Hybrid System's Automatic Execution Feature

This rule governs the automatic execution of incoming electronic customer and certain broker-dealer (''BD'') orders. Just as CBOE Rule 6.8 has no application to classes trading on Hybrid, this Rule is only applicable to classes trading on Hybrid. The allocation of electronically executed orders in Hybrid shall be pursuant to new CBOE Rule 6.45A.

Proposed section (b) governs aspects of the automatic execution feature, including defining eligible orders and eligible order size, the process for automatic execution, split price executions, and executions against orders in the electronic book.

Eligible Orders and Order Size

This section clarifies that eligible orders may be automatically executed in accordance with the provisions of this Rule. Hybrid creates two broad categories of orders that will be eligible for automatic execution. First, orders from non-broker-dealer public customers and non-market maker broker-dealers will be eligible for automatic execution for the same number of contracts. Second, consistent with current CBOE Rule 6.8.01, the appropriate floor procedure committee (''FPC'') may determine that orders from market makers and specialists may be eligible for automatic execution. Orders not eligible for automatic execution instead will route to PAR, BART, or to the order entry firm's booth printer.[6] All BD orders of a particular origin code will be routed to the same location (*e.g.,* all orders designated by the ''N'' origin code (non-CBOE market makers) will route to the firm's booth). Any changes to the routing parameters of non-auto-ex eligible BD orders will be made by the appropriate FPC and announced to the membership via regulatory circular.

As is the case today, the appropriate FPC shall determine on a class-by-class basis the maximum size of orders entitled to receive automatic execution through Hybrid. If the eligible order size exceeds the disseminated size, incoming eligible orders shall be entitled to receive an automatic execution up to the disseminated size. Similarly, if the appropriate FPC determines to allow market makers to access the automatic execution feature of Hybrid, it may also determine to establish the maximum order size eligibility for such orders at a level lower than the maximum order size eligibility for non-broker-dealer public customers and non-market-maker broker-dealers.

Split-Price Executions

Eligible orders will be automatically executed. Eligible orders for a size greater than the disseminated size will be automatically executed in part, up to the disseminated size. The balance of the order if marketable will execute automatically at the revised disseminated price up to the revised disseminated size (provided it does not violate NBBO, in which case it will route to PAR or BART).[7] If not marketable, the balance of the order will book electronically.

Automatic Executions at Prices Inferior to NBBO

When CBOE is not the NBBO, eligible orders will not automatically execute and instead, shall route to the DPM's PAR terminal for non-automated handling. Alternatively, order entry firms will have the ability, at their discretion, to have these orders route to the firm's booth instead of PAR. Eligible orders received while the CBOE market is locked (*e.g.,* $1.00 bid—$1.00 offered) shall be eligible for automatic execution on CBOE at the disseminated quote, provided that CBOE's disseminated quote is not inferior to the NBBO, in which case the order will either route to the DPM's PAR terminal or the firm's booth.

Users, Order Entry Firms, and Prohibited Practices

CBOE Rule 6.13(c) defines ''User'' as any person or firm that obtains electronic access to the automatic execution feature of the CBOE Hybrid System through an Order Entry Firm. The term ''Order Entry Firm'' (''OEF'') means a member organization of the Exchange that is able to route orders to the Exchange's Order Routing System.

Order Entry Firms are required to comply with all applicable CBOE options trading rules and procedures. They are required to provide written notice to all Users regarding the proper use of the CBOE Hybrid System, including any automated execution features. The Rule also requires OEFs to Maintain adequate procedures and controls that will permit the OEF to effectively monitor and supervise the entry of electronic orders by all Users. OEFs must monitor and supervise the entry of orders by Users to prevent the prohibited practices set forth below. These requirements are identical to those contained in CBOE Rule 6.8(e).

This section also incorporates the provisions found in current CBOE Rules 6.8 and 6.8A regarding prohibited practices. In this respect, prohibited practices include but are not limited to the following:

1. Dividing an order into multiple smaller orders for the purpose of meeting the eligible order size requirements for automatic execution (''unbundling'').
2. The electronic generation and communication of orders (and cancellations) in violation of CBOE Rule 6.8A by non-trading crowd participants.
3. Effecting transactions that constitute manipulation as provided in CBOE Rule 4.7 and Rule 10b–5 under the Act.

Trade Nullification Procedure

A trade executed on the CBOE Hybrid System may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification, one party must contact the Help Desk, which will confirm the agreement and disseminate cancellation information in prescribed OPRA format.

Removal of Unreliable Quotes

The Exchange incorporates from existing CBOE Rule 6.8.02 language pertaining to the removal of unreliable quotes or markets from NBBO calculation. To summarize, floor officials may remove unreliable quotes in one or more options classes upon: (1) Direct communication from the affected market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or (2) direct communication from the affected market that it is experiencing systems or

[6] BART is the Booth Automated Routing Terminal that enables firms to maintain orders in electronic format. Orders routed to the firm's booth, as opposed to BART, will print at the booth and must be handled by the firm manually.

[7] The balance of the order will only route to BART if the order entry firm so requests.

other problems affecting the reliability of its disseminated quotes. Any decision to remove a market or its quotes from NBBO calculation will be promptly communicated to the affected market and duly recorded by the Exchange.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

This rule establishes the priority principles applicable to Hybrid and provides for the allocation of trades. The rules of priority and order allocation procedures set forth in this rule shall apply only to option classes designated by the Exchange for trading on the CBOE Hybrid System. For those classes not trading on the Hybrid System, CBOE Rule 6.45 will govern. This section has four main parts:

- Allocation of Incoming Electronic Orders
- Allocation of Orders Represented in the Trading Crowd
- Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book
- Quotes Interacting with Quotes

A. Allocation of Incoming Electronic Orders

Electronic orders will be allocated using UMA, the Exchange's Ultimate Matching Algorithm. In UMA, any market participant (defined as an in-crowd market maker, in-crowd floor broker, or DPM for the class) who enters a quotation that is represented in the disseminated CBOE best bid or offer (''BBO'') shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote. If the number of contracts represented in the disseminated quote is less than the number of contracts in an incoming electronic order(s), the incoming electronic order(s) shall only be entitled to receive a number of contracts up to the size of the disseminated quote. The balance of the electronic order will be eligible to be filled at the refreshed quote either electronically or manually and, as such, may receive a split price execution (as provided in CBOE Rule 6.13).

Priority of Orders in the Electronic Book

Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, a market participant quote, the public customer order(s) shall have priority and, the balance of the electronic order, if any, will be allocated via UMA.

If pursuant to CBOE Rule 7.4(a) the appropriate FPC determines to allow certain types of broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one ''market participant'' regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''market participant'' shall be distributed among each broker-dealer order comprising the ''market participant'' via UMA. For example, if there were five BD orders in the book for a cumulative 100 contracts, those five BD orders would be deemed ''one market participant'' for 100 contracts. The allocation of incoming orders among the five BD orders in the book would be done pursuant to UMA.

Operation of the Allocation Algorithm

When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it will be entitled to receive incoming electronic order(s) up to the size of its quote. In this respect, market participants quoting alone at the BBO have priority.

When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to UMA. UMA is an algorithm that allocates orders based on two separate yet important aspects: parity (*i.e.*, multiple participants quoting at the best price) and depth of liquidity (*i.e.*, relative size of each market participant's quote).[8] Each of these components is described in greater detail below.

The UMA formula is as follows:

Allocation Algorithm

$$\frac{\text{Incoming Order Size} * \underset{\text{(Component A)}}{\text{(Equal Percentage based on number of market participants quoting at BBO)}} + \underset{\text{(Component B)}}{\text{(Pro-rata Percentage based on size of market participants quotes)}}}{2}$$

Component A: This is the parity component of UMA. In this component, UMA treats as equal all market participants quoting at the relevant best bid or best offer (or both). Accordingly, the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the best price. For instance, if there were four market participants quoting at the best price, each is assigned 25% for Component A (or 100/4). This component rewards and incents market participants that quote at a better price than do their counterparts even if they quote for a smaller size.

Component B: This size pro-rata component is designed to reward and incent market participants to quote with size. As such, the percentage used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote. For example, if the disseminated quote represents the quotes of market makers X, Y, and Z who quote for 20, 30, and 50 contracts respectively, then the percentages assigned under Component B are 20% for X, 30% for Y, and 50% for Z.

Final Weighting: The final weighting, which shall be determined by the appropriate FPC, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage +Component B Percentage)/2) * incoming order size. The final weighting shall apply uniformly across all options under the jurisdiction of the appropriate FPC.[9] Changes made to the weighting of Components A and B shall be announced to the membership in

[8] UMA operates electronically and, as such, only market participants that are represented in the disseminated quote will participate in the allocation of incoming electronic orders. Multiple incoming orders will execute in accordance with CBOE Rule 8.51, Firm Disseminated Market Quotes.

[9] While the initial weighting of Components A and B will be equal, the rule allows the appropriate FPC to adjust the weighting percentages, which it would do if it believed such modifications would further enhance market participants' incentives to quote competitively or reduce disincentives to quote competitively, in accordance with the terms of the Order.

advance of implementation via Regulatory Circular.

DPM's Participation Entitlement

By virtue of their performance of additional obligations, DPMs generally are entitled to receive a participation entitlement for transactions that occur at the DPM's quote.[10] If a DPM is eligible for an allocation pursuant to the operation of the Algorithm described above, its allocation shall be either: [11]

(1) The greater of the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder) or the amount it would otherwise receive pursuant to the operation of the Algorithm described above; or

(2) The amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

The appropriate FPC shall determine which of the above two formulas will be applicable to all classes over which it has jurisdiction.[12] Each pronouncement regarding which formula to be used will be made via Regulatory Circular.

B. Allocation of Orders Represented in the Trading Crowd

This section governs the allocation of orders that are represented in the trading crowd by floor brokers (including DPMs acting as agent under CBOE Rule 8.85(b)).

Priority of Orders in the Electronic Book

As an initial matter, public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, an oral bid or offer provided by a member of the trading crowd, the public customer order(s) shall have priority and the balance of the order, if any, will be allocated in open outcry, as described below.

If pursuant to CBOE Rule 7.4(a) the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one ''book market participant'' (or ''BMP'') regardless of the number of broker-dealer orders in the book. Any allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a ''book market participant'' shall be distributed among each broker-dealer order comprising the BMP in accordance with UMA.

Allocation

The method for allocating orders that are represented in the trading crowd by floor brokers is dependent upon whether there are any book market participants quoting at the prevailing price.

1. *No BMP Present at the Prevailing Price.* If there is no BMP present at the prevailing price, allocation of open outcry orders shall be pursuant to existing CBOE Rule 6.45(a) and (b).

2. *BMP is Present at the Prevailing Price.* In an effort to ensure that BMPs receive at least partial allocations of orders received in open outcry, CBOE proposes to adopt an allocation rule that will limit market participants in the crowd to a predetermined percentage. If two or more bids (offers) represent the best price, priority shall continue to be afforded in the sequence in which the bids (offers) were made subject to the restriction that the first market participant to respond shall be entitled to 70% of the order. The second market participant to respond (if ascertainable) shall be entitled to 70% of the remainder of the order (*i.e.*, 70% of 30%). The balance of the order shall be apportioned equally among the remaining market participants bidding (offering) at the same price and the BMP. The portion allocated to the BMP shall be distributed amongst each book market participant pursuant to the allocation algorithm described in CBOE Rule 6.45A(a)(i)(B)(2) above.

If at any point the order in which market participants respond is not ascertainable, the balance of the incoming order, if any, shall be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the book market participant. If a market participant declines to accept any portion of the available contracts, any remaining contracts shall be apportioned equally among the other participants who bid (offered) at the best price (including the book market participant, if applicable) at the time the market was established until all contracts have been apportioned.

Complex Order Exception

The CBOE Hybrid System will continue to utilize the exception to the general priority rules for complex orders. As such, the Exchange incorporates existing Rule 6.45(e). CBOE, however, takes this opportunity to shorten it considerably. The revisions do not change the substance of the rule.

C. Interaction of Market Participant's Quotes and/or Orders With Orders in Electronic Book

Under proposed CBOE Rule 6.45A(c), market participants may also submit orders electronically to trade with orders in the electronic book. If only one market participant submits an electronic order or quote to trade with an order in the electronic book, that market participant shall be entitled to receive an allocation of the order in the electronic book up to the size of the market participant's order. If, however, more than one market participant submits an order to trade with the book, each market participant that submits an order or quote to buy (sell) an order in the electronic book within a period of time not to exceed 5 seconds [13] of the first market participant to submit an order (''N-second group'') shall be entitled to receive an allocation of the order in the electronic book pursuant to the following allocation algorithm:

Allocation Algorithm

[10] Among the obligations, which are codified in CBOE Rule 8.85, are: The requirement to quote continuously, the obligation to make legal width markets; the obligation to book eligible orders; the requirement to represent orders routed to the PAR station; the obligation under Linkage to handle all inbound linkage orders and to send satisfaction orders on behalf of customer orders in CBOE's book.

[11] In either case, the DPM's entitlement cannot exceed the size of the DPM's quote.

[12] Due to a systems limitation, the Exchange initially will use method two and set the DPM's participation entitlement at the amount it would be entitled to pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

[13] This N-second period is configurable by the appropriate FPC but shall never exceed 5-seconds. Any reduction of this N-second period (or subsequent increase) shall be announced to the membership in advance of implementation via Regulatory Circular. Furthermore, this time period shall apply uniformly among all classes under the FPC's jurisdiction.

$$\frac{\text{Electronic Book Order(s) Size} * \text{(Equal percentage based on number of members of ``N-second group'') (Component A)} + \text{(Size pro-rata percentage based on size of orders of N-second group members) (Component B)}}{2}$$

Component A: The percentage to be used for Component A shall be an equal percentage derived by dividing 100 by the number of market participants in the ''N-second group.''

Component B: Size Pro-rata Allocation: The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that each participant of the ''N-second group's'' quote at the best price represents relative to the total number of contracts of all market participants of the ''N-second group.''[14]

Final Weighting: The final weighting, which shall be determined by the appropriate FPC, shall be a weighted average of the percentages derived for Components A and B, multiplied by the size of the order(s) in the electronic book. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage + Component B Percentage)/2) * electronic book order size.

If a DPM is eligible for an allocation by virtue of being a member of the ''N-second group'' as described in paragraph (C)(2) above, the DPM shall be entitled to receive an allocation equal to the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder). The DPM's entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

The Exchange believes this process whereby all members of the ''N-second group'' receive an allocation of orders in the book will enhance competition. As discussed above, this process only applies when market participants attempt to access orders resting in the electronic book (*i.e.*, liquidity-taking). As such, this process has no effect on a market participant's liquidity-providing activities where he receives allocation of incoming orders. Thus, market makers will always have an incentive to quote competitively (provide liquidity). Second, this process ensures that the market-making organization with the deepest pockets and fastest technology does not monopolize every order in the electronic book. This ''arms race'' scenario would create a situation where the fastest machine wins every time, even if it was faster by a number as miniscule as a few milliseconds.[15] This in turn would create a disincentive to other market participants who would be unable to interact with orders in the book. Creation of an ''N-second group,'' conversely, gives these market participants an incentive to continue to submit orders and hence more of an incentive to remain on the floor of the exchange making markets, providing crucial liquidity.

D. Quotes Interacting With Quotes (Proposed Rule 6.45A(d))

Because Hybrid allows the simultaneous entry of quotes by multiple market makers,[16] there may be instances where quotes may become locked. If an in-crowd market maker's (including the DPM) disseminated quote interacts with the disseminated quote(s) of another in-crowd market maker (including the DPM), resulting in the dissemination of a ''locked'' quote (*e.g.,* $1.00 bid '' 1.00 offer), the following shall occur:

(A) The Exchange will disseminate the locked market and both quotes will be deemed ''firm'' disseminated market quotes.

(B) The market makers whose quotes are locked will receive a quote update notification advising that their quotes are locked.

(C) A ''counting period'' will begin during which market makers whose quotes are locked may eliminate the locked market. Provided, however, that in accordance with subparagraph (A) above a market maker will be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to CBOE Rule 6.13 at his disseminated quote in accordance with CBOE Rule 8.51. During the ''counting period'' market makers will continue to be obligated for one contract in open outcry to other market makers, in accordance with CBOE Rules 8.51 and 6.48. If at the end of the counting period the quotes remain locked, the locked quotes will automatically execute against each other in accordance with the allocation algorithm described above in CBOE Rule 6.45A(a).

For the first 60 days after a class begins trading on the Hybrid System, the length of the ''counting period'' for that particular class may not exceed ten seconds. For the next 60 days thereafter (*i.e.*, days 61–120) the length of the ''counting period'' may not exceed seven seconds in that class. Commencing on the 121st day after a class begins trading on the Hybrid System, the length of the ''counting period'' may not exceed four seconds in that class. Beginning April 1, 2004, all classes trading on Hybrid will be subject to a counting period not to exceed four seconds. The appropriate FPC may shorten the duration of the ''counting period.''

The Exchange notes that the Hybrid System will not disseminate an internally crossed market (*i.e.*, the CBOE Bid is higher than the CBOE offer—$1.10 bid × $1.00 offer). If a market maker submits an incoming quote that would cross an existing quote, the Exchange will alter the incoming such that it locks the existing quote, at which point the locked quotes will be treated in accordance with the procedures described above. Correspondingly, the Exchange will notify the second market maker that its quote has been changed.[17]

The Exchange adds new Interpretations .01 and .02 to clarify that order entry firms may not bypass the crossing (CBOE Rule 6.74) and solicitation (CBOE Rule 6.9) rules without exposing orders they represent as agent for at least 30 seconds prior to electronically executing against those

[14] As noted in Rule 6.45A(c)(ii), the appropriate FPC may determine that the maximum quote size to be used for each market participant in the Component B calculation shall be no greater than the cumulative size of orders resident in the electronic book at the best price at which market participants are attempting to buy (sell). This would prevent a market participant from ''sizing out'' competing market participants by, for example, submitting an order for 1,000 contracts to buy a book order for 10 contracts.

[15] The Exchange notes that customers or anyone else eligible to submit orders electronically may access the book ahead of market participants. In this instance, customers would have absolute priority and would not be required to share the order allocation with members of the N-second group.

[16] At the Exchange's request, the term ''market participant'' has been replaced with the term ''market maker'' throughout the discussion of proposed CBOE Rule 6.45A(d). Telephone conversation between Stephen Youhn, Senior Attorney, CBOE and Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, on April 7, 2003.

[17] During the lock period, if the existing quote is cancelled subsequent to the changing of the incoming quote, the incoming quote will be restored to its original value. For example, assume MM A quotes 1.00–1.20 (which is the CBOE's disseminated quote) and MM B submits a 1.25–1.40 quote. Because MM B's quote would invert MM A's disseminated quote, MM B's quote will be changed to 1.20–1.40 and the disseminated quote will be 1.20–1.20. If during the lock period, MM A cancels its quote, MM B's quote (which is currently 1.20–1.40) will revert to its original value of 1.25–1.40.

orders through the auto-ex feature of Hybrid.

Rule 8.7. Obligations of Market Makers

CBOE Rule 8.7 governs market maker obligations. Market Makers on the CBOE Hybrid System will continue to be subject to the obligations imposed by this rule, as amended.

The proposed change to section (b)(ii) of CBOE Rule 8.7 clarifies that market makers will be obligated to honor their quotes for up to their disseminated size, in accordance with the Quote Rule. Under Hybrid, market makers will be deemed the ''responsible broker or dealer'' for quotes they cause to be disseminated. Currently, the entire trading crowd is considered the ''responsible broker or dealer.'' This represents a fundamental change and will also be reflected in CBOE Rule 8.51.

The proposed change to section (b)(iii) of CBOE Rule 8.7 imposes upon market makers an obligation to ensure that their quotes are accurate. This section also provides guidance as to the permissible methods by which market makers may quote. Under Hybrid, market makers will be able to quote verbally by open outcry in response to a request for a market or they may quote electronically (or submit orders electronically) by use of an exchange-approved quoting device. This rule also clarifies that market makers must be physically present in the trading crowd to quote and submit orders. This is designed to prevent remote market making.

The Exchange proposes to adopt new paragraph (d) to CBOE Rule 8.7 to govern market maker obligations in Hybrid classes. The proposed obligations in paragraph (d) will only apply to market makers trading classes on the CBOE Hybrid System and only in those Hybrid classes. As such, this section has no applicability to non-Hybrid classes. Proposed paragraph (d) to CBOE Rule 8.7 clarifies that unless otherwise provided in this Rule, market makers on the Hybrid System are subject to all obligations imposed by CBOE Rule 8.7. To the extent another obligation contained elsewhere in CBOE Rule 8.7 is inconsistent with an obligation contained in paragraph (d) of Rule 8.7, paragraph (d) shall govern.

The Exchange proposes an introductory rollout period with respect to the obligations contained in paragraph (d). Accordingly, for a period of ninety (90) days commencing immediately after a class begins trading on the Hybrid System, the provisions of proposed paragraph (d)(i) shall govern trading in that class. Upon completion of this 90-day rollout period, a market maker's electronic trading volume will determine whether (d)(i) or (d)(ii) shall govern his trading activities, as described more fully below.

The Exchange notes that the requirements in proposed paragraph (d) to CBOE Rule 8.7 will be applicable on a per class basis depending upon the percentage of volume a market maker transacts electronically versus in open outcry. In making this determination, the Exchange will monitor market makers' trading activity every calendar quarter to determine whether they exceed the thresholds established below in paragraph (d)(i). If a market maker exceeds the threshold established below, the obligations contained in (d)(ii) will be effective the next calendar quarter.

Proposed Rule 8.7(d)(i) Market Maker Trades Less Than 20% Volume Electronically

If a market maker on the CBOE Hybrid System transacts 20% or less of his contract volume electronically in an appointed Hybrid class during any calendar quarter, the following provisions shall apply to that market maker in that class:

(A) Quote Widths: With respect to electronic quoting, the market maker will not be required to comply with the quote width requirements of CBOE Rule 8.7(b)(iv).

(B) Continuous Electronic Quoting Obligation: The market maker will not be obligated to quote electronically in any designated percentage of series within that class. If a market maker quotes electronically, its undecremented quote must be for at least ten contracts.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in CBOE Rule 8.7(b)(iv) for a minimum of ten contracts.

(D) In-Person Quoting Requirement: Any volume transacted electronically will not count towards the market maker's in-person requirement contained in CBOE Rule 8.7.03(B).

Proposed Rule 8.7(d)(ii) Market Maker Trades More Than 20% Volume Electronically

If a market maker on the CBOE Hybrid System transacts more than 20% of his contract volume electronically in an appointed Hybrid class during any calendar quarter, beginning the next calendar quarter he will be subject to the following quoting obligations in that class for as long as he remains in that class:

(A) Quote Widths: The market maker must comply with the quote width requirements contained in Rule 8.7(b)(iv).

(B) Continuous Quoting Obligation: A market maker will be required to maintain continuous two-sided quotes for at least ten contracts (undecremented size) in a designated percentage of series within the class, in accordance with the schedule below:

% of Overall Class Volume Transacted on CBOE During the Previous Quarter that was Transacted Electronically	Electronic Quoting % Requirement (Percentage of series)
50% or Below	*20*
51–75%	*40*
Above 75%	*60*

The Exchange will monitor on a calendar quarter basis the percentage of business transacted electronically on CBOE in each particular class for the purpose of adjusting the applicable electronic quoting percentage during the next succeeding calendar quarter. For example, if during the preceding calendar quarter 83% of the volume transacted on CBOE in a particular class is done electronically, market makers subject to paragraph (d)(ii) of CBOE Rule 8.7 will have an obligation to make continuous markets in 50% of the series trading in that class.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts.

The Exchange proposes minor non-substantive wording changes to Interpretation .02 to CBOE Rule 8.7. First, in Interpretation .02, the Exchange removes the first six words of the sentence ''although each pricing decision has many elements'' as they are superfluous.

The change to Interpretation .05 imposes a minimum quote size obligation upon market makers. Specifically, market maker quotes may not be for less than ten contracts. The Exchange notes that this size obligation only applies to a market maker's initial undecremented quote. Accordingly, if a market maker puts up a quote for 20 contracts and an incoming order executes against 15 of those contracts causing the market maker's disseminated size to decline to five

contracts, the market maker will not be in violation of any exchange rule. The CBOE Hybrid System will not accept any market maker quotes without an attached size. Closely related to this change is the proposed change to Interpretation .06 to CBOE Rule 8.7. Because the Hybrid System will not accept one-sided quotes, the current rule would have no applicability to electronic quotes. Accordingly, Interpretation .06 will now only apply to open outcry quotes.

The proposed change to Interpretation .07 to CBOE Rule 8.7 clarifies that this provision only applies in classes in which Hybrid is not operational. Because market makers will have the ability to submit their own quotes, this rule will not have any applicability.

The Exchange proposes to amend Interpretation .11 to clarify its applicability to different systems. New section (a) will only apply to classes on RAES while section (b) will apply to Hybrid classes. Section (b) for the most part is identical to section (a) except for the elimination of the reference to RAES, an elimination necessitated by the fact that RAES will not exist in the Hybrid environment.

Amendment of Additional Rules

The Exchange notes that to accommodate the introduction of Hybrid, it must amend numerous of its existing rules. While CBOE does not believe that the changes to these rules are as substantive as those made to the rules described above, they nevertheless are described below.

Rule 6.2 Trading Rotations

The Exchange amends existing CBOE Rule 6.2 to specifically reference the Hybrid Opening System (''HOSS'') in order to indicate that trading rotations may occur via HOSS. The amendment to CBOE Rule 6.2.05 clarifies that the automatic execution feature of Hybrid may be disengaged during any closing rotation.

Rule 6.2A Rapid Opening System

The Exchange amends its ROS rule to clarify it has no applicability to series trading on the CBOE Hybrid Opening System.

Rule 6.2B Hybrid Opening System

This rule governs the opening procedures for the CBOE Hybrid System. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. For each class of options contracts that has been approved for Hybrid trading, the System shall conduct an opening rotation, which shall be held promptly following the opening of the underlying security in the primary market in accordance with the procedures contained in CBOE Rule 6.2B.

Rule 6.7 Exchange Liability

The Exchange amends this rule to clarify its applicability to Hybrid.

Rule 6.8 RAES Operations

The amendment clarifies that the RAES rule has no applicability to options classes traded on the CBOE Hybrid System. For classes not trading on Hybrid, Rule 6.8 will continue to be applicable.

Rule 6.20 Admission to and Conduct on the Trading Floor; Member Education

The Exchange proposes to amend Interpretations .04, .05 and .09 to make them applicable to Hybrid. In this respect, CBOE eliminates in Interpretation .04(i) the reference to CBOE Rule 6.43 as Hybrid allows market participants to effect transactions electronically. Thus, the prohibition against effecting a transaction without public outcry no longer violates CBOE Rule 6.43. The Exchange does not amend that portion of the rule referencing CBOE Rule 6.74.

The change to Interpretation .05 provides Floor Officials with the same authority to nullify transactions occurring in violation of proposed CBOE Rule 6.45A that they currently have with respect to CBOE Rule 6.45 (*i.e.,* non-Hybrid trades).

Current Interpretation .09 provides that Market Performance Committee members have Floor Official responsibilities with respect to enforcing rules relating to RAES. This amendment simply extends that authority to Hybrid.

Rule 6.43 Manner of Bidding and Offering

The proposed amendment to CBOE Rule 6.43(a) gives market participants the ability to enter quotes and orders electronically via Exchange-approved quoting devices. Previously, CBOE Rule 6.43(a) allowed only those bids and offers entered via open outcry. Proposed Rule 6.43(b) preserves the ability of trading crowd members to enter manual quotes in non-Hybrid classes. In classes trading on Hybrid, trading crowd members may enter their own quotes or orders through their own handhelds.[18]

[18] An individual market maker may use the same handheld quoting device to enter both quotes and orders.

Rule 6.45 Priority of Bids and Offers—Allocation of Trades

The Exchange proposes two changes to CBOE Rule 6.45. The first change clarifies that the rules of priority in CBOE Rules 6.13 and 6.45A shall operate independent of the priority rules contained in CBOE Rule 6.45. Second, the Exchange amends CBOE Rule 6.45(e) for the purpose of making it easier to read. This section, as amended, is identical to proposed CBOE Rule 6.45A(b)(iii).

Rule 6.47 Priority on Split Price Transactions Occurring in Open Outcry

The changes to CBOE Rule 6.47 clarify that split price priority only applies to those transactions effected in open outcry. There will be no split price priority for electronic transactions.

Rule 6.54 Accommodation Liquidations

The Exchange proposes to add new Section (b) to allow for accommodation liquidations to occur in Hybrid. Given current system limitations, cabinet trades may only occur in open outcry trading and thus will not be eligible for placement into the limit order book.

Rule 7.4 Obligations for Orders

The Exchange proposes to amend CBOE Rule 7.4(a) to expand the types of orders eligible for entry into the electronic book.[19] Proposed paragraph (a)(1) gives the appropriate FPC the ability to determine the categories of orders eligible for entry into the book. This paragraph authorizes market participants to place orders in the book (in those classes in which Hybrid is operational.)[20] Additionally, this section enables the FPC to allow all BD orders to be book eligible or, as with current RAES access rules for BDs, to allow orders from those BDs that are not market makers or specialists to enter the book. Both methods substantially enhance book access for non-customers.

This proposed rule also preserves that section of the current rule that allows the FPC to determine the manner and form in which orders are submitted.[21] Similarly, the Exchange deletes the last sentence of current CBOE Rule 7.4(a)(2)

[19] Currently only public customer orders are eligible for entry in the book.

[20] In this respect, market participants may place orders in the book. Regarding the entry of orders into the book from market participants in non-designated classes, they will not have ''market participant'' status and thus will be eligible for book entry only if the FPC has determined that all BD orders are eligible for book entry in that particular class.

[21] This, for example, would allow the FPC to require orders be submitted electronically into the book.

regarding the non-eligibility of BD orders for entry into the book.

The changes to proposed section (b) clarify that orders from market participants may be placed in the book (whether the order first routes to the OBO or directly into the book). The Exchange proposes to limit the applicability of paragraph (g) to non-Hybrid classes because ''live ammo'' functionality will not be available in Hybrid.

The Exchange proposes to delete existing Interpretation .05 to CBOE Rule 7.4 as obsolete. The Order Support System has been absent from the Exchange for more than ten years. Finally, the Exchange amends current Interpretation .07 by renumbering it as .06 and by adding reference to the automatic execution provisions of new CBOE Rules 6.13 and 6.45A.

Rule 7.7 Displaying Bids and Offers in the Book

The exchange also amends CBOE Rule 7.7 regarding the display of orders in the book. Specifically, the Exchange removes as obsolete the section of the rule that allows the OBO to display indications of book size when the book contains orders for at least 25 contracts. Because the Exchange currently disseminates the actual size of orders in the book, this section is obsolete. The Exchange also deletes Interpretation .01 in its entirety as obsolete.[22]

Rule 8.51 Firm Disseminated Market Quotes

The Exchange proposes to amend CBOE Rule 8.51(a)(1) to clarify that in Hybrid classes, the market participant who submits a quote that is disseminated shall be the responsible broker or dealer for that quote. In paragraph (c)(1), the Exchange removes the sentence indicating it will periodically publish the firm quote requirement for both BD and public customer orders. In this respect, the Exchange notes that in new subparagraph (c)(1(a)(i) to CBOE Rule 8.51 the firm quote requirement for customer orders shall be the size disseminated to vendors. In subparagraph (a)(ii), the Exchange clarifies that the firm quote requirement for BD orders will be the lesser of the size it disseminates to vendors or publishes in a different manner. This is almost identical to the current rule except that it provides flexibility to allow the Exchange to disseminate its BD firm quote size (rather than publish it).

The Exchange also strikes existing Rule 8.51(c)(2)(a) as obsolete. In this respect, the Exchange disseminates actual size regardless of whether that size represents autoquote, an order in the book, or both. In any instance, the Exchange is firm for its disseminated size, as required by proposed CBOE Rule 8.51(c)(1)(a)(i).

The Exchange proposes to delete current Interpretation .01 and replace it with the definition of ''Responsible broker or dealer''contained in Rule 11Ac1–1(a)(21) under the Act. The Exchange deletes the existing portion of Interpretation .01 as obsolete. In this respect, the Exchange disseminates the actual size of its firm quote obligation that, intuitively, can never be less than the disseminated size. The Exchange also amends Interpretation .02 to replace reference to the terms floor broker, DPM, or OBO with the term market participant. Because under Hybrid, the market participant will be the responsible broker or dealer, it will be responsible for removing its quote.

The proposed amendment to Interpretation .08 does not change the intent of the rule: that the responsible broker or dealer not be required to honor quotes that are erroneous as the result of a third party. Because the trading crowd will not be the responsible broker or dealer in Hybrid, however, the Exchange amends the rule to remove reference to the trading crowd.

Finally, CBOE proposes a change to Interpretation .10 to clarify the timing of when firm quote obligations attach. Currently, firm quote obligations attach to an order received on a PAR station at the time the order is received on PAR. This interpretation remains intact for non-Hybrid classes. For Hybrid classes, firm quote obligations will attach to an order received on a PAR station depending upon who is the responsible broker or dealer. If the responsible broker or dealer is not the DPM, firm quote will attach when the order is announced to the trading crowd. If, however, the DPM is a responsible broker or dealer for that order, firm quote obligations attach at the time of receipt of that order on PAR. The Exchange notes that in instances when an order is received on PAR when the disseminated quote represents the DPM and other market makers, there will be two separate firm quote obligations: the DPM's firm quote obligation will attach at the time the order is received on PAR while the market makers' firm quote obligations will attach when the order is announced to the crowd.[23]

Rule 8.85 DPM Obligations

To accommodate Hybrid, the Exchange proposes to amend CBOE Rule 8.85 regarding DPM obligations. First, the Exchange proposes to amend CBOE Rule 8.85(a)(i) to indicate that a DPM has a continuous quoting obligation with respect to its assigned classes. This ensures the DPM will quote at all times. Second, the Exchange clarifies subsection (ii) to indicate that the DPM must assure that each of its quotations is honored in accordance with the requirements of the Quote Rule. This change clarifies that DPMs must ensure their own compliance with the Quote Rule. Finally, the Exchange restricts the applicability of subparagraph (x) to non-Hybrid classes. In Hybrid, all market participants will have their own proprietary quoting systems. It would be anticompetitive to require the DPM to disclose its pricing formula to other members. In non-Hybrid classes, because there is only one autoquote that binds the entire crowd, this requirement remains.

2. Statutory Basis

The CBOE Hybrid System will provide investors with deeper and more liquid markets, will provide market participants with substantially enhanced incentives to quote competitively, and will provide order entry firms with a trading platform the exchange believes is most conducive to satisfying their best execution and due diligence obligations. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

[22] Exchange quote display systems automatically incorporate into the disseminated market quote all booked orders that improve the market (price or size). For this reason, the OBO does not have any ability to display the full (or less than full) size of an order.

[23] Market makers in the crowd have no control over PAR and no access to PAR. They will be completely unaware that an order resides on PAR until that order is announced to them. Contrast this to the present situation where even though a market maker may be unaware of the receipt of an order on PAR, because the disseminated quote represents the entire trading crowd, the entire crowd is deemed to receive the order upon receipt of the order on PAR. In Hybrid, each quote represents a completely different entity and not the crowd.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has engaged in a substantial and extensive educational program to apprise members of the features of the CBOE Hybrid System. During this two-month long process, members and staff of the Exchange conducted weekly seminars for CBOE members to provide guidance as to how the CBOE Hybrid System would operate. To date, the Exchange received one comment letter.[26] The Arciero Letter primarily expressed concern regarding the future of the trading floor in the hybrid environment when the Exchange allows electronic quoting. The Arciero Letter indicated that largely capitalized market making organizations would have sufficient competitive advantages in Hybrid by virtue of their larger capitalization structures. In response to the Arciero Letter, the Exchange scheduled additional educational seminars identical to those previously conducted during September and October of this year. The Exchange notes that most, if not all, of the Arciero Letter concerns were addressed in those educational seminars.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[26] Letter from Tony Arciero, CBOE Member, to Ed Tilly, Chairman, Equity Floor Procedure Committee, CBOE, dated November 7, 2002 (''Arciero Letter'').

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities 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 CBOE. All submissions should refer to File No. SR–CBOE–2002–05 and should be submitted by May 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9885 Filed 4–21–03; 8:45 am]

BILLING CODE 8010–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47680; File No. SR–CHX–2003–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. To Amend Its Membership Dues and Fees Schedule To Confirm the Amount of Consolidated Tape Association Credits Available to Its Members

April 15, 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 March 31, 2003, 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. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Exchange amended the proposal on April 14, 2003.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to confirm the amount of Consolidated Tape Association (''CTA'') credits available to members. The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

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 purpose of the proposed change to the Schedule is to clarify the amount of CTA credits available to CHX member firms. The Exchange, like other national

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission, dated April 10, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a revised Exhibit A, which replaced in its entirety, the Exhibit A submitted with the initial filing. Specifically, in the revised Exhibit A, the Exchange made technical corrections to the proposed rule text contained in the Exhibit A submitted with the initial filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on April 14, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

securities exchanges, receives CTA revenue from transactions in listed securities under the terms of the CTA Plan (''Plan''). In past years, the Securities Industry Automation Corporation (''SIAC''), which administers the collection and distribution of market data under the Plan, and the Plan Administrators, which administer, among other things, the accompanying revenue distribution to Plan participants, worked together so that all of the Plan costs were deducted from the total tape revenue pool, with each Plan participant then receiving the remaining portion of the revenues allocable to that participant. These methods are now changing and, beginning in 2003, the Plan Administrators will divide up the total revenue pool according to the Plan's terms and distribute the allocable revenues to each participant (less the Administrators' costs), and SIAC will then bill each participant for its portion of the SIAC costs.

The Exchange proposes to amend to its Schedule to ensure that the change in Plan billing methods does not have an inadvertent impact on the current method for providing tape-based credits to the Exchange's specialists, floor brokers and lead market makers. The Exchange's Schedule currently provides, for example, that the credits available to specialists are based on the ''applicable percentage of CHX tape revenue from the Consolidated Tape Association generated by a particular stock.'' The Exchange proposes to amend this text—and the text describing the Exchange's other tape credit programs—that confirms that the revenues shared with Exchange members are those calculated after the deduction of Plan costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received any written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b-4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX–2003–10 and should be submitted by May 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9884 Filed 4–21–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority 257]

Delegation by the Assistant Secretary of State for Educational and Cultural Affairs to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs, and to the Deputy Assistant Secretary for Professional and Cultural Exchanges, of Immunity From Judicial Seizure Authorities

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs by law, including by Delegation of Authority No. 236–3 (August 28, 2000), and to the extent permitted by law, I hereby delegate to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs, and to the Deputy Assistant Secretary for Professional and Cultural Exchanges, the functions in Pub. L. 89–259 (79 Stat. 985) (22 U.S.C. 2459), providing for immunity from judicial seizure for cultural objects imported into the United States for temporary exhibition.

Notwithstanding any other provision of this delegation, the Assistant Secretary of State for Educational and Cultural Affairs retains, and may at any time exercise, any function or authority delegated herein.

Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation shall be published in the **Federal Register**.

Dated: April 15, 2003.

Patricia S. Harrison,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–9938 Filed 4–21–03; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of TVA involvement in water quantity management. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social

development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of current TVA role in water quantity management and water supply.

(2) Review of water quantity management questions to be addressed by the Regional Council.

(3) National perspective on water quantity management and water supply.

(4) Regional, state, and local viewpoints on TVA's role with regard to water quantity management and water supply.

(5) Public comments on the topic of water quantity management and water supply.

(6) Regional Council discussion on the topic of water quantity management and water supply.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public Comment session will be held from 10:30 a.m. to Noon EDT on May 9, 2003. Citizens who wish to express views and opinions on the topic of TVA water quantity management and water supply may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, May 8, 2003, from 8 a.m. to 4:30 p.m. and on Friday, May 9, 2003, from 8 a.m. to 3 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: April 15, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–9860 Filed 4–21–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–20]

Petition for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of a prior petition.

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 the disposition of a petition previously received. 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.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 16, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petition

Docket No.: FAA–2003–14324.

Petitioner: West Air Incorporated.

Section of 14 CFR Affected: 14 CFR 21.197(c)(2) and 135.411(b).

Description of Relief Sought/Disposition: To allow West Air Incorporated to ferry aircraft from their fleet of Cessna Caravans, as needed, without first filing a Form 8130–6 with the FAA.

Denial, 4/9/2003, Exemption No. 8024

[FR Doc. 03–9888 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–19]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions 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 certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. 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 May 12, 2003.

ADDRESSES: Send comments on any 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–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that 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: Denise Emrick (202) 267–5174, 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 April 16, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13928

Petitioner: Winona Steamboat Days Festival Association

Section of 14 CFR Affected: 14 CFR 103.15

Description of Relief Sought: To permit Winona Steamboat Days Festival Association to fly up to four powered parachutes over the 56th Annual Winona Steamboat Days Grande Parade route on June 22, 2003, before the start of the parade. Each powered parachute would make two round trip passes over the parade route in a single-file formation at an altitude of not less than 100 feet above the surface.

[FR Doc. 03–9889 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting. Important. Please note that the meeting date has changed from Thursday, May 22nd to Wednesday, May 21st.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, May 21, 2003, from 8 a.m. to 5 p.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC, in the Bessie Coleman Conference Center, 2nd Floor. This will be the thirty-seventh meeting of the COMSTAC.

The agenda for the meeting will include a briefing on legislative strategies for space, and an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]), including an update on the newly-established FAA Commercial Space Transportation Safety office at Patrick Air Force Base. Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support) will be held on Tuesday, May 20, 2003. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 385–4713; E-mail *brenda.parker@faa.dot.gov.*

Issued in Washington, DC, April 11, 2003.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 03–9887 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on May 6–7, 2003 from 9 am to 5 pm.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. RTCA is establishing Special Committee (SC) 202 at the request of the Federal Aviation Administration. The SC–202 task is two-phased: (1) A Near-Term Portable Electronic Device (PED) Technology Assessment of the current PED environment and (2) a Longer-Term Assessment of emerging PED technologies. The initial document is scheduled for completion by November 2003. The agenda will include:

- May 6–7:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA procedures, Review Agenda, Review Terms of Reference)
  - Previous PED Committee History
  - Current Committee Scope, Discussion, Recommendations
  - Organization of Work, Assign Tasks and Workgroups Presentation, Discussion, Recommendations Assignment of Responsibilities
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9892 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In March 2003, there were five applications approved. This notice also includes information on one application, approved in February 2003, inadvertently left off the February 2003 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of

1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Texarkana Airport Authority, Texarkana, Arkansas.
Application Number: 03–05–C–00–TXK.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $98,250.
Earliest Charge Effective Date: October 1, 2005.
Estimated Charge Expiration Date: August 1, 2006.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved for Collection and Use: Rehabilitate runway 13/31 and taxiway C.
Decision Date: February 3, 2003.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City of Tyler, Texas.
Application Number: 03–04–C–00–TYR.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $2,140,662.
Earliest Charge Effective Date: April 1, 2008.
Estimated Charge Expiration Date: February 1, 2017.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved for Collection and Use:

Acquire and install one passenger loading bridge.
Construct terminal apron and install security fencing.
Terminal site work and utilities.
Construct terminal building.
Seal coat runway 4/22.
PFC application and administrative fees.

Decision Date: March 4, 2003.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.
Application Number: 03–15–C–00–CHO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $850,000.
Earliest Charge Effective Date: July 1, 2006.
Estimated Charge Expiration Date: January 1, 2008.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlottesville-Albemarle Airport.
Brief Description of Project Approved for Collection and Use:

Terminal building modifications.
Upgrade multi-user flight information display system.
Extend runway 3 safety area, phase IV.
PFC project administration fees.

Decision Date: March 5, 2003.
For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Town of Islip, New York.
Application Number: 03–05–C–00–ISP.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $493,001.
Earliest Charge Effective Date: August 1, 2005.
Estimated Charge Expiration Date: October 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Long Island MacArthur Airport.
Brief Description of Project Approved for Collection and Use:

Rehabilitation of runway 6/24.
Wildlife hazard management assessment and wildlife hazard management plan.
Acquire two snow removal brooms.
Purchase one passenger boarding assistance device.
Airport security enhancement items.

Decision Date: March 7, 2003.
For Further Information Contact: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: Jackson Municipal Airport Authority, Jackson, Mississippi.
Application Number: 03–04–C–00–JAN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $5,101,722.
Earliest Charge Effective Date: February 1, 2007.
Estimated Charge Expiration Date: June 1, 2010.
Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jackson Municipal Airport.
Brief Description of Projects Approved for Collection and Use:

Runway sweeper.
Tricherator.
Local share and engineering west parallel lights.
Local share and engineering west taxiway overlay.
Local share air cargo road.
Local share air cargo apron/taxiway.
Meets and bounds survey.
Rehabilitate International Drive.

Brief Description of Projects Disapproved for Collection and Use:
Hawkins Field environment assessment.
Determination: The proposed project was for a study of pre- and post-World War II underground storage tank locations. The public agency offered no evidence that the responsible federal agency, the Department of Defense, had been contacted to fund at least a portion of the cleanup. Therefore, the FAA determined that the project was not adequately justified.

Surfact Transportation System.

Determination: The public agency provided no evidence that the proposed project was for exclusive airport use. Therefore, it is not PFC eligible.
Decision Date: March 24, 2003.
For Further Information Contact: David Shumate, Jackson Airports District Office, (601) 664–9882.

Public Agency: City of Farmington, New Mexico.
Application Number: 03–01–C–00–FMN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $661,102.
Earliest Charge Effective Date: June 1, 2003.
Estimated Charge Expiration Date: May 1, 2011.
Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Four Corners Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Runway improvements
Taxiway improvements.
Apron improvements.
Drainage improvements.
Airfield improvements.
Airfield electrical improvements.
Security improvements.
Terminal improvements.
Non-revenue parking improvements.
Acquire safety equipment.
Conduct planning studies.
Service road improvements.
PFC application and administrative fees.

Decision Date: March 28, 2003.

For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–03–C–02–GEG, Spokane, WA*	01/24/03	$32,083,332	$35,859,822	06/01/05	05/01/05
01–04–C–01–HDN, Hayden, CO	02/19/03	150,833	163,842	08/01/05	08/01/05
96–02–C–01–PBI, West Palm Beach, FL	03/12/03	21,997,000	21,863,704	04/01/02	04/01/02
00–02–C–01–CEC, Crescent City, CA*	03/14/03	447,048	447,048	07/01/13	03/01/11
00–03–C–02–BHM, Birmingham, AL	03/20/03	13,500,000	15,100,000	06/01/03	11/01/03
93–01–C–02–OTH, North Bend, OR	03/25/03	162,044	139,785	01/01/98	01/01/98
96–02–C–OTH, North Bend, OR	03/25/03	68,731	95,984	04/01/99	04/01/99

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Spokane, WA, this change is effective on April 1, 2003. For Crescent City, CA, this change is effective on June 1, 2003.

Issued in Washington, DC, on April 15, 2003.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–9891 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14374]

Rotor Manufacturing Induced Anomaly Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Order designating voluntarily submitted information as protected from disclosure.

SUMMARY: By this Order the FAA designates the information and data submitted to create the Rotor Manufacturing Induced Anomaly Database (known as the ''ROMAN Database'') as protected from disclosure under 14 CFR part 193, Protection of voluntarily submitted information. This designation requires the FAA to protect the information from disclosure under the Freedom of Information Act (5 U.S.C. 552) and other laws. The FAA makes this designation to encourage production approval holders and suppliers that manufacture high energy rotating gas turbine engine components to voluntarily submit information for inclusion into the ROMAN database.

Authority: 49 U.S. 40123; and 14 CFR part 193.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Kerman, Aviation Safety Inspector-Manufacturing Process Specialist, Manufacturing Inspection Office, ANE–180, Engine and Propeller Directorate, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01802, telephone 781–238–7195; fax (781) 238–7898.

SUPPLEMENTARY INFORMATION: On February 4, 2003, the FAA issued a Notice proposing to designate information submitted to it to create the Rotor Manufacturing Induced Anomaly Database (known as the ''ROMAN Database'') as protected from disclosure under 14 CFR part 193 (68 FR 6790, February 10, 2003). No comments were received on the proposal.

Findings under CFR Part 193

The FAA finds:

(1) *The information will be provided voluntarily.* The FAA finds that the information will be provided voluntarily. Note that the information provided by the participants is beyond the scope of that required by the type certification mandatory reporting rules, and that the participants may withdraw from the program at any time. The ROMAN database will provide production approval holders (PAH) and suppliers of critical rotating parts with an opportunity to benefit from each other's adverse experiences and lessons learned that is not available without the protection of 14 CFR part 193. The identification of trends and the establishment of the shortfalls with the base manufacturing processes as a result of the ROMAN database will provide economic benefit to the submitters.

(2) *The information is safety or security related.* The FAA finds that the information is safety related. The ROMAN database will contain comprehensive information on manufacturing-induced anomalies on critical rotating engine components. These anomalies are of the kind that are known to initiate disk fracture and fatigue failure resulting in aircraft accidents. Also, important background information will be used to relate those anomalies to specific manufacturing methods and materials. The database will be instrumental in identifying manufacturing process and material shortfalls that will assist the industry and the FAA in improving the integrity and safety of rotating parts of jet engines.

(3) *The disclosure of the information would inhibit the voluntary provision of that type of information.* The FAA finds that the disclosure of the information would inhibit persons from voluntarily providing of that type of information. The information submitted for the ROMAN database would be highly sensitive and commercially valuable information. One of the reasons why such a database does not already exist is the reluctance of each participant to share its data and lessons learned with the FAA as well as each other without the assurances of protection from public disclosure.

(4) *The receipt of this type of information aids in fulfilling the FAA's safety and security responsibilities.* The

receipt of information for the ROMAN database will aid the FAA in improving overall engine rotor integrity and decreasing the occurrence and severity of engine rotor failures. Reducing the number of aircraft accidents attributable to the failure of rotating parts in engines is an important part of the FAA's Safer Skies Program. The ROMAN database provides a way to identify manufacturing trends and precursors before they result in anomalies that might cause rotating part failures and aircraft accidents.

(5) *Withholding such information from disclosure, under the circumstances provided in this part, is consistent with the FAA's safety and security responsibilities.* Withholding the information submitted to the FAA to form the ROMAN database from public disclosure is consistent with the FAA's safety responsibilities. The ROMAN database will provide a key method to improving safety in air commerce by identifying manufacturing trends that may contribute to the presence of anomalies in the rotating parts in aircraft engines that could potentially cause those parts to fail. Identifying these trends will lead to improvements in manufacturing processes as well as design practices to eliminate and account for the anomalies in future production and the removal of parts already in service before the actual failure occurs.

The FAA will withhold and release information submitted under this program as specified in 14 CFR 193.9.

The FAA may release activity reports that include the number of PAHs and suppliers who are participating and the number of manufacturing trends identified as a result. Activity reports will not include the names of the PAH's and suppliers who participate, or numbers or details of the anomalies that have been disclosed under this program.

(6) *Summary of how the FAA will distinguish information protected under this program from information the FAA receives from other sources.* The FAA routinely receives data and information aircraft engine PAHs as part of its regulatory oversight of approved engine designs. The data received for the ROMAN database will be maintained separately by having the ROMAN database managed by a contractor. The ROMAN database will include only information received under this program. Information that is received under this program, and reports generated ROMAN database, will be clearly marked as having been received under this program as follows:

WARNING: The Information in this Document Is Protected from Disclosure under 14 CFR part 193. This Information Shall Not Be Released Except With Written Permission of the Associate Administrator for Regulation and Certification.

Designation

Accordingly, the Federal Aviation Administration hereby designates the information submitted under this program to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC on April 14, 2003.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 03–9890 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6198

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6198, At-Risk Limitations.

DATES: Written comments should be received on or before June 23, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: At-Risk Limitations.

OMB Number: 1545–0712.

Form Number: Form 6198.

Abstract: Internal Revenue Code section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 185,167.

Estimated Time Per Respondent: 3 hrs. 58 min.

Estimated Total Annual Burden Hours: 735,113.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9952 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–79–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–79–93 (TD 8633), Grantor Trust Reporting Requirements (§ 1.671–4).

DATES: Written comments should be received on or before June 23, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Grantor Trust Reporting Requirements.

OMB Number: 1545–1442.

Regulation Project Number: PS–79–93.

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust treated as owned by the grantor or another person are properly reported.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,840,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 920,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9953 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, May 21, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9944 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, May 8, 2003, at 2 p.m., Central daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, May 8, 2003, from 2 p.m. to 3 p.m. Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and

suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9945 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, May 16 and 17, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, May 16, 2003, from 3 p.m. EST to 7 p.m. EDT and May 17, 2003, from 8:30 a.m. EDT to 12:30 p.m. EDT at the Marriott Century Center, 2000 Century Boulevard NE, Atlanta, GA 30345. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited space, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9946 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 10, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9947 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 12, 2003, at 2:30 p.m., Central Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, May 12, 2003, from 2:30 to 3:30 p.m. Central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9948 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, June 5, 2003 from 3 pm EST to 4 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (206) 220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or (206) 220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9949 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, May 20, 2003, at 1:30 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, May 20, 2003, from 1:30 to 3 pm EST via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9950 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, May 19, 2003 from 2 pm PDT to 4 pm PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9951 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Wednesday, May 7, 2003, through Thursday, May 8, 2003, at the Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Dupont Room, Washington, DC 20037. The meeting sessions are scheduled from 2 p.m. until 4:30 p.m. on May 7 and from 8:30 until 4 p.m. on May 8. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate

means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On May 7, the Committee will visit the Access Housing—Southeast Veterans Service Center, 820 Chesapeake Street, SE., Washington, DC. On May 8, the Committee will review information about efforts to coordinate services and increase veterans access to homeless services from VA and other health and benefits programs and review new draft recommendations to assist veterans.

Those wishing to attend the meeting should contact Mr. Peter Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 14, 2003.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–9823 Filed 4–21–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 77

Tuesday, April 22, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0085; FRL–7462–3]

RIN 2060–AH55

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

Correction

In rule document 03–5625 beginning on page 18008 in the issue of Monday, April 14, 2003 make the following corrections:

1. On page 18012, in the third column, the fourth line from the bottom, after ''April 14, 2003'', add the words, ''must comply by April 14, 2003.''.

§ 63.7283 [Corrected]

2. On page 18026, in the second column, under § 63.7283, in paragraph (b), in the eigth line, ''2006'' should read ''2003''.

[FR Doc. C3–5625 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 03–9264 beginning on page 18653 in the issue of Wednesday, April 16, 2003, make the following correction:

On page 18653, in the second column, under the heading **DATES**, in the second and third lines, ''[insert date 60 days from publication in the Federal Register]'' should read ''June 16, 2003''.

[FR Doc. C3–9264 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14843; Airspace Docket No. 03–ACE–28]

Modification of Class E Airspace; Rock Rapids, IA

Correction

In rule document 03–9179 beginning on page 18115 in the issue of Tuesday, April 15, 2003, make the following corrections:

1. On page 18116, in the first column, under the **ADDRESSES** heading, in the eighth line, ''03–ACD–28'' should read ''03–ACE–28''.

§71.1 [Corrected]

2. On the same page, in the third column, in §71.1, under the heading **ACE IA E5 Rock Rapids, IA**, in the fourth line, ''6.2'' should read ''6.3''.

[FR Doc. C3–9179 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14844; Airspace Docket No. 03–ACE–29]

Modification of Class E Airspace; New Madrid, MO

Correction

In rule document 03–9178 beginning on page 18117 in the issue of Tuesday, April 15, 2003, make the following corrections:

1. On page 18117, in the first column, under the **SUMMARY** heading, in the second paragraph, in the first line ''is not'' should read ''is''.

2. On the same page, in the same column, under the **ADDRESSES** heading, in the eigth line, ''03–AC–29'' should read ''03–ACE–29''.

§ 71.1 [Corrected]

3. On page 18118, in the first column, in §71.1, under the heading **ACE MO E5 New Madrid, MO**, in the fourth line, ''(Lat. 36°33′17″ N.,'' should read ''(Lat. 36°33′18″ N.,''.

[FR Doc. C3–9178 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 22, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (Branchinecta sandiegonensis); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI71

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate new critical habitat units pursuant to the Endangered Species Act of 1973, as amended (Act), for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). The San Diego fairy shrimp is listed as an endangered species under the Act. A total of approximately 2,468 hectares (6,098 acres) of land within Orange and San Diego counties, California, are within the boundaries of proposed critical habitat.

Critical habitat receives protection from destruction or adverse modification through consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation, and our approaches for handling any future habitat conservation plans and Department of Defense installations. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

The drafting and review of this proposed rule revealed a number of difficult and complex issues regarding which public comment would be particularly helpful, especially given the strict court-ordered deadline pursuant to which this proposal is being published. Therefore, in addition to the general comments requested above, we are requesting public comment either in support of or opposition to a number of specific issues associated with this proposal to assist in development of a final rule.

DATES: We will accept comments until June 23, 2003. Public hearing requests must be received by June 6, 2003.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

(2) You may also send comments by electronic mail (e-mail) to *FW1SDFS@r1.fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a small aquatic crustacean in the order, Anostraca, restricted to vernal pools in coastal southern California and south to northwestern Baja California, Mexico. Vernal pools contain water in the winter months which drains and evaporates giving way to a vernal display of wildflowers. The San Diego fairy shrimp is a habitat specialist found in smaller, shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (cm) (2 to 12 inches (in)) (Simovich and Fugate 1992; Hathaway and Simovich 1996). Water chemistry is also an important factor in determining fairy shrimp distribution (Belk 1977; Gonzales *et al.* 1996). This species does not occur in riverine or marine waters. All known localities are below 701 meters (m) (2,300 feet (ft)) and are within 64 kilometers (km) (40 miles (mi)) of the Pacific Ocean.

San Diego fairy shrimp is one of several *Branchinecta* species that occur in southern California (Simovich and Fugate 1992). Other species of *Branchinecta* in southern California include the nonlisted versatile fairy shrimp (*B. lindahli*) and the federally threatened vernal pool fairy shrimp (*B. lynchi*). Male San Diego fairy shrimp are distinguished from males of other species of *Branchinecta* by differences found at the distal (located far from the point of attachment) tip of the second antennae. Females are distinguishable from females of other species of *Branchinecta* by the shape and length of the brood sac, the length of the ovary, and by the presence of paired dorsolateral (located on the sides, toward the back) spines on five of the abdominal segments (Fugate 1993).

Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex wavelike beating movements of the legs that pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 in); adult females are 8 to 14 mm (0.31 to 0.55 in.) long. The second pair of antennae in males are greatly enlarged and specialized for clasping the females during copulation, while the second pair of antennae in the females are cylindrical and elongate. The females carry their eggs in an oval or elongate ventral brood sac (Eriksen and Belk 1999). Fairy shrimp are presumed to feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Pennak 1989; Eng *et al.* 1990; Parsick 2002).

Adult San Diego fairy shrimp are usually observed from January to March; however, in years with early or late rainfall, the hatching period may be extended. The species hatches and matures within 7 to 14 days, depending on water temperature (Hathaway and Simovich 1996; Simovich and Hathaway 1997). San Diego fairy shrimp may no longer be visible after about a month, but animals will continue to hatch if subsequent rains result in additional water or refilling of the vernal pools (Branchiopod Research Group 1996). The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The ''resting eggs,'' or ''cysts,'' are capable of withstanding temperature extremes and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not all of the eggs may hatch. Fairy shrimp egg banks in the soil may be composed of the eggs from several years of breeding (Donald 1983; Simovich and Hathaway 1997). Simovich and Hathaway (1997) found that vernal pools and ephemeral wetlands that support anostracans, small aquatic crustaceans like the San Diego fairy shrimp, and occur in areas with variable weather conditions or filling periods, may hatch only a fraction of the total

cyst (organisms in a resting stage) bank in any given year. Thus, the San Diego fairy shrimp is adapted to highly variable environments .

San Diego fairy shrimp require functioning vernal pools for their conservation (Belk 1998). Both the pool basin and the surrounding watershed are essential for a functioning vernal pool system (Hanes and Stromberg 1998). Loss of upland vegetation, increased overland flow due to urban runoff, and alteration of the micro-topography can all alter the narrow physiological parameters that the San Diego fairy shrimp requires for survival.

The maintenance of genetic variability is crucial to the survival of a species with declining populations and a limited range, such as the San Diego fairy shrimp (Gilpin and Soulé 1986; Lesica and Allendorf 1995). Vernal pool complexes throughout the range of the San Diego fairy shrimp are critical for the conservation of this species. Likewise, the pools within a multi-pool complex are also important for the local population of San Diego fairy shrimp to remain viable. Vernal pool complexes identified as necessary in the Recovery Plan for Vernal Pools in Southern California must be secured in a configuration that maintains habitat function and viability. There are several reasons for this. Each vernal pool complex is unique in soil type, species composition, and hydrology (Service 1998). This high degree of variability in habitat combined with the unpredictability of winter rains (pool filling events) has given rise to a genetic structure between pool complexes (Davies 1996; Davies *et al.* 1997). This means that San Diego fairy shrimp living in one pool complex may not be adapted to a pool complex elsewhere in the species range. This research also revealed that within pool complexes there was a low degree of genetic variability. The genetic structure and low genetic variability suggests that there is a low degree of gene exchange between different pool complexes. This research indicates that pool complexes throughout the range contain unique genetic traits necessary for the conservation of San Diego fairy shrimp.

The life cycle of the San Diego fairy shrimp is such that in any single breeding event there may be individuals present from multiple generations. This has the effect of dampening the effects of genetic drift and inbreeding that are normally associated with a small population size. In particular this makes the preservation of existing vernal pools a high priority for critical habitat designation because of the cyst banks that are present in natural pools (Belk 1998). Creation of vernal pools has not been successfully implemented as a viable measure to compensate for impacts to vernal pools. Restoration of vernal pools has been successfully completed; however, restoration must be carefully pursued. Restored pools may lack the multi-generational cyst bank. In the event that soils are transported from existing vernal pools to a restoration site, soils may be mixed, compacted, or otherwise mistreated so that the cyst bank can no longer function (Hathaway *et al.* 1996). Thus, restored pools may not exhibit the necessary genetic dynamics of natural pools and may not contribute as significantly as natural vernal pools.

Vernal pools have a discontinuous occurrence in several regions of California (Keeler-Wolf *et al.* 1995), from as far north as the Modoc Plateau in Modoc County, south through San Diego County to the international border with Mexico. Vernal pools form in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Holland and Jain 1977, 1988; Thorne 1984; Zedler 1987; Simovich and Hathaway 1997). The presence of the surrounding watershed is a vital component of a vernal pool ecosystem. The term ''watershed'' is commonly associated with riverine drainages, however, in the context of this discussion the term ''watershed'' refers to the land surrounding a single vernal pool or vernal pool complex that contributes to the hydrology of the vernal pools. These watersheds can vary in size from a few hundred meters to much larger areas around the vernal pools.

In years of high precipitation, overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Vernal pool studies conducted in the Sacramento Valley indicate that the contribution of subsurface or overland flows is significant only in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996). Downward percolation of water in vernal pool basins is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988). The integrity of both the vernal pool and the surrounding watershed is crucial to the long term survival and conservation of the San Diego fairy shrimp.

Researchers have found that vernal pools located in San Diego County are associated with five soil series types: Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). These soil types have a nearly impermeable surface or subsurface soil layer with a flat or gently sloping topography (Service 1998). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986; Holland and Jain 1977). Pools within a complex are typically separated by distances on the order of meters, and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools.

Vernal pool systems are often characterized by different landscape features including mima mound (miniature mounds) microtopography, varied pool basin size and depth, and vernal swales (low tract of marshy land). Vernal pool complexes that support one to many distinct vernal pools are often interconnected by a shared watershed. Chemistry, geophysiology, and hydrology influenced by watershed characteristics determine the distribution of vernal pool species (Dehoney and Lavigne 1984; Eng *et al.*, 1990, Branchiopod Research Group 1996), therefore ecosystems on which the San Diego fairy shrimp and its vernal pool habitat depend are best described from a watershed perspective (see Recovery Criteria 1 and 2 in the Recovery Plan for Vernal Pools of Southern California, Service 1998). California's vernal pools begin to fill with the fall and winter rains. Before ponding occurs, there is a period during which the soil is wetted and the local water table may rise. Some pools in a complex have a substantial watershed that contributes to water input; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg, 1998). Even in pools filled primarily by direct precipitation, subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring (Hanes and Stromberg 1998).

Vernal pools exhibit four major phases—the wetting phase, when vernal pool soils become saturated; the aquatic phase, when a perched water table develops within the watershed and the vernal pool contains water; a waterlogged drying phase, when the vernal pool begins losing water as a result of evaporation and loss to the surrounding soils but soil moisture remains high; and the dry phase, when the vernal pool and underlying soils are completely dry (Keeley and Zedler 1998). Upland areas within vernal pool watersheds are also an important source of nutrients to vernal pool organisms. Vernal pool habitats derive most of their nutrients from detritus, which is

washed into the pool from adjacent uplands, and these nutrients provide the foundation for the vernal pool aquatic community food chain (Eriksen and Belk 1999).

San Diego County supports the largest number of remaining vernal pools occupied by the San Diego fairy shrimp. Scientists estimated that, historically, vernal pool soils covered 51,800 hectares (ha) (200 square miles (mi.^{2})) in San Diego County (Bauder and McMillan 1998). The majority of these pools were destroyed prior to 1990. On the basis of available information to us at the time the species was listed, we estimated that fewer than 81 ha (200 acres (ac)) of occupied vernal pool habitat remained. This calculation was based on the area of the specific vernal pool basins that contained San Diego fairy shrimp, and did not include the acreage of the surrounding watersheds. Keeler-Wolf *et al.* (1995) concluded that the greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Penasquitos, and Kearny Mesa, which accounted for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986. Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 and 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997). Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995). It is estimated that 70 percent of existing vernal pools occurs on lands managed by the Department of Defense (Bauder and Weir 1991).

Urban and water development; flood control, highway, and utility projects; and conversion of wildlands to agricultural use have eliminated vernal pools and their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic patterns, overgrazing, and off-road vehicle use also impact vernal pools. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986). Human activities that reduce the extent of the watershed or that alter runoff patterns (*i.e.*, amounts and seasonal distribution of water) may eliminate San Diego fairy shrimp, reduce their population sizes or reproductive success, or shift the location of sites inhabited by this species. The California Department of Fish and Game's Natural Diversity Data Base ranks the vernal pool habitat type in priority class G1–S1, which denotes natural communities in the State of California that occur over fewer than 809 ha (2,000 ac) globally.

Previous Federal Action

The San Diego Biodiversity Project in Julian, California; Our Lady of the Lake University in San Antonio, Texas; and the Biodiversity Legal Foundation submitted a petition to us, dated March 16, 1992, to list the San Diego fairy shrimp as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). We received the petition on March 24, 1992. On August 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 39874) to list the San Diego fairy shrimp as an endangered species. The proposed rule was the first Federal action on the San Diego fairy shrimp, and also constituted the 12-month petition finding, as required by section 4(b)(3)(B) of the Act. On February 3, 1997, we published a final rule determining the San Diego fairy shrimp to be an endangered species (62 FR 4925). The Vernal Pool Recovery Plan, which included recovery planning for this species, was published in 1998.

At the time of listing, we concluded that designation of critical habitat for the San Diego fairy shrimp was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely increase the degree of threat from vandalism or other human-induced impacts. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process.

On October 14, 1998, the Southwest Center for Biological Diversity filed a lawsuit in the U.S. District Court for the Southern District of California challenging our decision not to designate critical habitat for the San Diego fairy shrimp. On September 16, 1999, the court ordered that ''[O]n or before February 29, 2000, the Service shall submit for publication in the **Federal Register**, a proposal to withdraw the existing not prudent critical habitat determination together with a new proposed critical habitat determination for the San Diego fairy shrimp'' (*Southwest Center for Biodiversity* v. *United States Department of the Interior et al.*, CV 98–1866) (S.D. Cal.).

After reviewing our not-prudent determination, we concluded that the threats to this species and its habitat from specific instances of habitat destruction did not outweigh the broader educational, potential regulatory, and other benefits that designation of critical habitat would provide for this species. We determined that a designation of critical habitat would provide educational benefits by formally identifying those areas essential to the conservation of the species, and the areas likely to be the focus of our recovery efforts for the San Diego fairy shrimp. Therefore, we concluded that the benefits of designating critical habitat on lands essential for the conservation of the San Diego fairy shrimp would not increase incidences of vandalism above current levels for this species.

On March 8, 2000, we published our determination that critical habitat for the San Diego fairy shrimp was prudent and a concurrent proposed rule to designate critical habitat for the San Diego fairy shrimp on approximately 14,771 ha (36,501 ac) of land in Orange and San Diego counties, California (65 FR 12181). The public comment period was open for 60 days. On August 21, 2000, we published a notice of availability for the draft economic analysis and reopening of the comment period for the proposed critical habitat designation for the San Diego fairy shrimp (65 FR 50672). The second comment period closed on September 5, 2000. On October 23, 2000, we published a final rule designating approximately 1,629 ha (4,025 ac) of critical habitat for the San Diego fairy shrimp in Orange and San Diego counties, California (65 FR 63438).

On January 17, 2001, a lawsuit challenging the designation of critical habitat for the San Diego fairy shrimp and coastal California gnatcatcher was filed by multiple parties including Building Industry Association of Southern California, National Association of Home Builders, and Foothill/Eastern Transportation Corridor (*Building Industry Association of Southern California et al.* v. *Norton, CV 01–7028*). The lawsuit was filed in the U.S. District Court for the District of Columbia.

The U.S. District Court for the District of Columbia issued an order on July 3, 2001, transferring this lawsuit and another lawsuit challenging the designation of critical habitat for the coastal California gnatcatcher to the U.S. District Court for the Central District of California (*Rancho Mission Viejo L.L.C.* v. *Babbitt*, CV 01–8412).

On June 11, 2002, the U.S. District Court for the Central District of California granted the Service's request for a remand of the San Diego fairy shrimp critical habitat designation so that we may reconsider the economic impact associated with designating any particular area as critical habitat. The Court ordered us to complete a new

proposed rule on or before April 11, 2003. In a subsequent order the Court held that the critical habitat designated for the San Diego fairy shrimp on October 23, 2000 (65 FR 63438) should remain in place until such time as a new, final regulation becomes effective.

This proposal for critical habitat for the San Diego fairy shrimp differs from the current designation of critical habitat with respect to the mapping grid size and changes of locations of critical habitat due to new survey data. In the preparation of this proposed critical habitat we were able to reduce the minimum mapping unit from a 250 meter UTM grid to a 100 meter UTM grid. This allowed for the grid to more closely follow the watershed boundaries. Through new surveys for the San Diego fairy shrimp, the presence of San Diego fairy shrimp was confirmed in four additional vernal pool complexes in Orange County. The presence of the San Diego fairy shrimp was also reported from the Naval Radio Receiving Facility (NRRF) in Southern San Diego County and vernal pools in the City of San Marcos. However, NRRF is not proposed because of a completed and approved INRMP. Besides these additional confirmations, surveys at the Palomar Airport pools, an area previously designated as critical habitat, found the pools to be unoccupied by the San Diego fairy shrimp, thus they are no longer proposed as critical habitat. This proposal is consistent with the previous designation of critical habitat. Exclusions under 3(5)(A) and 4(b)(2) are similar to the exclusions in the existing critical habitat.

Critical Habitat

Section 3 defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

To be included in a critical habitat designation, habitat must be either a specific areas within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9(a)(2) prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Relationship to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an

analysis, that an area determined to be biologically essential has an adequate conservation management plan that covers the species and provides for adaptive management sufficient to conserve the species, then special management and protection are already being provided, and then those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships and national security, if, we determine, the benefits of excluding an area from critical habitat outweigh the benefits from including the area in critical habitat, providing the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations we have used both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). On the basis of these provisions, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by a legally operative individual (project-specific) or regional habitat conservation plans (HCPs) that cover the subject species, (3) covered by a completed and approved Integrated Natural Resource Management Plans (INRMPs) for specific Department of Defense (DoD) installations, or (4) covered by an adequate conservation management plan or agreement.

Relationship to Habitat Conservation Plans

Individual Habitat Conservation Plans

In general, we believe that lands essential to the conservation of San Diego fairy shrimp that are protected in reserves established in individual HCPs and for which adaptive management and protections are in place do not require special management and protections because their value for conservation has been addressed by the existing protective measures and actions from the provisions of the HCP. Consequently, reserve areas defined in these individual HCPs do not meet the definition of critical habitat. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2). Therefore, individual HCPs that cover the San Diego fairy shrimp are not being proposed as critical habitat for the species.

Regional Habitat Conservation Plans

We have considered, but have not proposed as critical habitat those preserve, reserve, or other conservation lands within the boundaries of approved and legally operative regional HCPs that provide coverage for the San Diego fairy shrimp. On the basis of the Secretary of the Interior's authority under section 4(b)(2) of the Act we believe the benefits of excluding these lands outweigh the benefits of including them. Unlike individual HCPs significant portions of the lands to be conserved and managed under these regional plans when they are fully implemented, are not currently receiving special management or protections. Therefore, these lands meet the definition of critical habitat as outlined in section 3(5)(A) of the Act in that they are ''essential to the conservation of the species'' and ''may require special management considerations or protection.'' This is because, in contrast to fully implemented individual HCPs, the assembly of reserve lands and establishment of protection and special management for reserve lands in these regional HCPs occurs over decades as the conservation program is put into place. Thus lands that are designated for inclusion in a reserve once the plan is fully implemented still may require special management or protection until such inclusion occurs. In addition, in many cases, vernal pools and their surrounding habitats are not within the boundaries of designated or targeted reserve lands in these regional plans, which typically have focused reserve lands and boundaries around the species that occupy the coastal sage scrub habitat community rather than the vernal pool ecosystem.

Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and represents a large investment in a conservation partnership. HCPs vary in size and complexity. They may provide incidental take coverage and conservation management for one, several, or many federally listed species. Additionally, there may be one or more than one applicant participating in the development and implementation of an HCP.

Large, regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many large, regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed and unlisted sensitive species and the habitats that provide for their respective biological needs. These HCPs are designed to proactively implement conservation actions to address projects that are proposed to occur within the planning area of the HCP; however, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur within the planning area of a regional HCP may actually take place.

In the case of approved regional HCPs (*i.e.*, those sponsored by cities, counties or other local jurisdictions) that provide coverage for the San Diego fairy shrimp, a primary goal is to provide for the protection and management of habitat areas essential to the conservation of the species while accommodating economic development. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the San Diego fairy shrimp. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a system of interlinked habitat blocks that provide for the biological needs of the species.

Approved HCPs and their accompanying implementation agreements outline appropriate management measures and protections for covered species for the purpose of protecting, restoring, and enhancing the value of habitat for the conservation of the San Diego fairy shrimp. These measures, which include explicit standards to avoid to the maximum extent practicable and minimize impacts to the species and its habitat

resulting from urban development for vernal pools, are designed to ensure the continued value of vernal pools that are both within and outside of the preserve boundaries as suitable habitat for the San Diego fairy shrimp. HCPs provide for active conservation actions that positively benefit the affected species, while the maximum requirement that results from critical habitat designation is that parties subject to a Federal nexus refrain from undertaking actions that adversely modify the designated area. Active conservation measures are of greater benefit to the species than mere avoidance of harm. These measures cannot be compelled under a critical habitat designation, but must be volunteered by the parties to the HCP.

Pursuant to the terms of implementation agreements signed by the Service and permit holders in connection with approved HCPs and their associated incidental take permits, once the protection and management required under the HCPs are in place and assuming the established HCPs are functioning properly, no additional mitigation in the form of land or financial compensation may be required of the permit holders and certain identified third parties except as provided under the terms of the individual HCP. Similar assurances will be extended to future permit holders in accordance with our Habitat Conservation Plan Assurance (''No Surprises'') rule codified at 50 CFR 17.22(b)(5) and (6), and 17.32(b)(5) and (6).

In light of the intensive investigation and analysis, public comment, and internal section 7 consultations undertaken prior to approval of regional and other Habitat Conservation Plans, we are confident that individual HCPs identify, protect, and provide beneficial adaptive management for essential vernal pool habitat within the boundary of HCPs. Similarly, regional HCPs also identify and will, as the plans are implemented over the life of the permits, protect and provide beneficial adaptive management for essential vernal pool habitat within their boundaries. Therefore, we have considered, but have not proposed critical habitat for the San Diego fairy shrimp within these approved HCPs pursuant to Section 4(b)(2) of the Act. We are soliciting additional public review and comment on these conclusions.

We are proposing to exclude currently proposed HCPs that cover the San Diego fairy shrimp if, prior to publication of a final rule designating critical habitat for the San Diego fairy shrimp, the plans are completed, approved, and legally operative. We will evaluate the exclusion of these lands on the basis of the best scientific and commercial data available, and after taking into consideration the economic and any other relevant impact of designating critical habitat. Following is our preliminary analysis of the benefits of including lands within approved HCPs versus excluding such lands from critical habitat designation.

(1) Benefits of Inclusion

Critical habitat designation is anticipated to provide little additional benefit to the San Diego fairy shrimp within the boundaries of approved HCPs. The primary benefit of any critical habitat is that activities that require Federal funding, permitting, or authorization and which may affect critical habitat require consultation pursuant to section 7 of the Act to ensure the activity will not destroy or adversely modify designated critical habitat. Consultations would also include the associated vernal pool watershed that are designated as critical habitat. However, as a result of the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), there may be limited opportunities to consult with the U.S. Army Corps of Engineers on activities that may affect vernal pools.

Currently approved and permitted HCPs are already designed to ensure the conservation of covered species within the plan area. Additionally, an HCP application must itself be consulted upon pursuant to section 7 of the Act. All HCPs address land use within the plan boundaries, and habitat issues as they relate to land use will have been addressed within the HCP through our consultation on the HCP.

Furthermore, regional HCPs typically provide greater conservation benefits to covered species than independent, project-by-project section 7 consultations because HCPs assure the long-term protection and special management needs for these species and their habitats, and the funding for such management and protections through the standards found in the 5-Point Policy for HCPs (65 FR 35242, June 1, 2000) and the HCP No Surprises regulation (63 FR 8859, February 23, 1998). These types of assurances are typically not provided by individual, project-by-project section 7 consultations because such consultations do not always commit the project proponent to long-term special management or protections; therefore, a consultation may not accord the lands it covers the extensive benefit a regional HCP provides. It is also important to note that an HCP does not preclude the requirement for Federal agencies to consult under section 7 of the Act for projects that are proposed to occur within the plan area of HCPs, even if the proposed action is a covered activity.

Development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species' recovery, and the creation of innovative solutions to conserve species while allowing for continued economic development.

The educational benefits of critical habitat, including informing the public of areas that are important to the conservation of listed species, are essentially the same as those that would occur during the process of approving an HCP. Specifically, an HCP involves public participation through public notices and public comment periods, prior to being approved. For these reasons, we believe that designation of critical habitat typically provides little additional benefit in areas covered by approved HCPs.

(2) Benefits of Exclusion

We have determined that the benefits of excluding lands within approved HCPs from critical habitat designation may be more substantial. The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities and counties of any additional regulatory burden that may result from such designation. Many HCPs, particularly large, regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review after an HCP is completed solely on the basis of critical habitat designation may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those entities developing HCPs.

A related benefit of excluding lands within HCPs from critical habitat designation is the continued ability to seek new partnerships with future HCP participants including the State of California, counties, local jurisdictions, conservation organizations, and private landowners, that together can implement conservation actions that we would be unable to accomplish

otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a chilling effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By considering excluding these lands, we preserve our current partnerships and, we believe, set the stage for additional conservation actions in the future.

In addition to the conservation benefits HCPs provide to covered species within the plan areas, many of these HCPs, particularly large, regional HCPs, also address landscape-level conservation of native habitats. The Natural Communities Conservation Planning Act of 1991 (NCCP) provides a framework for conserving listed and other sensitive species at a regional or ecosystem scale. The pilot program of the NCCP focuses on conservation of native coastal sage scrub communities throughout a 6,000-square-mile area in southern California that includes parts of Los Angeles, Orange, San Diego, Riverside, and San Bernardino counties. The NCCP program complements the objectives of regional HCP planning efforts. In southern California, several regional conservation planning efforts that incorporate the dual objectives of NCCP/HCP have already been approved.

In southwestern San Diego County, the Multiple Species Conservation Program (MSCP) effort encompasses more than 236,000 ha (582,000 ac) and reflects the potential participation of more than 12 local jurisdictions. The MSCP provides for the establishment over the permit term of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species. Under the broad umbrella of the MSCP, each participating jurisdiction prepares a Subarea Plan that complements the goals of the MSCP. Each Subarea Plan is consulted on under section 7 of the Act to ensure the Subarea Plans are consistent with the aims of the MSCP.

The MSCP provides for avoidance of impacts to vernal pool habitat for the San Diego fairy shrimp both within and outside of existing and targeted reserve areas. In addition, the incidental take permits issued to the City and County of San Diego under the MSCP limits take of San Diego fairy shrimp to areas outside of jurisdictional waters of the United States, as that term was understood at the time the permits were issued prior to the *SWANCC* decision. In other words, take of San Diego fairy shrimp under the approved subarea plans is limited to situations where the species occurs outside of its natural vernal pool habitat. The subarea plans also contemplated individualized review of projects impacting vernal pool habitat of the San Diego fairy shrimp under Section 404 of the Clean Water Act and Section 7 of the ESA to insure compliance with the Environmental Protection Agency Clean Water Act, 404(b)(1) guidelines and the Federal policy of ''no net loss of wetland function and values''; however, that review may not occur because of the intervening *SWANCC* decision. Even without that additional Section 7 review, however, the commitment by the City and County to avoid impacts to vernal pool habitat both within and outside reserve areas to the maximum extent practicable remains in place. The plans also commit the jurisdictions to affirmatively monitor and adaptively manage vernal pool habitats and species. Those measures combined with the restrictive incidental take authorized under the City and County incidental take permits, will ensure the conservation of the San Diego fairy shrimp and its vernal pool habitat within the approved MSCP subarea plan areas.

The Central-Coastal NCCP/HCP in Orange County was developed in cooperation with numerous State and local jurisdictions, agencies, and participating landowners including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison, the Transportation Corridor Agencies, The Irvine Company, California Department of Parks and Recreation, Metropolitan Water District of Southern California, and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 15,677 ha (38,738 ac) of reserve lands for 39 Federal or State listed and unlisted and sensitive species.

There are three known locations of vernal pools occupied by San Diego fairy shrimp within the Central-Coastal NCCP/HCP boundaries: Fairview Regional Park, Newport-Banning Ranch, and the North Ranch Policy Plan Area. The vernal pool complex at Fairview Regional park occurs within a city that is not a participating jurisdiction under the Central-Coastal NCCP/HCP. The Newport Banning Ranch is designated as an ''existing use'' habitat area in the Central-Coastal NCCP/HCP and is not covered for the take of any federally listed species, including the San Diego fairy shrimp. San Diego fairy shrimp known from the North Ranch Policy Plan area occur in a non-degraded, natural vernal pool. There is currently a Nature Conservancy conservation easement over the portion of the North Ranch Policy Plan area containing vernal pool habitat and a management endowment for the easement, but a conservation management plan has not yet been completed for the area. Under the Central-Coastal NCCP/HCP, SDFS occurring within these three vernal pool areas are not covered by the plan.

Several regional NCCP/HCP efforts are currently under way in southern California that have not yet been completed but which, upon approval, should provide conservation benefits to the San Diego fairy shrimp.

The Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County encompasses approximately 45,300 ha (175 mi.^{2}) within the study area, including vernal pool habitat. Currently, seven cities are participating in the development of the MHCP.

The proposed Southern Subregion NCCP/HCP in Orange County encompasses approximately 51,800 ha (200 mi.^{2}) in its planning area, including vernal pool habitat for the San Diego fairy shrimp. Jurisdictions and private landowners within the study area include the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, and Rancho Mission Viejo.

In general, we find that the benefits of critical habitat designation on lands within approved HCPs that cover those species are small, while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouragement for the pursuit of additional conservation partnerships, we have considered, but have not proposed critical habitat on reserve, preserve, or other lands targeted for conservation within the boundaries of approved HCPs that include the San Diego fairy shrimp as a covered species.

In the event that future HCPs covering the San Diego fairy shrimp are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the San Diego fairy shrimp and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the

essential lands that are proposed as critical habitat in this rule. If an HCP that addresses the San Diego fairy shrimp as a covered species is ultimately approved, the Service can reassess the critical habitat boundaries in light of the HCP. The Service would seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Relationship to Department of Defense Lands

Marine Corps Air Station, Miramar and Naval Radio Receiving Facility

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they already provide special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not proposed as critical habitat for the covered species.

Marine Corps Air Station, Miramar (MCAS, Miramar) has completed a final INRMP in May 2000 that provides for sufficient conservation management and protection for the San Diego fairy shrimp. We have reviewed this plan and have determined that it addresses and meets the three criteria discussed above. Therefore, lands on MCAS, Miramar that are biologically essential to the San Diego fairy shrimp do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they have currently have special management and protection. Consequently, these lands essential to the San Diego fairy shrimp have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the San Diego fairy shrimp on MCAS, Miramar may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2) as discussed below.

Similar to MCAS, Miramar, the U.S. Navy's Naval Radio Receiving Facility (NRRF) in Coronado also has a completed and approved final INRMP that provides for the conservation of the San Diego fairy shrimp. Therefore, lands on NRRF that are biologically essential to the San Diego fairy shrimp do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they have currently have special management and protection. Consequently, these lands essential to the San Diego fairy shrimp have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the San Diego fairy shrimp on NRRF may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2) as discussed below.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. As previously discussed MCAS, Miramar and NRRF have completed final INRMPs that provide for sufficient conservation management and protection for the San Diego fairy shrimp. Therefore, we do not believe that designation of areas on MCAS, Miramar and on NRRF as critical habitat will appreciably benefit the San Diego fairy shrimp beyond the protection already afforded the species under the Act and the completed INRMPs. Exclusion of these lands would not result in the extinction of the species.

However, even if the lands on MCAS, Miramar and NRRF did require special management and thus meet the definition of critical habitat, there would be appreciable benefits to excluding these areas from critical habitat pursuant to section 4(b)(2). If critical habitat were to be designated, these facilities would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. Given the INRMPs, the additional burden of consulting could unnecessarily impair their ability to conduct activities. Similarly, including these areas in the proposed critical habitat rule would require these facilities to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This could result in unnecessary delays and disruption of base's activities and potentially impair our Nation's military readiness. In light of our country's national security interest, we have considered, but have not proposed critical habitat on MCAS, Miramar or NRRF.

Marine Corps Base, Camp Pendleton

Critical habitat is being proposed for the San Diego fairy shrimp on Department of Defense (DoD) lands including lands that are not mission-essential training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); and on lands leased to the State of California by Camp Pendleton. Areas proposed as critical habitat for the San Diego fairy shrimp on Camp Pendleton meet the definition of critical habitat pursuant to section 3(5)(A) in that they are ''essential to the conservation of the species'' and ''may require special management or protections.''

Under 4(b)(2) of the Act, we have considered, but have not proposed critical habitat on mission-essential training areas on Camp Pendleton. Camp Pendleton operates an amphibious training base that promotes the combat readiness of military forces and is the only West Coast Marine Corps facility where amphibious operations can be combined with air, sea, and ground assault training activities year-round. Currently, the Marine Corps has no alternative installation available for the types of training that occur on Camp Pendleton.

The Marine Corps consults with us under section 7 of the Act for activities that may affect federally threatened or endangered species on Camp Pendleton. On March 30, 2000, at the request of the Marine Corps, we initiated a formal consultation regarding Marine Corps activities on upland areas of Camp Pendleton. The consultation covers approximately 60,703 ha (150,000 ac) of land within the upland areas of Camp Pendleton, including combat readiness operations, air operations, vehicle operations, facility maintenance and operations, fire management, recreation activities, and housing. The upland consultation that addresses vernal pool habitat, the San Diego fairy shrimp, and other species is not yet completed. We are currently working cooperatively with Camp Pendleton to facilitate the completion of this upland consultation.

In order to continue its critical training mission pending completion of the consultation, the Marine Corps has implemented measures the Corps believes will avoid jeopardy to the continued existence of the San Diego fairy shrimp and other listed species within the uplands area and comply with section 7(d) of the Act. In particular, the Marine Corps is implementing a set of ''programmatic instructions'' to avoid adverse effects to the San Diego fairy shrimp.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. We are already in formal consultation with the Marine Corps on their upland activities to ensure current and proposed actions will not jeopardize the species' continued existence. Therefore, we do not believe that designation of mission-essential training areas on Camp Pendleton as critical habitat will appreciably benefit the San Diego fairy shrimp beyond the protection already afforded the species under the Act. Exclusion of these lands will not result in the extinction of the species.

In contrast to the absence of an appreciable benefit resulting from designation of Camp Pendleton training areas, there are substantial benefits to excluding these areas from critical habitat. If critical habitat were to be designated within the training areas, the Marine Corps would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. The additional burden of consulting on activities within mission-essential training could delay and impair the ability of the Marine Corps to conduct training activities, thus, limiting Camp Pendleton's utility as a military training installation. Similarly, including these areas in the proposed critical habitat rule would require the Marine Corps to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This would result in similar delays and disruption of base's military training mission and impairment of our Nation's military readiness.

In light of our country's national security interest in ensuring Camp Pendleton's ability to maintain a high level of readiness and fighting capabilities, and the disruption to the Marine Corps' training mission, we have considered, but have not proposed critical habitat on lands identified as mission-essential training areas.

We are soliciting public review and comment on our decision to consider, but not propose critical habitat for the San Diego fairy shrimp on mission-essential training areas of Camp Pendleton, based on section 4(b)(2) of the Act. Maps delineating habitat for the San Diego fairy shrimp, overlaid with mission-essential training areas on Camp Pendleton, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov.* Additionally, maps showing lands essential to the conservation of the San Diego fairy shrimp, but not included in proposed critical habitat based and the provisions of section 3(5)(A)(i)(II), are available for viewing at the Carlsbad Fish and Wildlife Office (see Addresses section). These maps are provided to allow the public to adequately comment on these exclusions.

Methods

In determining areas that are essential to conserve the San Diego fairy shrimp, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998), regional Geographic Information System (GIS) vegetation and species coverages (including vegetation layers for Orange and San Diego counties), data collected on Camp Pendleton and MCAS, Miramar, data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the March 8, 2000, proposed rule to designate critical habitat for the San Diego fairy shrimp (65 FR 12181) and the August 21, 2000, draft economic analysis (65 FR 50672). In an effort to map areas essential to the conservation of the species, we used data on known San Diego fairy shrimp locations and those vernal pools and vernal pool complexes that we identified in the Recovery Plan as essential for the stabilization and reclassification of the species.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, cyst (egg) dormancy, dispersal, and genetic exchange. The primary constituent elements are found in those areas that support vernal pools or other ephemeral depressional wetlands. Primary constituent elements include the vernal pool basins and associated watersheds, and include, but are not limited to: small to large vernal pools with shallow to moderate depths that hold water for sufficient lengths of time necessary for San Diego fairy shrimp incubation and reproduction, but not necessarily every year; associated watershed(s) and hydrology for vernal pool basins and their related vernal pool complexes; ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. The associated watersheds are essential in maintaining the hydrology of vernal pools necessary to support San Diego fairy shrimp.

The first constituent element necessary for vernal pools to form are

soils with an underlying claypan or hardpan layer that restricts water drainage. These soils include, but are not limited to: Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). The second primary constituent element is the possibility that a cyst bank exists in the soil. Dormant fairy shrimp cysts are viable for several years (Donald 1983; Belk 1998). In some cases vernal pool areas that appear degraded still maintain a viable source of fairy shrimp cysts. These cyst banks are similar to the seed banks of flowering plants. These areas are indicated by historical records of vernal pools, the presence of plants or animals associated with ephemeral wetlands, or the occasional pooling of water. The third constituent element relates to the topography of areas supporting the San Diego fairy shrimp. Vernal pool topography is such that the vernal pool fills directly from rain fall or in other cases the topography is such that the pool forms through the subsurface or overland waterflow from the surrounding watershed. The topography does not need to facilitate pooling water every year.

The long-term conservation of vernal pools that are essential for the recovery of the San Diego fairy shrimp include the protection and management of their associated watersheds. Primary constituent elements are found in all the areas proposed as critical habitat.

Criteria Used To Identify Critical Habitat

The long-term conservation of the San Diego fairy shrimp depends upon the protection and management of vernal pools within each management area as described in the Recovery Plan for Vernal Pools in Southern California. Eight distinct management areas were identified in the Recovery Plan based on plant and animal distribution, soil types, and climatic variables. Further, the management area for the conservation of the San Diego fairy shrimp includes vernal pools and complexes that are known to be or are likely occupied by this species and are needed to retain local genetic differentiation, reduce the risk of losing individual species or pool types, buffer environmental variation, and provide for the opportunity for re-establishment of populations (Service 1998). We evaluated those areas based on the hydrology, watershed and topographic features. On the basis of this evaluation of vernal pools identified as essential for the recovery of the San Diego fairy shrimp, we overlaid a 100 m (330 ft) Universal Transverse Mercator (UTM) (North American Datum 1927 (NAD 27)) grid on top of those essential vernal pool complexes and their associated essential watersheds. In those cases where occupied vernal pools were not identified in the Recovery Plan, we relied on recent scientific data to update the map coverage for Orange County where essential vernal pools have been identified since the publication of the recovery plan.

Secondly, after determining those specific areas that are biologically essential to the San Diego fairy shrimp, we evaluated the areas relative to approved and legally operative individual and regional HCPs, completed and approved INRMPs for DoD lands, and other adequate conservation management plans or agreements. This comparison was conducted to ascertain the extent to which these conservation measures precluded the need to designate critical habitat on those lands based on the management provisions and protections afforded the San Diego fairy shrimp and its habitat. As previously discussed, we are not proposing as critical habitat, pursuant to sections 3(5)(A) and 4(B)(2), on lands covered by: (1) A legally operative and fully implemented HCP that covers the San Diego fairy shrimp, (2) a completed and approved INRMP that adequately address the San Diego fairy shrimp and its habitat, and (3) other appropriate conservation management plans or agreements. Consequently, lands within the boundaries of fully implemented HCPs, and Miramar are not proposed as critical habitat for the San Diego fairy shrimp based on the provisions of section 3(5)(A)(i)(II). Maps showing lands essential to the conservation of the San Diego fairy shrimp, but not included in proposed critical habitat based on the basis of Secton 3(5)(A)(i)(II) are available for viewing at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**). We have also considered but are not proposing as critical habitat lands within the Central-Coastal Orange County Subregional NCCP/HCP boundaries with the exception of the three vernal pool areas identified under Regional HCPs, lands within approved subareas under the MSCP, and certain military lands on Camp Pendlton based on our evaluation under section 4(b)(2) of the relatively greater benefits that would result from exclusion of these lands from proposed critical habitat. Miramar and NRRF have also been considered and excluded from proposed critical habitat based on sections 3(5)(A) and 4(b)(2). Maps showing the all essential areas considered, but not proposed, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov.* Additionally, these maps are provided to allow the public to adequately comment on these exclusions.

In defining critical habitat boundaries, we made an effort to avoid mapping developed areas that are unlikely to contribute to San Diego fairy shrimp conservation. However, the minimum mapping unit that we used did not allow us to avoid mapping of all developed areas unlikely to contain the primary constituent elements essential for conservation of the San Diego fairy shrimp. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, landscaped areas, and other urban areas, will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat. The complexes of vernal pools and their associated watersheds within the proposed critical habitat area are within the geographical area occupied by San Diego fairy shrimp.

In summary, in determining areas that are essential to conserve San Diego fairy shrimp, we used the best scientific information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Critical habitat includes San Diego fairy shrimp habitat throughout the species' range in the United States (*i.e.*, Orange and San Diego counties, California). Areas proposed for critical habitat are under Federal, State, local, and private ownership. Areas proposed for critical habitat exclude some of the essential areas for this species; the exclusions are summarized in Table 2. Some of the areas proposed as critical habitat are within HCPs. Table 3 shows the total area that each of these plans cover and the preserve area for each. Only the San Diego MSCP represents a completed plan that covers the San Diego fairy shrimp. Areas proposed as critical habitat are divided into five Critical Habitat Units which are based on the recovery units in the Recovery Plan (Service 1998). The units are generally based on geographical location of the vernal pools, soil types, associated

watersheds, and local variation of topographic position (*i.e.*, coastal mesas, inland valley). A brief description of each unit and the reasons for designating it as critical habitat are presented below.

TABLE 1.—APPROXIMATE AREA ENCOMPASSING DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

Orange	N/A	30 ha (74 ac)	117 ha (289 ac)	147 ha (363 ac).
San Diego	530 ha (1,309 ac)	228 ha (564 ac)	1,563 ha (3,862 ac)	2,321 ha (5,735 ac).
Total	530 ha (1,309 ac)	258 ha (638 ac)	1,680 ha (4,151 ac)	2,468 ha (6,098 ac).

[1] Includes Department of Defense and U.S. Fish and Wildlife Service lands.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA

Area considered essential	8,100 ha (20,015 ac).
Area not included under 3(5)(A) (MCAS Miramar, NRRF, individual HCPs*)	1,036 ha (2,561 ac).
Area excluded under 4(b)(2) (Camp Pendleton and preserve lands under the San Diego MSCP)	4,596 ha (11,356 ac).
Proposed Critical Habitat	2,468 ha (6,098 ac).

* Acreage for individual HCPs are not available.

TABLE 3.—NCCP/HCPS WITHIN THE GENERAL AREA WHICH CONTAIN THE PROPOSED CRITICAL HABITAT

NCCP/HCP	Planning area	Preserve area
San Diego MSCP	236,000 ha (582,000 ac)	69,573 ha (171,000 ac).
Central/Coastal Orange County NCCP/HCP	84,463 ha (208,713 ac)	15,677 ha (38,738 ac).
Proposed MSCP North County Subarea	142,854 ha (353,000 ac)	Information not available.
Proposed Northwestern San Diego MHCP	45,288 ha (111,908 ac)	8,064 ha (19,928 ac).
Proposed Southern Subregion NCCP/HCP Orange County (pending)	51,800 ha (128,000 ac)	5,666 ha (14,000 ac).

Areas proposed as critical habitat do not include all of the vernal pools where the San Diego fairy shrimp are found. All of the vernal pools included in the critical habitat were surveyed and are considered to be occupied by the San Diego fairy shrimp. Vernal pools can be measured by different methods: (1) Area of pool basins, (2) soil types, or (3) the associated watersheds. These differences make estimating the historical and current extent of vernal pool habitat in Southern California difficult. In delineating areas essential for the conservation of the San Diego fairy shrimp, we used the area of the associated vernal pool watersheds. Depending on the topography of the area and the adjacent land use, the size of the associated vernal pool watersheds vary between pool complexes.

The five Critical Habitat Units are based on the Management Areas outlined in the Recovery Plan for Vernal Pools of Southern California (Service 1998). The units represent those vernal pools, their associated watersheds, and include populations of the San Diego fairy shrimp throughout its range. The critical habitat units occur on the various soil types and vegetation classes associated with vernal pools. Each contains the primary constituent elements for the San Diego fairy shrimp. We are proposing 2,468 ha (6,098 ac) as critical habitat for this species. Some of the pools within proposed critical habitat are in a degraded state and will benefit from restoration and enhancement work, which will contribute to recovery of the San Diego fairy shrimp.

Unit 1: Orange County

Unit 1 encompasses approximately 147 ha (363 ac) in Orange County within the Los Angeles Basin/Orange Management Area as outlined in the Recovery Plan. The majority of vernal pools in this management area were extirpated prior to 1950 and only a small number of vernal pools remain in Los Angeles and Orange counties (Service 1998). This unit represents the northern extent of this species' currently known distribution in southern California and includes vernal pools that have been identified as essential to the recovery of the San Diego fairy shrimp in order to stabilizing populations and habitat loss. The vernal pools that are proposed as critical habitat are relatively isolated and are the only known remaining vernal pools in Orange County that support the San Diego fairy shrimp. The pools in this unit include examples of the historic distribution of coastal terrace vernal pools at Fairview Regional Park and Newport-Banning Ranch, vernal pool-like ephemeral ponds formed by landslides and fault activity on Rancho Mission Viejo, and the only known rock pool in southern California. This rock pool is located in the North Ranch Policy Plan Area. As discussed in the Recovery Plan (Service, 1998), preservation of vernal pools must be on a geographical scale for individual species and habitats. For species like the San Diego fairy shrimp with declining populations and limited distribution, maintenance of genetic variability is crucial for its survival. The high degree of variability in habitat combined with the unpredictability of winter rains has resulted in genetic structure be tween pool complexes. Moreover, there is a low degree of genetic variability within pool complexes. Thus, to conserve the genetic structure and variability of this species, vernal pools supporting San Diego fairy shrimp need to conserved throughout the range of this species, including the northern end of the distribution. This northernmost unit is essential to the conservation of the San Diego fairy shrimp because it maintains the ecological distribution and genetic variability of this species on a broad geographical scale. The restricted distribution and isolation of the vernal pools also suggest that they may contain genetic diversity important for the long-term survival of the San Diego fairy shrimp.

Unit 2: San Diego: North Coastal Mesa

Unit 2 encompasses approximately 357 ha (882 ac) in San Diego County within the North Coastal Mesa Management Area, as outlined in the Recovery Plan. This unit includes a small portion of Camp Pendleton

(nontraining areas) and an area within the City of Carlsbad. The area proposed on Camp Pendleton includes lands leased by the Marine Corps to the California Department of Parks and Recreation and private interests; Cockleburr preserve; and nontraining lands around the Wire Mountain housing area. These pools represent some of the best examples of coastal pools still remaining in San Diego County. The other vernal pools on Camp Pendleton that occur within mission-essential training areas have been excluded from proposed critical habitat under section 4(b)(2) of the Act, but are considered essential for the recovery of the San Diego fairy shrimp. Within the jurisdiction of the City of Carlsbad, the vernal pool complex located in the vicinity of Palomar Airport is currently designated as critical habitat. However, based on recent surveys, we have determined that this vernal pool complex is not essential for the San Diego fairy shrimp. The pool complex at Poinsettia Lane train station, in the City of Carlsbad, is proposed as critical habitat. The Poinsettia Lane pools represent the most coastal location where the San Diego fairy shrimp and the endangered Riverside fairy shrimp co-occur. The Recovery Plan identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. As discussed in the Recovery Plan (Service 1998), vernal pools must be conserved on a geographical scale and these examples represent coastal terrace vernal pools found in northern San Diego County. Given the rarity of San Diego fairy shrimp and the limited amount of remaining vernal pool habitat, this unit is essential to the conservation of this species because of need to conserve vernal pools throughout the range of the species in order to meet the overall recovery of this species, and its role in maintaining the genetic diversity and population stability of the San Diego fairy shrimp.

Unit 3: San Diego: Inland Valley

Unit 3 encompasses 1,225 ha (3,027 ac) in San Diego County within the San Diego Inland Valley Management Area, as outlined in the Recovery Plan. Lands proposed as critical habitat for the San Diego fairy shrimp contain vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona. In the community of Ramona, one of the complexes is within the boundaries of Ramona Airport. These vernal pool complexes are generally isolated from maritime influence (greater than 10 km (6 mi) from the coast) and are representative of vernal pools associated with alluvial or volcanic type soils. The vernal pools in San Marcos are associated with native grassland and a unique association of multiple species of Brodiaea. The Recovery Plan specifically identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. Protection of these areas will help meet the Recovery Plan goal of reclassifying this species in a future downlisting/delisting action. This unit includes vernal pools within the easternmost edge of the geographical distribution of the species. Conservation of vernal pools in this unit will help maintain the diversity of vernal pool habitats and their unique geological substrates, and will retain the genetic diversity of these geographically distinct populations.

Unit 4: San Diego: Central Coastal Mesa

Unit 4 encompasses 73 ha (181 ac) in San Diego County within the San Diego Central Coastal Mesa Management Area, as outlined in the Recovery Plan. Lands considered for this critical habitat unit contain vernal pool complexes within the jurisdiction of the City of San Diego, State of California, Service, Navy, and private lands. The Recovery Plan specifically identifies these vernal pools as essential for the recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. These vernal pool complexes are associated with coastal terraces and mesas found south of the San Dieguito River to San Diego Bay. While many of the vernal pool complexes in this unit have been destroyed or fragmented, these complexes represent some of the best remaining vernal pools in San Diego County.

On MCAS, Miramar, vernal pools identified in the Recovery Plan are considered to be essential for the conservation of the San Diego fairy shrimp. MCAS, Miramar is successfully implementing its INRMP and the majority of these pools are considered to be of the highest quality and irreplaceable. These pools are encompassed within Level 1 Management Areas under the installation's INRMP. We have considered, but have not proposed critical habitat designation under 3(5)(A) of the Act for MCAS, Miramar based on the INRMP. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the ''other relevant impacts'' provisions of section 4(b)(2). Therefore, MCAS, Miramar lands are not being proposed as critical habitat for this species.

Many of the vernal pools considered for this unit receive conservation protection by virtue of their land ownership and management. These pools represent the some of the best opportunities for long-term protection for the San Diego fairy shrimp. Many of these vernal pools are within the MSCP. We have considered, but have not proposed as critical habitat those vernal pools within approved HCPs (MSCP) where the San Diego fairy shrimp is a covered species. Vernal pools that are included in this critical habitat unit consist of four subunits that are federally owned. This unit includes pools that occur on Del Mar Mesa that are within the San Diego National Wildlife Refuge. This unit also includes land owned by the Department of Defense which meet the definition of critical habitat at Tierrasanta South and at Chollas Heights. This unit provides for the conservation of the San Diego fairy shrimp by protecting vernal pools essential for the future reclassification (downlisting/delisting actions) of this species. It includes vernal pools within the center of this species' geographical distribution, and retains the genetic diversity of these geographically distinct populations.

Unit 5: San Diego: Southern Coastal Mesa

Unit 5 encompasses 666 ha (1,645 ac) in San Diego County within the San Diego Southern Coastal Mesa Management Area, as outlined in the Recovery Plan. Essential habitat for the San Diego fairy shrimp occurs in vernal pool complexes within the jurisdiction of the Service, the Cities of San Diego and Chula Vista, County of San Diego, U.S. Immigration and Naturalization Service (INS), other DoD lands, and private lands within unit 5. These vernal pool complexes are associated with coastal mesas from the Sweetwater River south to the international border with Mexico. We have considered, but have not proposed as critical habitat those vernal pools within approved HCPs (MSCP) where the San Diego fairy shrimp is a covered species. We have considered, but have not proposed critical habitat designation under 3(5)(a) of the Act for NRRF based on their INRMP. The remaining lands identified as essential in the recovery plan are proposed as critical habitat. These vernal pool complexes occur on Federal lands and lands included in the Major Amendment areas of San Diego County. These pools represent the southern most

occurrences of the San Diego fairy shrimp. Due to rapid urbanization in the on both sides of the United States and Mexican border the preservation of these pools is essential for the survival of the San Diego fairy shrimp. The pools proposed for critical habitat in subunit A contain the endangered Otay mesa-mint (*Pogogyne nudiuscula*); subunit D also supports the endangered Riverside fairy shrimp (*Streptocephalus woottoni*); and subunit F include the endangered Orcutt's grass (*Orcuttia californica*) and represent vernal pools with high biological diversity. The Recovery Plan specifically identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and habitat loss and in reclassifying these species in future downlisting/delisting actions. This southernmost unit is essential to the conservation of the San Diego fairy shrimp because it maintains the ecological distribution and genetic diversity of this species. Many of these vernal pools are within the MSCP, and as previously stated in this rule, we have considered, but have not proposed those vernal pools in reserve, preserve, or other lands targeted for conservation areas within approved HCPs, pursuant to section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiating of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Any activity that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins (*e.g.,* road and fence construction and maintenance, right-of-way designation, airport improvement activities, and regulation of agricultural activities) that constitutes jurisdictional waters of the United States under the Clean Water Act;

(2) Any activity that alters the watershed, water quality, or water quantity to an extent that water quality becomes unsuitable to support San Diego fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system; and

(3) Activities that could lead to the introduction of exotic species into San Diego fairy shrimp habitat.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Diego fairy shrimp is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

We recognize that the proposed designation of critical habitat may not

include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, we want to ensure that the public is aware that critical habitat designations do not signal that habitat outside the proposed designation is unimportant or may not be required for recovery. Areas outside the proposed critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of the San Diego fairy shrimp is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Those activities that involve Federal action that may destroy or modify critical habitat are listed above in our discussion of Section 7(a)(2).

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

All lands proposed as critical habitat are within the geographical area occupied by the species and are necessary to preserve functioning vernal pool habitat for the San Diego fairy shrimp. Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation, although there may be consultations that result from Federal actions within critical habitat in the watersheds associated with vernal pools.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the San Diego fairy shrimp is being prepared. We will announcing the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment at that time. Copies may be obtained from the Carlsbad Fish and Wildlife Office's Internet Web site at *http://carlsbad.fws.gov,* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Based on public comment, the final rule could find areas not essential, appropriate for exclusion under either 3(5)(A) or 4(b)(2), or not appropriate for exclusion, in which case, they would be made part of the designation. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species that would result from the designation;

(2) Specific information on the amount and distribution of San Diego fairy shrimp and vernal pool habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the areas proposed as critical habitat and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for the San Diego fairy shrimp such as those derived from nonconsumptive uses (*e.g.,* hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs);

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(7) We have considered, but have not proposed the following areas as critical habitat: mission-essential training areas on Camp Pendleton, lands on MCAS Miramar, lands on the U.S. Navy's NRRF, and lands in the San Diego Multiple Species Conservation Program because we believe that: (1) Their value for conservation has been addressed by existing protective actions, or (2) they are appropriate for exclusion pursuant to the ''other relevant factor'' provisions of section 4(b)(2). We specifically solicit comment, however, on the inclusion or exclusion of such areas and (a) whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 3(5)(A) or section 4(b)(2)).

(8) The benefits of including or excluding from this critical habitat designation lands within approved Habitat Conservation Plans.

(9) Are ''associated watersheds'' of these vernal pools essential for the conservation of the species? If so, does the term need to be defined and how should it be defined?

(10) The majority of area proposed as critical habitat consists of upland areas that contain ''associated watersheds'' which may be needed to preserve vernal pool hydrology. Does the extent of the upland areas around the complexes of vernal pools proposed to be designated as critical habitat comply with the regulatory requirement at 50 CFR 484.12(d)? Do these areas comprise ''a small local area'' within the meaning of the example found in that provision,

and if not, what weight should be given to that example in the final rule?

(11) Should all lands at Camp Pendleton be excluded from critical habitat in light of the INRMP process, the formal consultation under section 7 of the Act for upland species now underway, and possible future needs to utilize different areas for military training?

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may mail comments to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the internet to *FW1SDFS@r1.fws.gov.* Please submit internet comments as an ASCII file and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN–1018–AI71'' in your e-mail subject header and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that the internet address ''*FW1SDFS@r1.fws.gov*'' will be closed out at the termination of the public comment period; or (3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section above).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the San Diego fairy shrimp. This analysis will be made available for public review and comment. Copies may be obtained from the Carlsbad Fish and Wildlife Office's Internet website at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. In this proposed rule, we are certifying that it will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents, as well as small businesses (*http://www.sba.gov/size/*). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the San Diego fairy shrimp through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants where the species may be present, because consultation would already be required because of the presence of a listed species.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the areas designated as critical habitat that are considered unoccupied, such as the watersheds associated with occupied vernal pools, would result from the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

On non-Federal lands, activities that do not require Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by this proposed designation are primarily commercial or residential development. None of the developments recently approved by the local jurisdictions in these areas have any Federal involvement, and we are not aware of a substantial number of future activities on any of the proposed units that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could result in project modifications. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, are economically and technologically feasible, and would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless it could obtain an exemption, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. However, the Act does not require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included in future reasonable and prudent alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of

the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have concluded that this proposed rule would not result in a significant economic effect on a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for the San Diego fairy shrimp will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule to designate critical habitat for the San Diego fairy shrimp is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing to designate approximately 2,468 ha (6,098 ac) of lands in Orange and San Diego counties, California, as critical habitat for the San Diego fairy shrimp in a takings implications assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in California. The proposed designation of critical habitat in areas currently occupied by the San Diego fairy shrimp imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat in unoccupied areas may require a conference under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred.

The proposed designation of critical habitat may have some benefit to the State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the San Diego fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the San Diego fairy shrimp because they do not support populations or suitable vernal pool habitat. Therefore, critical habitat for the

San Diego fairy shrimp has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95 revise the entry for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) under paragraph (h) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

San Diego fairy shrimp (*Branchinecta sandiegonensis*).

(1) Critical habitat units are depicted for Orange and San Diego counties, California, on the maps below.

(2) Critical habitat includes vernal pool basins and vernal pool complexes indicated on the maps below and their associated watersheds and hydrologic regime.

(3) Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support vernal pools or other ephemeral depressional wetlands. Within these seasonal wetlands, specific associations that are essential to the primary biological needs of the San Diego fairy shrimp include, but are not limited to: Small to large vernal pools with shallow to moderate depths that hold water for sufficient lengths of time necessary for San Diego fairy shrimp incubation and reproduction, but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their associated vernal pool complexes, ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

(4) Existing features and structures, such as buildings, roads, railroads, urban development, and other features not containing primary constituent elements, are not considered critical habitat. In addition, critical habitat does not include non-Federal lands covered by a legally operative habitat conservation plan for the San Diego fairy shrimp issued under section 10(a)(1)(B) of the Act on or before April 22, 2003.

(5) Index map of critical habitat units for San Diego fairy shrimp follows:

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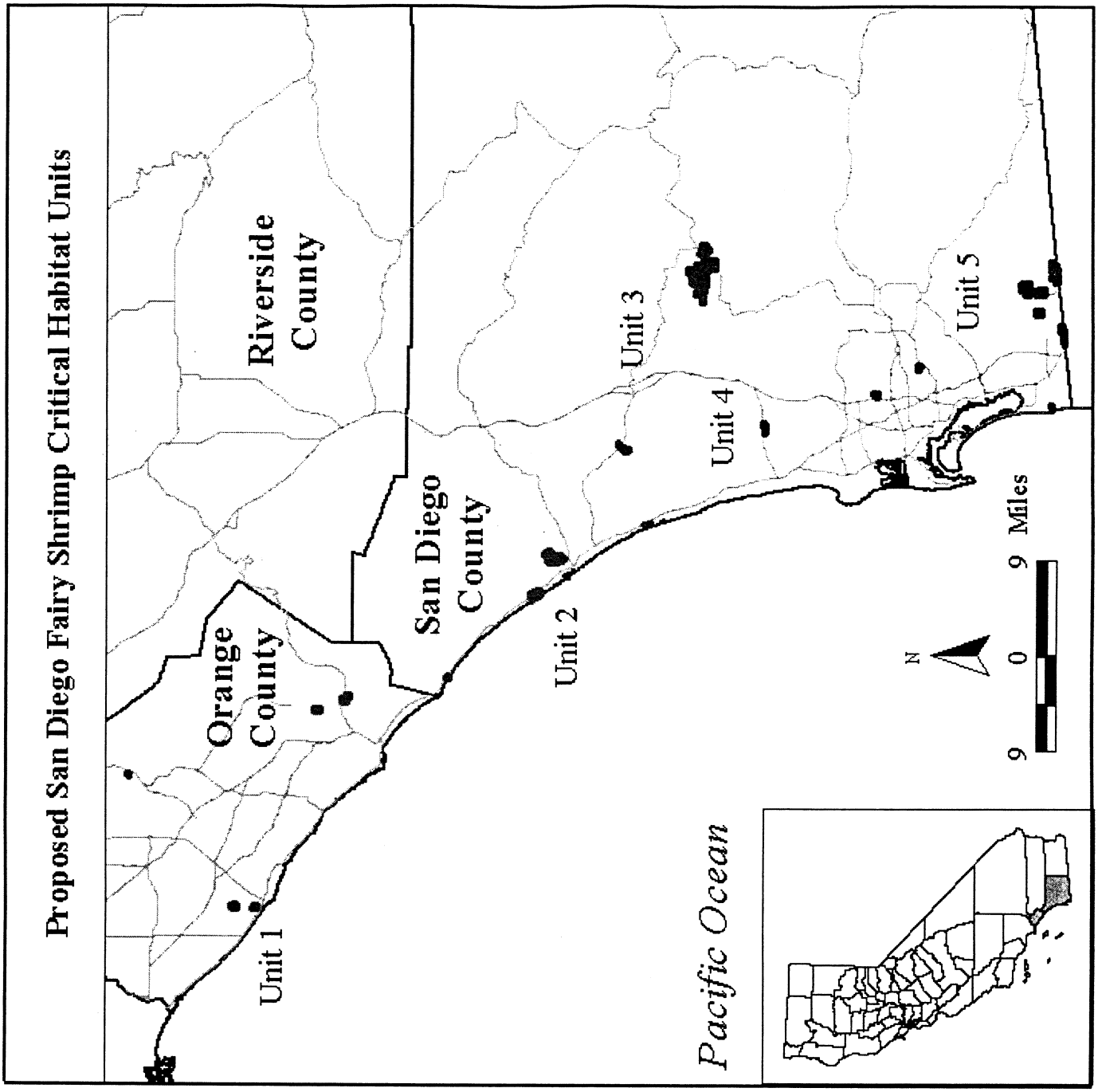

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(6) Map Unit 1: Orange County, Orange County, California. From USGS 1:24,000 quadrangle maps Black Star Canyon, Newport Beach, and Canada Gobernadora, California.

(i) Unit 1a: lands bounded by the following UTM NAD27 coordinates (E,N): 432400, 3740900; 432700, 3740900; 432700, 3740600; 432400, 3740600; 432400, 3740700; 432300, 3740700; 432300, 3740800; 432400, 3740800; 432400, 3740900.

(ii) Unit 1b: lands bounded by the following UTM NAD27 coordinates (E,N): 412700, 3725200; 412900, 3725200; 412900, 3725100; 413000, 3725100; 413000, 3724800; 413100, 3724800; 413100, 3724600; 412900, 3724600; 412900, 3724400; 412600, 3724400; 412600, 3725100; 412700, 3725100; 412700, 3725200.

(iii) Unit 1c: lands bounded by the following UTM NAD27 coordinates (E,N): 412500, 3722000; 412600, 3722000; 412600, 3721900; 412900, 3721900; 412900, 3721500; 412600, 3721500; 412600, 3721600; 412400, 3721600; 412400, 3721900; 412500, 3721900; 412500, 3722000.

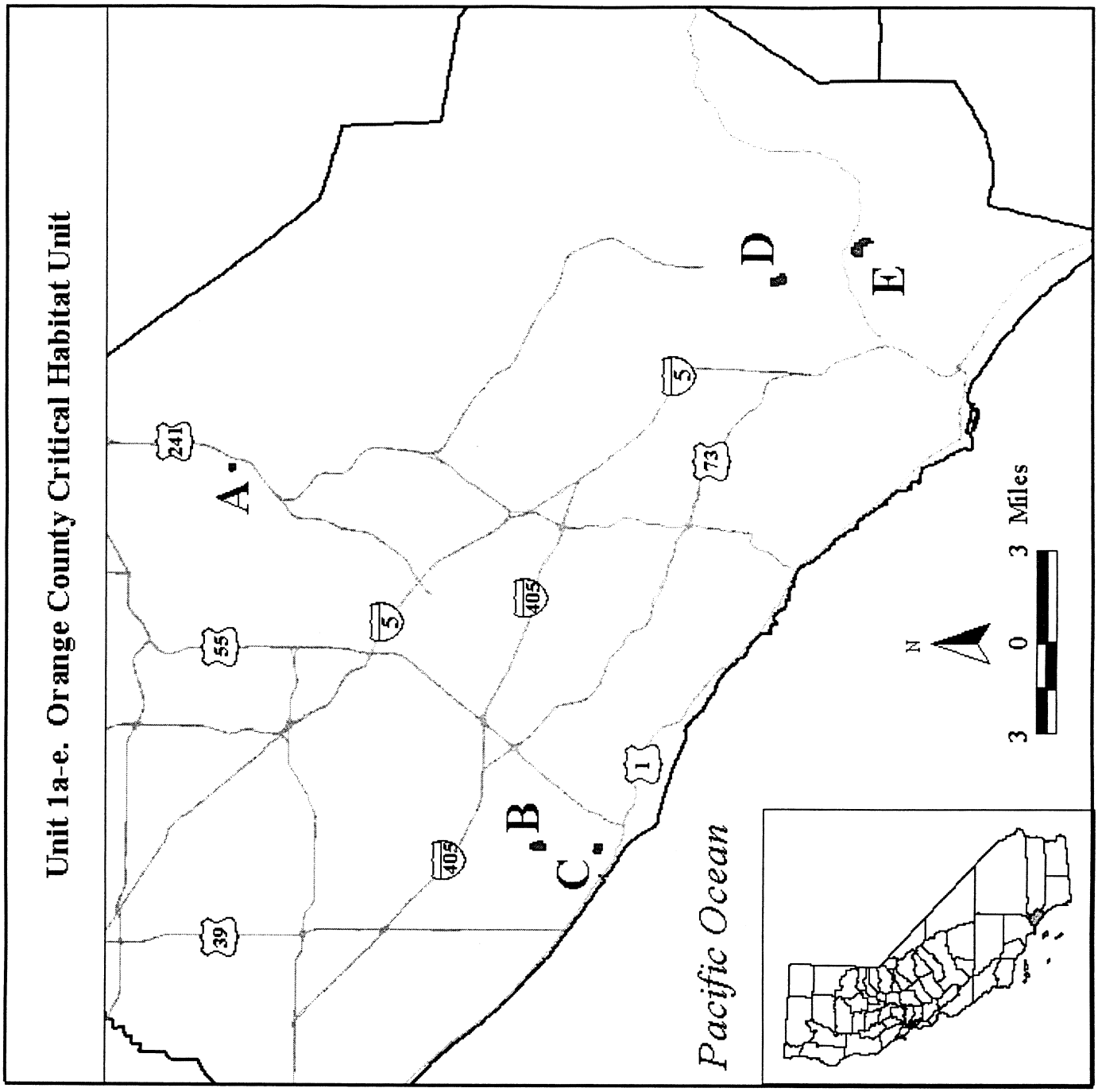
(iv) Unit 1d: lands bounded by the following UTM NAD27 coordinates (E,N): 442100, 3712800; 442500, 3712800; 442500, 3712500; 442600, 3712500; 442600, 3712300; 442700, 3712300; 442700, 3712100; 442600, 3712100; 442600, 3712000; 442300, 3712000; 442300, 3712100; 442200, 3712100; 442200, 3712400; 442100, 3712400; 442100, 3712800.

(v) Unit 1e: lands bounded by the following UTM NAD27 coordinates (E,N): 443800, 3708700; 444100, 3708700; 444100, 3708500; 444300, 3708500; 444300, 3708300; 444500,

3708300; 444500, 3708100; 444600, 3708100; 444600, 3707700; 444400, 3707700; 444400, 3707600; 444300, 3707600; 444300, 3707900; 444200, 3707900; 444200, 3708100; 443600, 3708100; 443600, 3708500; 443700, 3708500; 443700, 3708600; 443800, 3708600; 443800, 3708700.

(vi) Map of Unit 1a–e follows:

BILLING CODE 4310–55–P



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(7) Map Unit 2: San Diego: North Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps San Clemente, San Onofre Bluff, Las Pulgas Canyon, Oceanside, San Luis Rey, and Encinitas, California.

(i) Unit 2a: lands bounded by the following UTM NAD27 coordinates (E,N): 447100, 3693100; 447500, 3693100; 447500, 3693000; 447600, 3693000; 447600, 3692800; 447500, 3692800; 447500, 3692700; 447300, 3692700; 447300, 3692800; 447100, 3692800; 447100, 3693100, excluding the Pacific Ocean.

(ii) Unit 2b: lands bounded by the following UTM NAD27 coordinates (E,N): 459500, 3680600; 459900, 3680600; 459900, 3680500; 460000, 3680500; 460000, 3680300; 459800, 3680300; 459800, 3680400; 459700, 3680400; 459700, 3680300; 459600, 3680300; 459600, 3680200; 459500, 3680200; 459500, 3680000; 459300,

3680000; 459300, 3679900; 459200, 3679900; 459200, 3680000; 459100, 3680000; 459100, 3680100; 459000, 3680100; 459000, 3680300; 459300, 3680300; 459300, 3680500; 459500, 3680500; 459500, 3680600, excluding the Pacific Ocean.

(iii) Unit 2c: lands bounded by the following UTM NAD27 coordinates (E,N): 460000, 3680000; 460200, 3680000; 460200, 3679900; 460300, 3679900; 460300, 3679600; 460500, 3679600; 460500, 3679500; 460600, 3679500; 460600, 3679200; 460500, 3679200; 460500, 3679100; 460400, 3679100; 460400, 3679000; 460300, 3679000; 460300, 3679100; 460100, 3679100; 460100, 3679000; 459800, 3679000; 459800, 3679100; 459700, 3679100; 459700, 3679200; 459600, 3679200; 459600, 3679400; 459500, 3679400; 459500, 3679500; 459400, 3679500; 459400, 3679700; 459300, 3679700; 459300, 3679800; 459800, 3679800; 459800, 3679700; 460000, 3679700; 460000, 3680000, excluding the Pacific Ocean.

(iv) Unit 2d: lands bounded by the following UTM NAD27 coordinates (E,N): 465800, 3678400; 466100, 3678400; 466100, 3678300; 466200, 3678300; 466200, 3677800; 466400, 3677800; 466400, 3677500; 466300, 3677500; 466300, 3677400; 466100, 3677400; 466100, 3677200; 466000, 3677200; 466000, 3677100; 465700, 3677100; 465700, 3677200; 465600, 3677200; 465600, 3677300; 465500, 3677300; 465500, 3677400; 465400, 3677400; 465400, 3677500; 465200, 3677500; 465200, 3677400; 465100, 3677400; 465100, 3677500; 465000, 3677500; 465000, 3677300; 464900, 3677300; 464900, 3677200; 464700, 3677200; 464700, 3677500; 464600, 3677500; 464600, 3677800; 464800, 3677800; 464800, 3677700; 464900, 3677700; 464900, 3677600; 465000, 3677600; 465000, 3678000; 465200, 3678000; 465200, 3677900; 465400, 3677900; 465400, 3677800; 465600, 3677800; 465600, 3677700; 465900, 3677700; 465900, 3677800; 465700, 3677800; 465700, 3678200; 465800, 3678200; 465800, 3678400.

(v) Unit 2e: lands bounded by the following UTM NAD27 coordinates (E,N): 464600,3677800; 464800,3677800; 464800,3677700; 464900,3677700; 464900,3677500; 465000,3677500; 465000,3677300; 464900,3677300; 464900,3677200; 464700,3677200; 464700,3677500; 464600,3677500; 464600,3677800.

(vi) Unit 2f: lands bounded by the following UTM NAD27 coordinates (E,N): 464900,3677000; 465000,3677000; 465000,3676900; 465200,3676900; 465200,3677000; 465300,3677000; 465300,3676800; 465400,3676800; 465400,3676700; 465500,3676700; 465500,3676500; 465600,3676500; 465600,3676400; 465700,3676400; 465700,3676200; 465800,3676200; 465800,3675900; 465700,3675900; 465700,3675800; 465600,3675800; 465600,3675700; 465500,3675700; 465500,3675600; 465300,3675600; 465300,3675500; 465100,3675500; 465100,3675800; 465000,3675800; 465000,3675700; 464800,3675700; 464800,3676000; 464900,3676000; 464900,3676300; 464700,3676300; 464700,3676400; 464600,3676400; 464600,3676800; 464800,3676800; 464800,3676900; 464900,3676900; 464900,3677000.

(vii) Unit 2g: lands bounded by the following UTM NAD27 coordinates (E,N): 470300,3663400; 470400,3663400; 470400,3663200; 470500,3663200; 470500,3662900; 470600,3662900; 470600,3662700; 470700,3662700; 470700,3662500; 470600,3662500; 470600,3662600; 470500,3662600; 470500,3662800; 470400,3662800; 470400,3663000; 470300,3663000; 470300,3663400.

(viii) Maps of Unit 2 follow:

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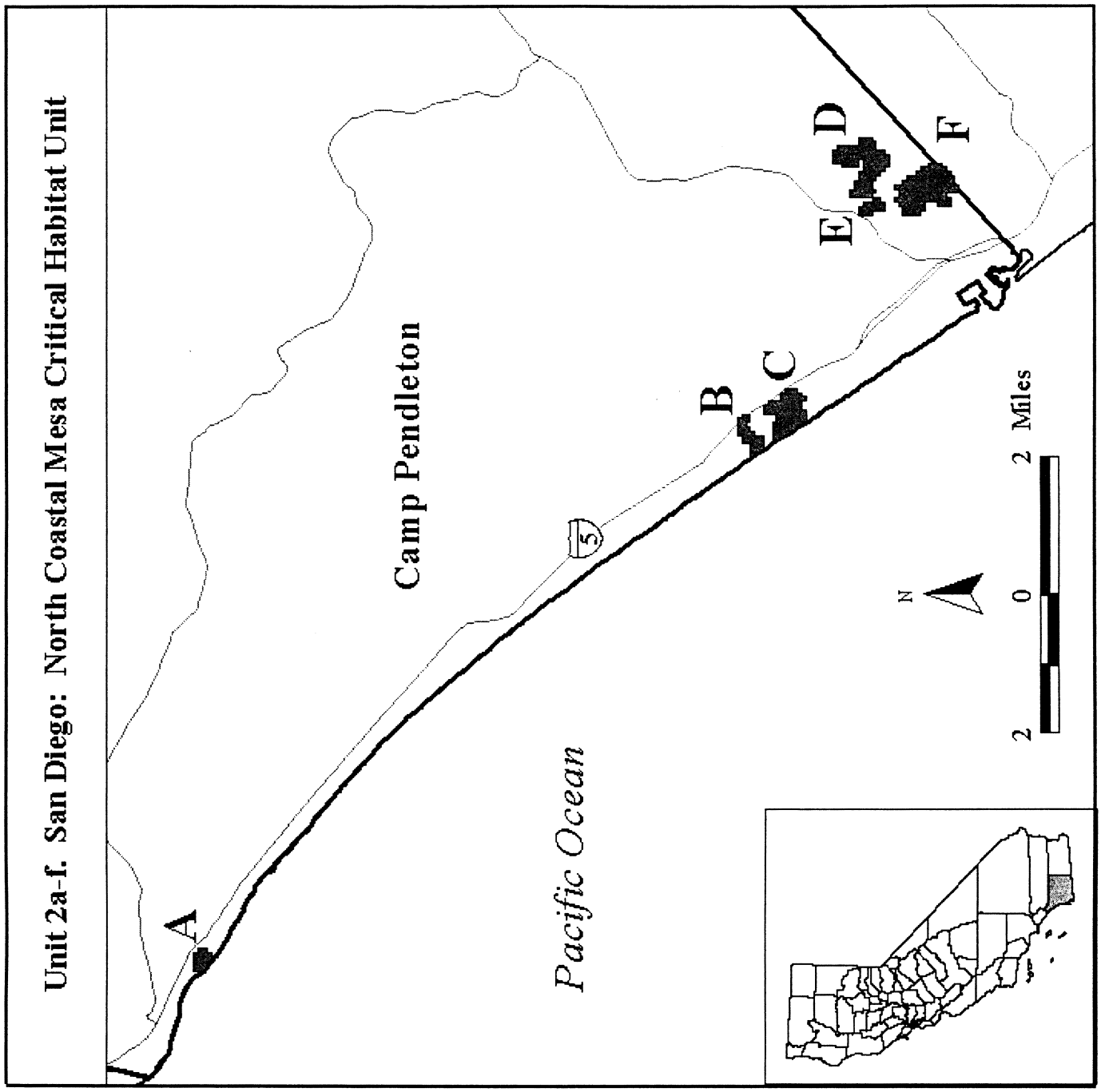
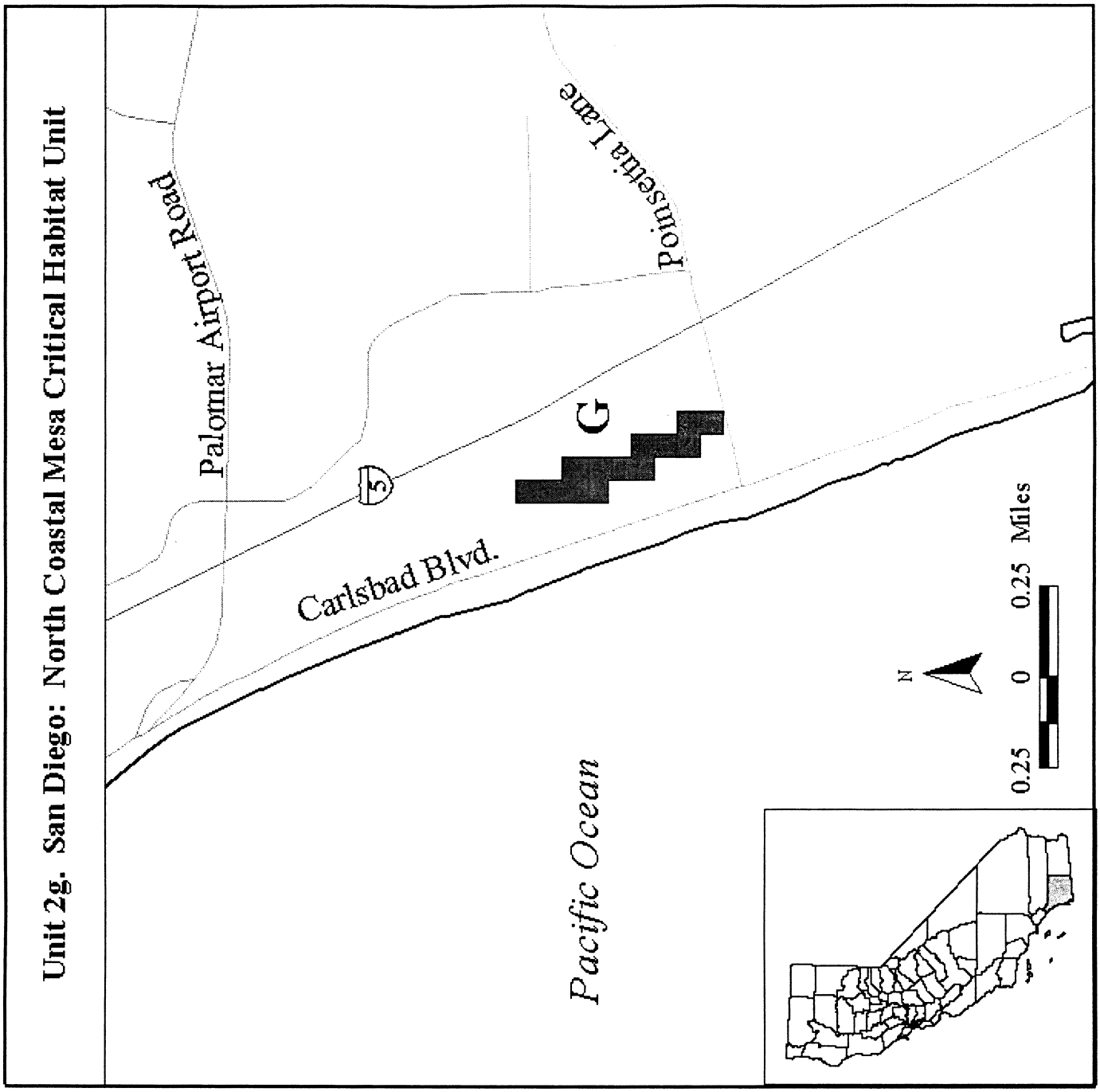

Unit 2a-f. San Diego: North Coastal Mesa Critical Habitat Unit
A
Camp Pendleton
Pacific Ocean
5
B
C
D
E
F
N
2
0
2 Miles



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(8) Map Unit 3: San Diego: Inland Valley, San Diego County, California. From USGS 1:24,000 quadrangle maps San Marcos, San Pasqual, and Ramona, California.

(i) Unit 3a: lands bounded by the following UTM NAD27 coordinates (E,N): 482500,3667500; 482800,3667500; 482800,3667300; 482600,3667300; 482600,3667100; 482400,3667100; 482400,3667000; 482200,3667000; 482200,3667200; 482300,3667200; 482300,3667400; 482500,3667400; 482500,3667500.

(ii) Unit 3b: lands bounded by the following UTM NAD27 coordinates (E,N): 481800,3667300; 482000,3667300; 482000,3667100; 481800,3667100; 481800,3667300.

(iii) Unit 3c: lands bounded by the following UTM NAD27 coordinates (E,N): 481600,3666800; 481900,3666800; 481900,3666700; 482100,3666700; 482100,3666500; 482000,3666500; 482000,3666300; 481900,3666300; 481900,3666100; 482000,3666100; 482000,3665900; 481900,3665900; 481900,3665800; 481700,3665800; 481700,3665900; 481600,3665900; 481600,3666100; 481400,3666100; 481400,3666300; 481800,3666300; 481800,3666400; 481600,3666400; 481600,3666500; 481500,3666500; 481500,3666600; 481600,3666600; 481600,3666800.

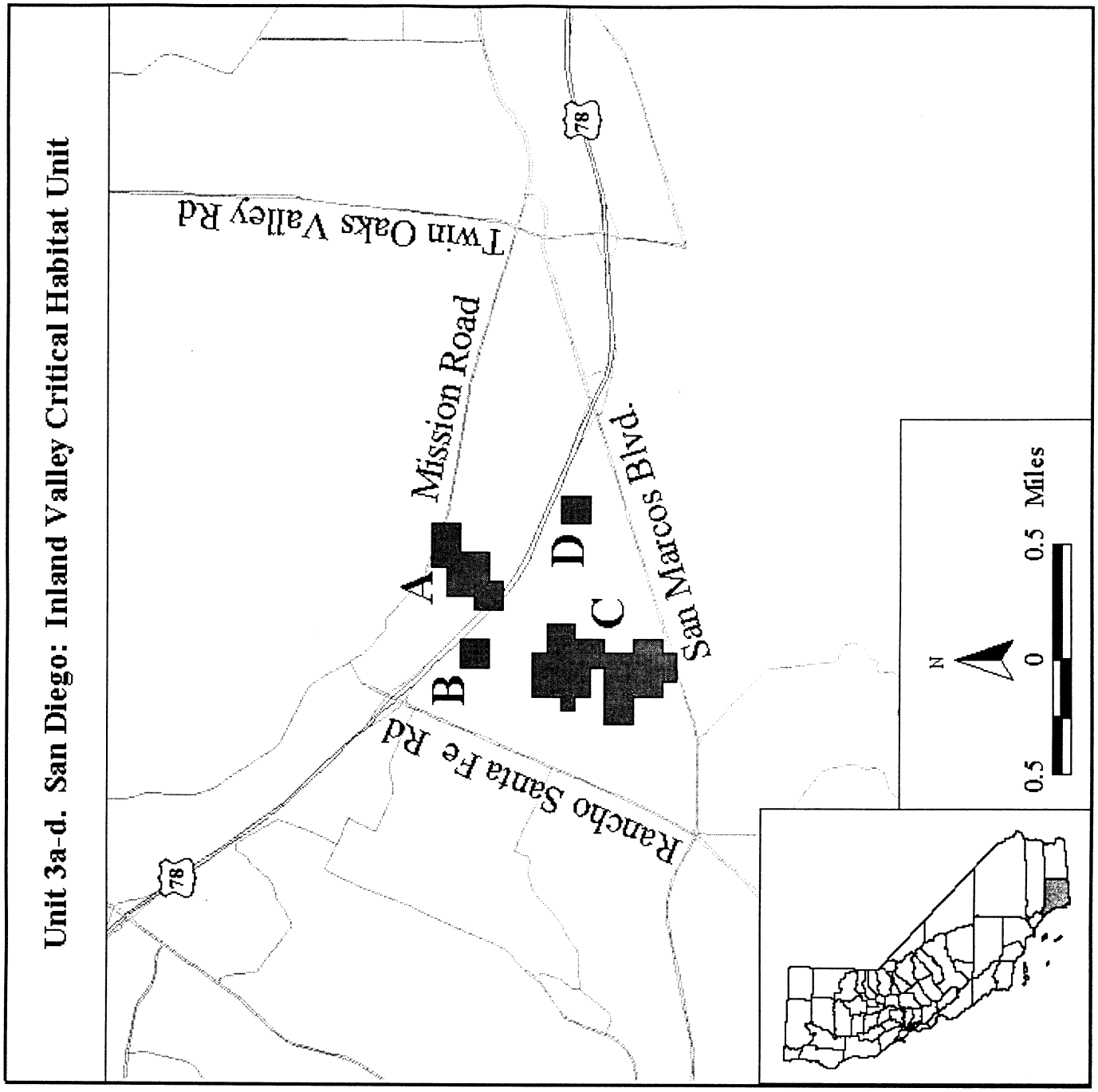
(iv) Unit 3d: lands bounded by the following UTM NAD27 coordinates (E,N): 482800,3666600; 483000,3666600; 483000,3666400; 482800,3666400; 482800,3666600.

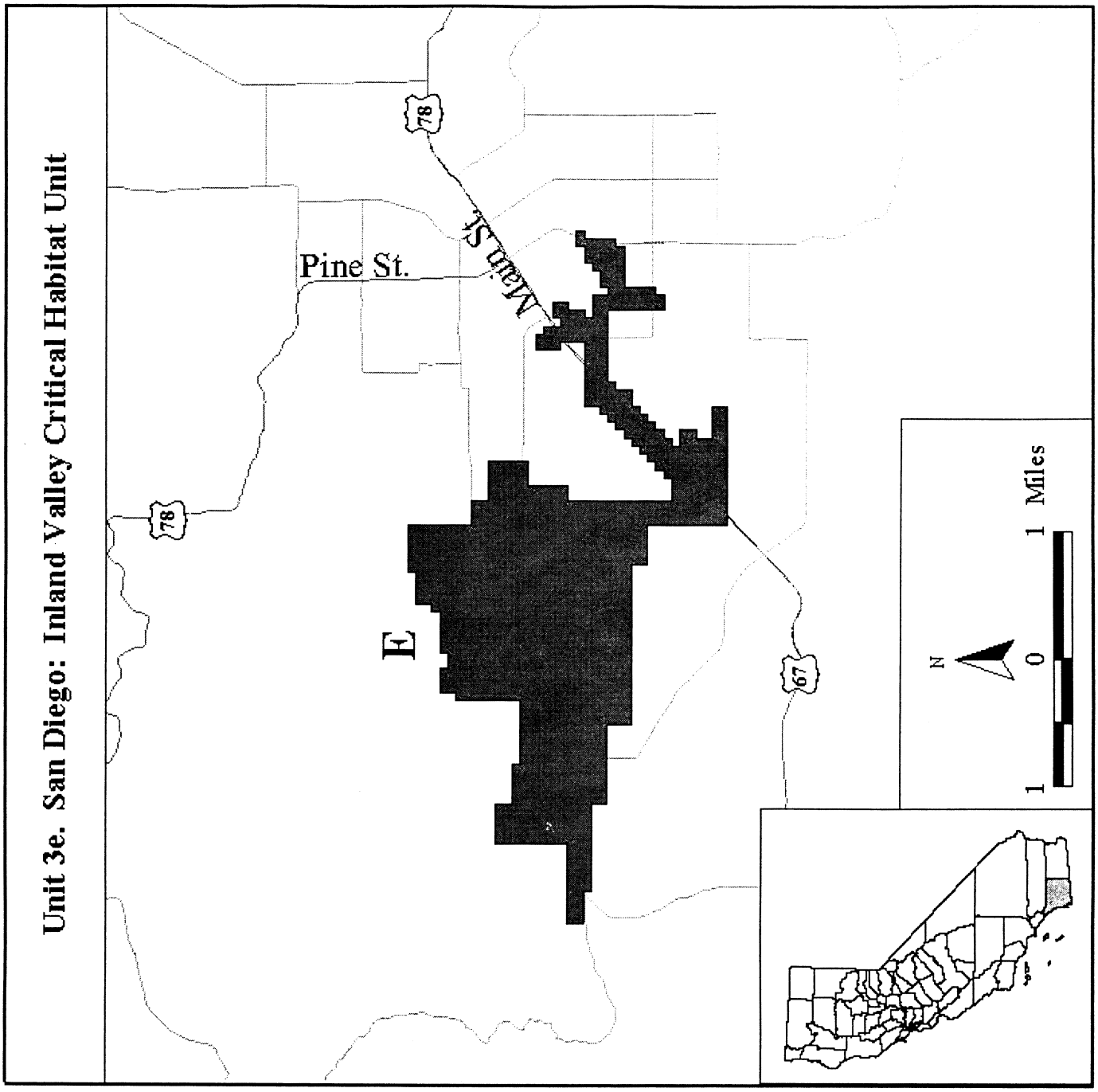
(v) Unit 3e: lands bounded by the following UTM NAD27 coordinates

(E,N): 508400,3657000; 509000,3657000; 509000,3656200; 509300,3656200; 509300,3656000; 509800,3656000; 509800,3655500; 509500,3655500; 509500,3655000; 509300,3655000; 509300,3653700; 509600,3653700; 509600,3653800; 509700,3653800; 509700,3653900; 509800,3653900; 509800,3654000; 509900,3654000; 509900,3654100; 510000,3654100; 510000,3654200; 510100,3654200; 510100,3654300; 510200,3654300; 510200,3654400; 510300,3654400; 510300,3654500; 510400,3654500; 510400,3654600; 510500,3654600; 510500,3654800; 511300,3654800; 511300,3655100; 511200,3655100; 511200,3655400; 511400,3655400; 511400,3655300; 511500,3655300; 511500,3655100; 511600,3655100; 511600,3655200; 511800,3655200; 511800,3655000; 511700,3655000; 511700,3654800; 511600,3654800; 511600,3654700; 511900,3654700; 511900,3654500; 512000,3654500; 512000,3654600; 512200,3654600; 512200,3654700; 512300,3654700; 512300,3654800; 512500,3654800; 512500,3654900; 512700,3654900; 512700,3654800; 512600,3654800; 512600,3654400; 512500,3654400; 512500,3654300; 512000,3654300; 512000,3653900; 511900,3653900; 511900,3653800; 511700,3653800; 511700,3654500; 510800,3654500; 510800,3654400; 510700,3654400; 510700,3654200; 510500,3654200; 510500,3654100; 510400,3654100; 510400,3654000; 510300,3654000; 510300,3653900; 510200,3653900; 510200,3653800; 510100,3653800; 510100,3653700; 510000,3653700; 510000,3653600; 510200,3653600; 510200,3653400; 510100,3653400; 510100,3653200; 510500,3653200; 510500,3653000; 509000,3653000; 509000,3654000; 508500,3654000; 508500,3654200; 506500,3654200; 506500,3654500; 505500,3654500; 505500,3654700; 504400,3654700; 504400,3654800; 504000,3654800; 504000,3655000; 505000,3655000; 505000,3655900; 505500,3655900; 505500,3655700; 506000,3655700; 506000,3655600; 506800,3655600; 506800,3656400; 506900,3656400; 506900,3656600; 507200,3656600; 507200,3656500; 507400,3656500; 507400,3656600; 507900,3656600; 507900,3656700; 508000,3656700; 508000,3656900; 508400,3656900; 508400,3657000.

(vi) Maps of Unit 3 follow:

BILLING CODE 4310–55–P


Unit 3a-d. San Diego: Inland Valley Critical Habitat Unit
Twin Oaks Valley Rd
78
Mission Road
A
B
C
D
San Marcos Blvd
Rancho Santa Fe Rd
78
N
0.5
0
0.5
Miles



BILLING CODE 4310–55–C

(9) Map Unit 4: San Diego: Central Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps Del Mar, La Mesa, and National City, California.

(i) Unit 4a: lands bounded by the following UTM NAD27 coordinates (E,N): 485400, 3645900; 485900, 3645900; 485900, 3645500; 485600, 3645500; 485600, 3645400; 485400, 3645400; 485400, 3645900.

(ii) Unit 4b: lands bounded by the following UTM NAD27 coordinates (E,N): 484300, 3645600; 484600, 3645600; 484600, 3645500; 484700, 3645500; 484700, 3645300; 484400, 3645300; 484400, 3645500; 484300, 3645500; 484300, 3645600.

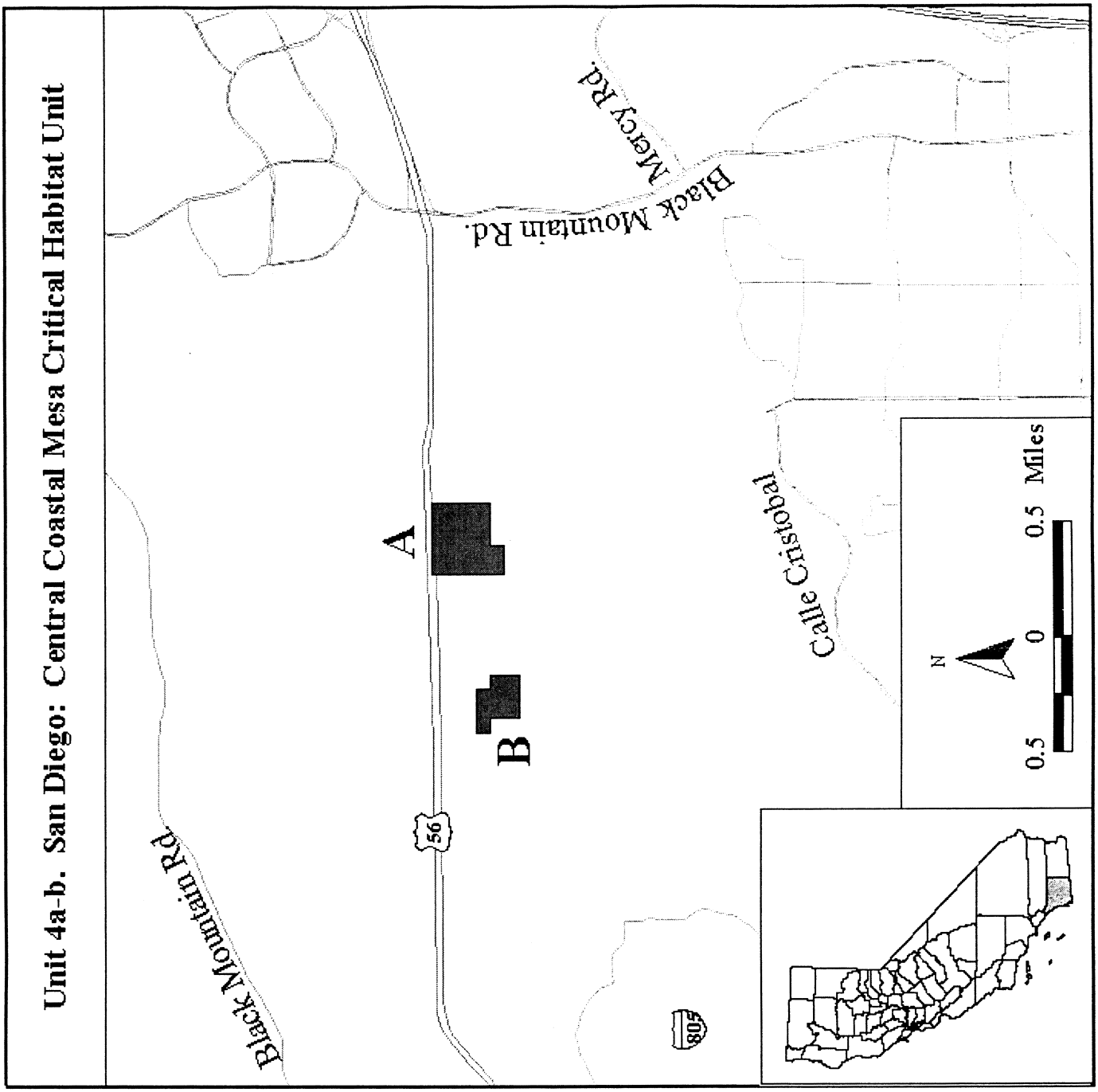
(iii) Unit 4c: lands bounded by the following UTM NAD27 coordinates (E,N): 490200, 3629300; 490400, 3629300; 490400, 3629200; 490500, 3629200; 490500, 3629100; 490400, 3629100; 490400, 3628700; 490300, 3628700; 490300, 3628600; 490200, 3628600; 490200, 3628500; 490100, 3628500; 490100, 3628600; 490000, 3628600; 490000, 3628500; 489700, 3628500; 489700, 3628700; 489800, 3628700; 489800, 3628800; 490100, 3628800; 490100, 3629000; 490200, 3629000; 490200, 3629100; 490300, 3629100; 490300, 3629200; 490200, 3629200; 490200, 3629300.

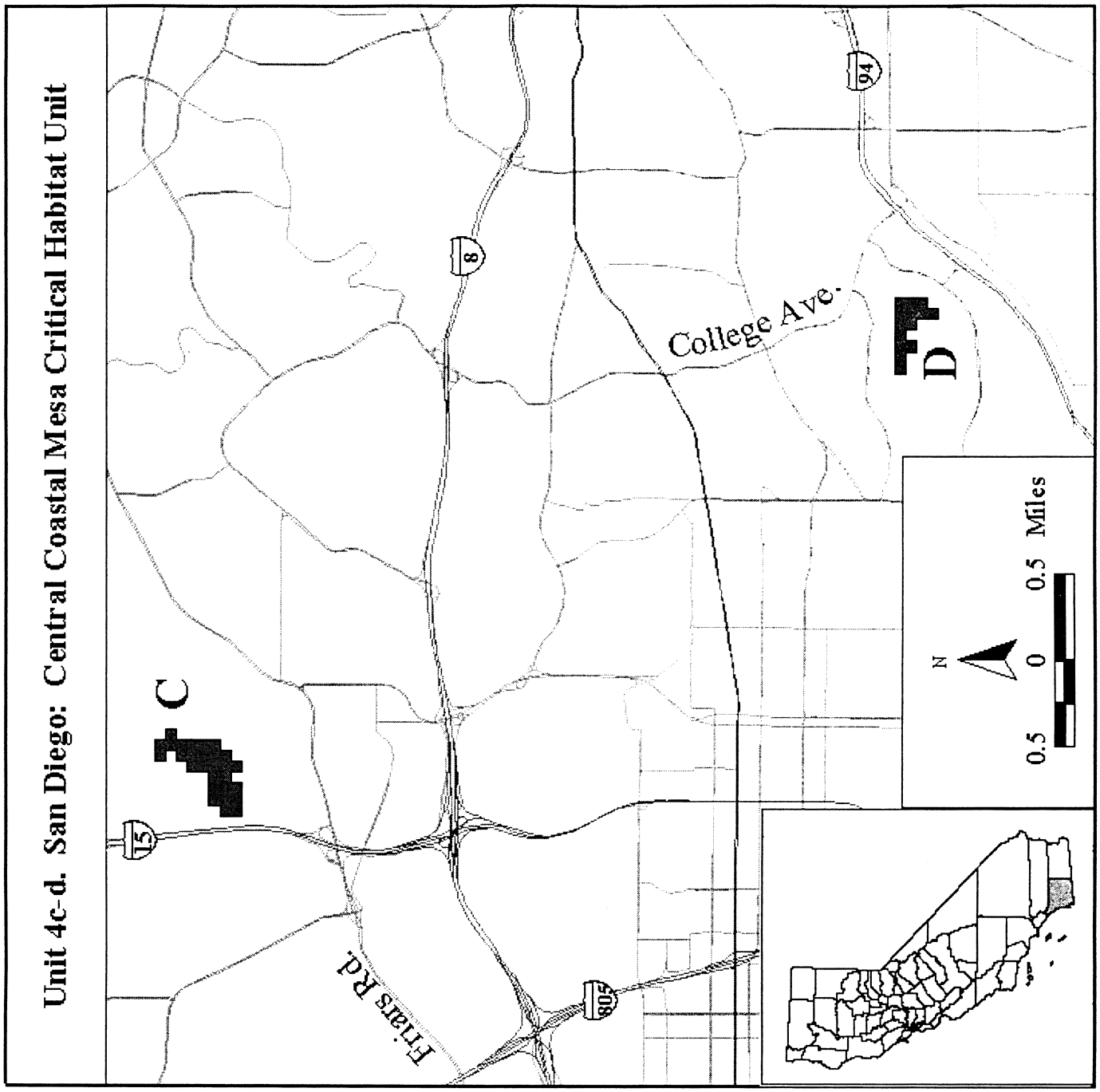
(iv) Unit 4d: lands bounded by the following UTM NAD27 coordinates (E,N): 493800, 3622500; 494500, 3622500; 494500, 3622200; 494400, 3622200; 494400, 3622100; 494300, 3622100; 494300, 3622300; 494200, 3622300; 494200, 3622400; 494100, 3622400; 494100, 3622300; 494000,

3622300; 494000, 3622400; 493800, 3622400; 493800, 3622500.

(v) Maps of Unit 4 follow:

BILLING CODE 4310–55–P





BILLING CODE 4310–55–C

(10) Map Unit 5: San Diego: Southern Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps Imperial Beach and Otay Mesa, California.

(i) Unit 5a: lands bounded by the following UTM NAD27 coordinates (E,N): 506000, 3607300; 506600, 3607300; 506600, 3607100; 506700, 3607100; 506700, 3606900; 506900, 3606900; 506900, 3606500; 507000, 3606500; 507000, 3606000; 506900, 3606000; 506900, 3605800; 506800, 3605800; 506800, 3605900; 506400, 3605900; 506400, 3606200; 506800, 3606200; 506800, 3606400; 506300, 3606400; 506300, 3606300; 506000, 3606300; 506000, 3606200; 505700, 3606200; 505700, 3606100; 505400, 3606100; 505400, 3606000; 505100, 3606000; 505100, 3605900; 505000, 3605900; 505000, 3606400; 505100, 3606400; 505100, 3606500; 505400, 3606500; 505400, 3606600; 505600, 3606600; 505600, 3606700; 506000, 3606700; 506000, 3607000; 505900, 3607000; 505900, 3607200; 506000, 3607200; 506000, 3607300.

(ii) Unit 5b: lands bounded by the following UTM NAD27 coordinates (E,N): 502000, 3604900; 502800, 3604900; 502800, 3603900; 502600, 3603900; 502600, 3604000; 502000, 3604000; 502000, 3604900.

(iii) Unit 5c: lands bounded by the following UTM NAD27 coordinates (E,N): 505200, 3604800; 505700, 3604800; 505700, 3604400; 506100, 3604400; 506100, 3603500; 505200, 3603500; 505200, 3604800.

(iv) Unit 5d: lands bounded by the following UTM NAD27 coordinates (E,N): 509600, 3602700; 510000,

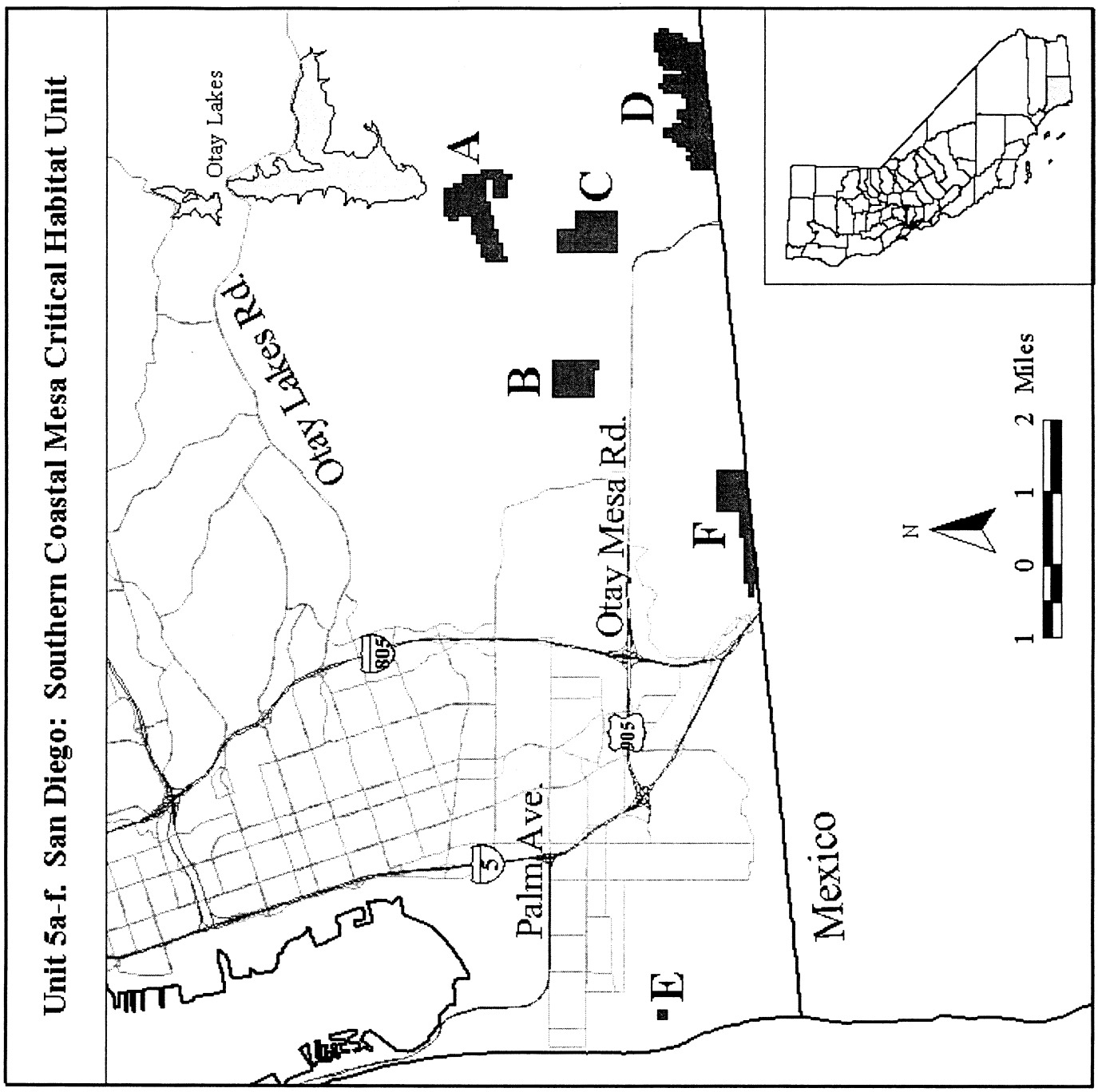
3602700; 510000, 3602600; 510100, 3602600; 510100, 3602400; 510000, 3602400; 510000, 3602100; 509900, 3602100; 509900, 3602000; 509800, 3602000; 509800, 3601600; 509500, 3601600; 509500, 3601500; 508500, 3601500; 508500, 3601400; 507500, 3601400; 507500, 3601300; 507000, 3601300; 507000, 3601900; 507200, 3601900; 507200, 3602000; 507300, 3602000; 507300, 3601900; 507400, 3601900; 507400, 3602000; 507500, 3602000; 507500, 3602200; 507600, 3602200; 507600, 3602300; 507700, 3602300; 507700, 3602500; 507900, 3602500; 507900, 3602300; 508000, 3602300; 508000, 3602100; 508100, 3602100; 508100, 3602200; 508300, 3602200; 508300, 3602000; 508600, 3602000; 508600, 3602100; 508700, 3602100; 508700, 3602500; 508800, 3602500; 508800, 3602600; 508900, 3602600; 508900, 3602500; 509100, 3602500; 509100, 3602100; 509200, 3602100; 509200, 3602500; 509300, 3602500; 509300, 3602600; 509600, 3602600; 509600, 3602700, excluding Mexico.

(v) Unit 5e: lands bounded by the following UTM NAD27 coordinates (E,N): 488300, 3602600; 488500, 3602600; 488500, 3602400; 488300, 3602400; 488300, 3602600.

(vi) Unit 5f: lands bounded by the following UTM NAD27 coordinates (E,N): 499500, 3601300; 500400, 3601300; 500400, 3600600; 499500, 3600600; 499500, 3600500; 498400, 3600500; 498400, 3600400; 497900, 3600400; 497900, 3600500; 497600, 3600500; 497600, 3600600; 497900, 3600600; 497900, 3600700; 498900, 3600700; 498900, 3600800; 499500, 3600800; 499500, 3601300, excluding Mexico.

(vii) Maps of Unit 5 follow:

BILLING CODE 4310–55–P



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* * * * *

Dated: April 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–9434 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 22, 2003

Part III

General Services Administration

Federal Management Regulation; Federal Property Profile; Notice

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2003–B2]

Federal Management Regulation; Federal Property Profile

AGENCY: General Services Administration.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the availability of the new Federal Real Property Profile, which provides an overview of the United States Government's owned and leased real property. This report represents a yearlong effort to improve the accuracy and usefulness of the former Worldwide Inventory report.

EFFECTIVE DATE: This bulletin is effective April 22, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Stanley C. Langfeld, General Services Administration, Real Property Policy Division, (MPR), Washington, DC 20405; *stanley.langfeld@gsa.gov,* (202) 501-1737. Please cite FMR Bulletin 2003–B2.

SUPPLEMENTARY INFORMATION: The Federal Real Property Profile is a summary report of the Federal Government's real property assets, as reported to the General Services Administration's (GSA's) Federal Real Property Profile (FRPP) reporting system. It provides an overview of Federal real property assets categorized in three major areas—buildings, land, and structures. The FRPP reporting system is a redesign of the former Worldwide Inventory data collection and reporting system.

Dated: April 2, 2003.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

General Service Administration

[FMR Bulletin 2003–B2]

Real Property

To: Heads of Federal Agencies.
Subject: Federal Real Property Profile.

1. *What is the purpose of this bulletin?* This bulletin announces the availability of the new Federal Real Property Profile, which provides an overview of the United States Government's owned and leased real property. This report represents a yearlong effort to improve the accuracy and usefulness of the former Worldwide Inventory report.

2. *What is the effective date of this bulletin?* This bulletin is effective April 22, 2003.

3. *When does this bulletin expire?* This bulletin will remain in effect indefinitely until specifically cancelled.

4. *What is the background?*

a. This publication is a summary report of the Federal Government's real property assets, as reported to the General Services Administration's (GSA's) Federal Real Property Profile (FRPP) reporting system. It provides an overview of Federal real property assets categorized in three major areas—buildings, land, and structures. Descriptions of specific use classifications are located in the Appendix of the report.

b. The detailed information for this summary report is held in a password-protected Web-based database. This database allows agency representatives to update data on-line in real time, and to produce ad hoc reports. The FRPP reporting system provides information regarding Federal real property holdings to stakeholders including the Congress, the Federal community and the public. Its purpose is to assist Federal asset managers with their stewardship responsibilities by offering a real-time environment for on-line updates.

c. The FRPP reporting system is a redesign of the former Worldwide Inventory data collection and reporting system. GSA and the System Design Focus Group, comprised of representatives from the majority of Federal agencies with landholding authority, gathered user input and defined system and data requirements for the improved system design.

d. To ensure accuracy, GSA requested that agencies confirm their FY 2002 data summary figures prior to publication of the FRPP. Most agencies provided data based on their real property holdings as of September 30, 2002. In a few instances, data provided in previous years has been used where updated information was unavailable. This is noted on the list of contributing agencies. The agency list and status of updates and confirmations is provided as part of the Federal Real Property Profile.

5. *Who uses the Federal Real Property Profile?* The Federal Real Property Profile, managed by the GSA, constitutes a centralized source of information for the Congress, Office of Management and Budget, General Services Administration, and other Federal agencies, as well as universities, libraries, trade associations, the press, the private sector and the general public.

6. *How does the Federal Government benefit from the Federal Real Property Profile?* The Federal Government uses the real property profile, in combination with other available data, in: Planning space needs, promoting fuller utilization management and property accounting surveys, evaluating funding requests for acquisition of real property, and facilitating on-site inspection activities.

7. *When is the Federal Real Property Profile published?* It is published every year and reflects real property data submitted by landholding agencies as of the last day of the fiscal year (September 30).

8. *How can we obtain a copy of the Federal Real Property Profile?* You will find the Federal Real Property Profile for FY 2002 on the GSA Web site at *http://www.gsa.gov/realpropertyprofile.* There you will be able to read, print or download this report. You can also obtain a copy from the Real Property Policy Division (MPR), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

9. *Who should we contact for further information regarding the Federal Real Property Profile?* For further information, contact Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, by phone (202) 501–1737 or by e-mail at *stanley.langfeld@gsa.gov.*

[FR Doc. 03–9926 Filed 4–21–03; 8:45 am]

BILLING CODE 6820–RH–P

Federal Register

Tuesday,
April 22, 2003

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Rehabilitation Engineering Research Centers (RERCs) Program; Invitation for Applications for Fiscal Year (FY) 2003 and Notice of Final Priorities; Notices

DEPARTMENT OF EDUCATION

Final Priorities Notice

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities under the Rehabilitation Engineering Research Centers (RERCs) program for up to nine awards for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FYs) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

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:

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

We make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

General RERC Requirements

The following requirements apply to each RERC pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

Each RERC must develop and implement in the first three months of the grant a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer or other entities as appropriate, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Each RERC will be expected to coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Centers of Excellence

RERCs are expected to function as Centers of Excellence, which are defined by their degree of accountability, level of productivity, integrity of internal activities, and the quality and relevance of outputs and outcomes. The NIDRR Centers of Excellence Model identifies four major areas of activity; these are: (1) Excellence in administration and evaluation; (2) excellence in scientific research and development; (3) excellence in capacity building and training for research and development and practice; and (4) excellence in relevance and productivity (including dissemination). Within these areas of activity, RERCs must develop consumer and industrial partnerships to ensure the relevance and appropriateness of research directions and to transfer research-generated knowledge into commercial products. Each RERC must operate as part of a national network and extend beyond the boundaries of their programmatic objectives to become leaders in their field, attract new research dollars, and significantly impact the education of professionals, consumers, and manufacturers. For information about NIDRR's Centers of Excellence Model, applicants are invited to visit the following Web site: *http://www.cessi.net/pr/RERC/Summative/CoEmodel.html.*

Program Review

RERCs are required to participate in NIDRR's program review process. Program review is a key element in NIDRR's quality assurance, performance monitoring, and evaluation systems, providing an opportunity for staff and

key stakeholders to interact with grantees and provide feedback on center activities. As part of this evaluation system, NIDRR conducts both formative (early in the five-year funding cycle) and summative (toward the end of the fourth year) reviews. The overall goal of the formative review is to support grantees in achieving their planned results and becoming centers of excellence across the four major areas of activity. The overall goal of the summative review is to evaluate the quality, relevance, and productivity of each center's results and accomplishments. For more information about NIDRR's program review process, applicants are invited to visit the following Web site: *http://www.cessi.net/pr*).

In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

These priorities reflect issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html.*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We published a notice of proposed priorities for the Rehabilitation Engineering Research Centers (RERC) Program in the **Federal Register** on January 10, 2003 (67 FR 51744).

Except for minor revisions there are no significant differences between the notice of proposed priorities and this notice of final priorities.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

In response to our invitation in the notice of proposed priorities 13 parties submitted comments. We fully explain changes made as a result of these comments in the Analysis of Comments and Changes published as an appendix to this notice.

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**. A notice inviting applications for FY 2003 awards is published elsewhere in this issue of 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)).

Background

The Background statement for the following priorities was published in the notice of proposed priorities on January 10, 2003 (67 FR 1446).

Priorities

NIDRR intends to fund up to nine new RERCs in FY 2003. Applicants must select one of the following priority topic areas: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; (f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information:

(1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed RERC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of an LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than May 22, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy as soon as possible. All communications pertaining to the LOI must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by e-mail at: *william.peterson@ed.gov.*

Priorities

The Assistant Secretary intends to fund up to nine RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, employment, active engagement in daily activities, and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

(6) Each RERC must focus on one of the following priority topic areas:

(a) *Hearing Enhancement:* This center must research and develop methods, systems, and technologies that will assist hearing professionals with the process of matching hearing technology to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement

technologies with various environments such as school, work, recreation, and social settings;

(b) *Prosthetics and Orthotics:* This center must increase understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices;

(c) *Communication Enhancement:* This center must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (*i.e.*, education, employment, recreation, social);

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Technology Access for Land Mine Survivors:* This center must address the unique rehabilitation needs of land mine survivors of all ages and develop low-cost replacement limbs, orthotics, and assistive technologies using indigenous materials and expertise from respective countries that will improve the quality of life for individuals who have been severely injured due to land mine explosions;

(f) *Universal Interface and Information Technologies:* This center must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, the community, and the workplace. This center must work collaboratively with the RERC on Telecommunication Access, the RERC on Mobile Wireless Technologies, and the NIDRR-funded Information Technology Technical Assistance and Training Center;

(g) *Telerehabilitation:* This center must research and develop methods, systems, and technologies that support remote delivery of rehabilitation and home health care services for individuals who have limited local access to comprehensive medical and rehabilitation outpatient services;

(h) *Accessible Public Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely, comfortably, and efficiently identify destination information, embark/disembark, and use restroom facilities on various types of public transportation systems such as passenger trains and airplanes;

(i) *Wheeled Mobility:* This center must research and develop innovative technologies and strategies that will improve the current state of the science, design guidelines and performance standards, and usability of wheeled mobility devices and wheelchair seating systems;

(j) *Cognitive Technologies:* This center must research, develop, and evaluate innovative technologies and approaches that will have a positive impact on the way in which individuals with significant cognitive disabilities function independently within their communities and workplace; and

(k) *Technology Transfer:* This center must research and develop innovative ways to facilitate and improve the process of moving new, useful, and more effective assistive technology inventions and applications from the prototype phase to the marketplace. This center will be expected to provide technical assistance to all RERCs on issues pertaining to technology transfer, including the development of long-range technology transfer plans.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Engineering Research Centers program have been well established over the years in that similar projects have been completed. These priorities will generate new knowledge through a research, dissemination, utilization, and technical assistance projects.

The benefit of these priorities and application and project requirements will be the establishment of new health and function centers that support the President's NFI.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: April 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Rehabilitation Engineering Research Centers

Comment: One commenter suggested that the Wheeled Mobility topic area would be strengthened if the phrase ''design standards'' were changed to ''design guidelines and performance standards.''

Discussion: NIDRR agrees with the commenter that the Wheeled Mobility topic area would be strengthened by replacing the phrase ''design standards'' with ''design guidelines and performance standards.''

Changes: The phrase ''design standards'' has been replaced with ''design guidelines and performance standards.''

Comment: One commenter suggested that the RERC on Measurement and Monitoring of Functional Performance be required to incorporate issues that relate functional performance measurements to specific work tasks associated with the job or jobs a person performs or will be performing.

Discussion: An applicant could propose activities that relate functional performance measurements to specific work tasks

associated with the job or jobs a person performs or will be performing. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to provide technical and financial resources to assist persons with disabilities who have developed assistive technology devices with bringing them to market.

Discussion: An applicant could propose activities to assist persons with disabilities who have developed assistive technology devices with bringing the devices to market. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to encourage large companies to incorporate the concept of universal design within their products, both current and future, so that persons with disabilities could use them.

Discussion: An applicant could propose activities to encourage large companies to incorporate the concept of universal design within their products. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to develop partnerships with venture capitalists to generate resources that could be used to assist small businesses in marketing their products.

Discussion: An applicant could propose activities to develop partnerships with venture capitalists to generate resources that could be used to assist small businesses in marketing their products. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to support other RERCs by providing small product development grants for products developed within the RERC family.

Discussion: There is no authority under the Rehabilitation Act for RERCs to provide subgrants. Therefore the activity suggested by the commenter is not an allowable activity.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to involve underrepresented, minority high school, and undergraduate engineering and business students in the product evaluation process.

Discussion: NIDRR requires all RERCs funded under this priority to develop a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation. An applicant could propose activities that go beyond these requirements to include minority high school students and undergraduate engineering and business students. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: Two commenters suggested that the Cognitive Technologies topic area be expanded to include research and development activities pertinent to cognitive disabilities across the lifespan.

Discussion: An applicant could propose research and development activities pertinent to cognitive disabilities across the lifespan. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring these activities.

Changes: None.

Comment: Two commenters suggested that the RERC on Cognitive Technologies be required to seek additional financial support from outside foundations, such as the Coleman Colorado Foundation, that specifically focus on funding technology research pertinent to cognitive disability.

Discussion: An applicant could propose activities to seek additional financial support from outside foundations. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Cognitive Technologies be required to include a research and development activity to develop ''smart'' residential living environments designed to augment the effectiveness of developmental disabilities direct support/personal assistance services.

Discussion: An applicant could propose activities to develop ''smart'' residential living environments designed to augment the effectiveness of developmental disabilities direct support/personal assistance services. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Accessible Public Transportation be required to include activities that focus on technology to improve accessibility to bus and other public and private ground transportation systems, and integrating those technologies with residential and community living environments for people with cognitive disabilities.

Discussion: An applicant could propose research and development activities to improve accessibility to bus and other public and private ground transportation systems, and integrating those technologies with residential and community living environments for people with cognitive disabilities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to include these activities.

Changes: None.

Comment: One commenter suggested that the very nature of the RERC on Telerehabilitation requires it to focus on care providers and their patients rather than a more general consumer base.

Discussion: NIDRR agrees that care providers and their patients play an important role for this RERC. Others, including family members, allied health professionals, and points of service (*e.g.,* hospitals, clinics, one's home, *etc.*) also play integral roles with respect to this topic area. This RERC will also need to stay in contact with representatives from the telecommunications industry, healthcare insurers, and healthcare policy makers.

Changes: None.

Comment: One commenter suggested that the Technology Access for Land Mine Survivors topic area and the Prosthetics and Orthotics topic area be combined so that the additional resources could be used for other topic areas not included in this priority.

Discussion: NIDRR believes the mission and intended target populations of these two topic areas are distinctly different even though both of them include the need to research and develop prosthetics and orthotics (P&O). One is expected to focus on improving the state of the science in the field of P&O while the other is expected to work within developing countries to improve the lives of land mine survivors using indigenous materials and expertise from respective countries. If the two were combined the RERC would be spread too thin thereby negatively affecting the center's ability to conduct quality research and development activities. If funded, the two centers will be expected to coordinate on research projects of mutual interest.

Changes: None.

[FR Doc. 03–9939 Filed 4–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Engineering Research Centers (RERCs) Program; Notice Inviting Applications for Fiscal Year (FY) 2003

Note to Applicants: The notice of final funding priorities is published elsewhere in this issue of the **Federal Register**.

Purpose of the Program: RERCs conduct research, develop-ment, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance opportunities for meeting the needs of,

and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Applications Available: April 22, 2003.

Deadline for Transmittal of Applications: June 27, 2003.

Maximum Award Amount: $1,000,000 per year for the Universal Interface and Information Technologies topic area; $950,000 per year for all other topic areas.

Note: We will reject without consideration or evaluation any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

Estimated Number of Awards: 9.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and the program regulations 34 CFR part 350.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**. The priorities are: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one priority topic area. The topic area should be the descriptive title of the applicant's project. NIDRR requests that you include the topic in the title block of the ED 424 form, the abstract, and introduction paragraph.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities

Selection Criteria: The selection criteria to evaluate applications under this program are found in the application package.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on May 12, 2003 either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, room 3065, 330 C Street, SW., Washington, DC between 10 AM and 12 noon. NIDRR staff will also be available from 1:30 PM to 4 PM on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3412, 330 C Street, SW., Washington, DC 20202. Telephone (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.,* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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 FY 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 Rehabilitation Engineering Research Centers (RERCs) Program—CFDA No. 84.133E—is one of the programs included in the pilot project. If you are an applicant under the RERCs Program, 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 RERCs Program 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 RERCs Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project and instructions for how to submit paper applications in the application package (*see* Parity Guidelines between Paper and Electronic Applications).

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 84.133E.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: *Donna.Nangle@ed.gov.*

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.**

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Program Authority: 29 U.S.C. 764(b)(3).

Dated: April 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9940 Filed 4–21–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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