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### WASHINGTON, DC

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**WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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

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

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 212

**[INS No. 2020–99]**

**RIN 1115–AF81**

### Update of the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program

**AGENCY:** Immigration and Naturalization Service, Department of Justice.

**ACTION:** Interim rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled ''Update of the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States under the TWOV Program'', published in the **Federal Register** on January 5, 2001, at 66 FR 1017. The temporary 60-day delay in effective date is necessary to give Department of Justice officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001.

**DATES:** The effective date of the ''Update of the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States under the TWOV Program'', published in the **Federal Register** on January 5, 2001, at 66 FR 1017, is delayed for 60 days, from February 5, 2001, to a new effective date of April 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Sloan, Director, Policy Directives and Instructions Branch (HQPDI), Immigration and Naturalization Service, 425 I Street, NW, room 4034, Washington DC 20536, telephone number (202) 514–3048.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Immigration and Naturalization Service (Service) implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register,** is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department of Justice officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Dated: January 29, 2001.

**Mary Ann Wyrsch,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 01–2821 Filed 2–1–01; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 2

**[Docket No. 98–065–3]**

### Animal Welfare; Confiscation of Animals: Delay of Effective Date

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

**ACTION:** Final Rule; Delay of Effective Date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Animal Welfare; Confiscation of Animals, published in the **Federal Register** on January 3, 2001, 66 FR 236. The rule amends the Animal Welfare regulations in 9 CFR part 2 to allow us to place animals confiscated form situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register,** is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the Presidents' memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also

good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Animal Welfare; Confiscation of Animals regulation, published in the **Federal Register** on January 3, 2001 at 66 FR 236, is delayed for 60 days, form February 2, 2001 to a new effective date of April 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jerry De Poyster at (301) 734–7586.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2867 Filed 2–1–01; 8:45 am]

**BILLING CODE 3410–34–M**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 3

**[Docket No. 93–076–16]**

### Animal Welfare; Marine Mammals: Delay of Effective Date

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

**ACTION:** Final Rule; Delay of Effective Date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Animal Welfare; Marine Mammals, published in the **Federal Register** on January 3, 2001, 66 FR 239. The rule amends the Animal Welfare Act regulations in 9 CFR part 3 concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

**DATES:** The effective date of the Animal Welfare; Marine Mammals regulation, published in the **Federal Register** on January 3, 2001, at 66 FR 239, is delayed for 60 days, from February 2, 2001, to a new effective date of April 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kahn at (301 734–7833.

Dated: January 29, 2001.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 01–2865 Filed 2–1–01; 8:45 am]

**BILLING CODE 3410–34–M**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. EE–RM–94–403]**

**RIN 1904–AA67**

### Energy Conservation Program for Consumer Products; Clothes Washer Energy Conservation Standards

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date and correcting amendment.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan'' (66 FR 7702, January 24, 2001), DOE publishes a rule today that temporarily delays for 60 days the effective date of the amendments to appendix J to subpart B of part 430 for the final rule for the Energy Conservation Program for Consumer Products; Clothes Washer Energy Conservation Standards. This rule also corrects the text of that appendix.

**DATES:** The effective date of the rule amending 10 CFR part 430 published at 66 FR 3314, January 12, 2001 remains January 1, 2004, except that the effective date of the amendments to appendix J to subpart B of part 430 is delayed until April 13, 2001. The correcting amendment in this rule is effective April 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, michael.whatley@hq.doe.gov; Bryan Berringer, (202) 586–0371, *bryan.berringer@ee.doe.gov*; or, Eugene Margolis, (202) 586–9526, *eugene.margolis@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** DOE publishes a rule today that temporarily delays for 60 days the effective date of the amendments to appendix J to subpart B of part 430 for the final rule for the Energy Conservation Program for Consumer Products; Clothes Washer Energy Conservation Standards. This document also corrects the text in appendix J of 10 CFR part 430 of the Code of Federal Regulations. To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Accordingly, 10 CFR part 430 is corrected by making the following correcting amendment:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

**Appendix J [Amended]**

2. Appendix J to subpart B of part 430 is amended in the first sentence of the introductory paragraph by removing the date ''February 12, 2001'' and adding in its place ''April 13, 2001''.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2884 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. EE–RM–97–900]**

**RIN 1904–AA76**

### Energy Conservation Program for Consumer Products; Energy Conservation Standards for Water Heaters

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; notice of review.

**SUMMARY:** The effective date of the final rule titled ''Energy Conservation Program for Consumer Products; Energy Conservation Standards for Water Heaters'' (66 FR 4474, January 17, 2001) is January 20, 2004. Consistent with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan'' (66 FR 7702, January 24, 2001), DOE today announces that contemporaneous with the review of other recently published final regulations it will be reviewing this final rule to determine whether further actions are warranted.

**DATES:** The effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 66 FR 4474 on January 17, 2001 remains January 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, *michael.whatley@hq.doe.gov;* Terry Logee, (202) 586–9127, *terry.logee@ee.doe.gov;* Francine Pinto, (202) 586–7432, *francine.pinto@hq.doe.gov;* or, Eugene Margolis, (202) 586–9526, eugene.margolis@hq.doe.gov.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2885 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket No. EE–RM–97–440]**

**RIN 1904–AA77**

### Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards'' published in the **Federal Register** on January 22, 2001 (66 FR 7170).

**DATES:** The effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 66 FR 7170 on January 22, 2001, is delayed 60 days, from February 21, 2001, until April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, *michael.whatley@hq.doe.gov*; Dr. Michael E. McCabe, (202) 586–0854, *michael.e.mccabe@ee.doe.gov*; or, Eugene Margolis, (202) 586–9526, *eugene.margolis@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2886 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 431

**[Docket No. EE–RM/STD–00–100]**

**RIN 1904–AB06**

### Energy Efficiency Program for Commercial and Industrial Equipment; Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Energy Efficiency Program for Commercial and Industrial Equipment; Commercial Heating, Air Conditioning and Water Heating Equipment'' published in the **Federal Register** on January 12, 2001 (66 FR 3336).

**DATES:** The effective date of the rule amending 10 CFR part 431 published in the **Federal Register** at 66 FR 3336 on January 12, 2001, is delayed for 60 days, from February 12, 2001, until April 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, michael.whatley@hq.doe.gov; Cyrus H. Nasseri, (202) 586–9138, *cyrus.nasseri@ee.doe.gov;* or, Eugene Margolis, (202) 586–9526, *eugene.margolis@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a

rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register,** is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2887 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 490

**RIN 1904–AB00**

### Alternate Fuel Transportation Program; Biodiesel Fuel Use Credit

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Alternate Fuel Transportation Program; Biodiesel Fuel Use Credit'' published in the **Federal Register** on January 11, 2001 (66 FR 2207).

**DATES:** The effective date of the rule amending 10 CFR part 490 published in the **Federal Register** at 66 FR 2207, January 11, 2001 is delayed for 60 days, from February 12, 2001, until April 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, michael.whatley@hq.doe.gov; or David Rogers, (202) 586–9118.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2888 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### 10 CFR Part 719

### 48 CFR Parts 931 and 970

**RIN 1990–AA27**

### Contractor Legal Management Requirements; Department of Energy Acquisition Regulation

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Contractor Legal Management Requirements; Department of Energy Acquisition Regulation'' published in the **Federal Register** on January 18, 2001 (66 FR 4616).

**DATES:** The effective date of the rule adding 10 CFR part 719 and amending 48 CFR parts 931 and 970 published in the **Federal Register** at 66 FR 4616 on January 18, 2001, is delayed 60 days, from February 20, 2001, until April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, *michael.whatley@hq.doe.gov*; Laura Fullerton, (202) 586–3420, *laura.fullerton@hq.doe.gov*; or, Anne Broker, (202) 586–5060, *anne.broker@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, DC on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2889 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### 10 CFR Part 830

**RIN 1901–AA34**

### Nuclear Safety Management

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Nuclear Safety Management'' published in the **Federal Register** on January 10, 2001 (66 FR 1810).

**DATES:** The effective date of the rule revising 10 CFR part 830 published in the **Federal Register** at 66 FR 1810 on January 10, 2001 is delayed 60 days, from February 9, 2001, until April 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, *michael.whatley@hq.doe.gov;* or Richard Black, (301) 903–3465, *richard.black@eh.doe.gov.*

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2890 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## 10 CFR Parts 1040 and 1042

**RIN 1901–AA87**

## Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance'' published in the **Federal Register** on January 18, 2001 (66 FR 4627).

**DATES:** The effective date of the rule amending 10 CFR part 1040 and adding 10 CFR part 1042 published in the **Federal Register** at 66 FR 4627 on January 18, 2001 is delayed for 60 days, from February 20, 2001, until April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, michael.whatley@hq.doe.gov; or Sharon Wyatt, (202) 586–2256, sharon.wyatt@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2891 Filed 2–1–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 1044

**[Docket No. SO–RM–00–3164]**

**RIN 1992–AA26**

## Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000

**AGENCY:** Department of Energy (DOE).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000'' published in the **Federal Register** on January 18, 2001 (66 FR 4639).

**DATES:** The effective date of the rule adding 10 CFR part 1044 published in the **Federal Register** at 66 FR 4639 on January 18, 2001 is delayed for 60 days, from February 20, 2001, until April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Whatley, (202) 586–3410, michael.whatley@hq.doe.gov; or Cathy Tullis, (301) 903–4805, cathy.tullis@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in

effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Issued in Washington, D.C. on January 29, 2001.

**Spencer Abraham,**

*Secretary of Energy.*

[FR Doc. 01–2892 Filed 2–1–01; 8:45 am]

**BILLING CODE 6450–01–P**

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 208

**[Regulation H; Docket No. R–1066]**

## DEPARTMENT OF THE TREASURY

## 12 CFR Part 1501

**RIN 1505–AA77**

## Office of the Under Secretary for Domestic Finance; Financial Subsidiaries

**AGENCIES:** The Board of Governors of the Federal Reserve System (Board) and the Department of the Treasury (Treasury).

**ACTION:** Final rule.

**SUMMARY:** Section 121 of the Gramm-Leach-Bliley Act (GLBA) permits a national bank or state member bank that is among the second 50 largest insured banks to own or control a financial subsidiary only if the bank meets either the eligible debt requirement set forth in section 121 of the Act or alternative criteria established jointly by the Board and Treasury. On March 14, 2000, the Board and Treasury adopted and requested public comment on an interim rule establishing this alternative criteria. The interim rule provided that a national or state member bank meets the alternative criteria if the bank has a current long-term issuer credit rating from a nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization. After reviewing public comments, the Board and Treasury are adopting a final rule that is substantively identical to the interim rule.

**DATES:** The final rule is effective March 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** *Board of Governors:* Kieran J. Fallon, Senior Counsel, Legal Division (202/452–5270); or Mark S. Carey, Senior Economist, Division of Research & Statistics (202/452–2784); Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

*Department of the Treasury:* Matthew Green, Senior Financial Analyst (202/622–2740); or Gary W. Sutton, Senior Banking Counsel (202/622–1976); U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 121 of the GLBA (Pub. L. 106–102, 113 Stat. 1338) authorizes national banks and state member banks to acquire control of, or hold an interest in, a new type of subsidiary called a ''financial subsidiary.'' A financial subsidiary may, with certain exceptions, engage in activities that have been determined to be financial in nature or incidental to financial activities in accordance with the GLBA, and in other activities that the parent bank is permitted to conduct directly.

In order for a national bank or state member bank to control, or hold an interest in, a financial subsidiary, the bank and each of its depository institution affiliates must be ''well-capitalized'' and ''well-managed,'' as those terms are defined in the GLBA. The aggregate consolidated total assets of all financial subsidiaries of the bank also may not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion. (The $50 billion limit is to be adjusted according to an indexing mechanism established in a separate regulation to be issued jointly by the Board and Treasury.) In addition, in order to acquire control of a financial subsidiary, the bank and each of its insured depository institution affiliates must have received a ''satisfactory'' or better rating at its most recent examination under the Community Reinvestment Act.

Furthermore, if the bank is one of the 50 largest insured banks, as determined by the bank's consolidated total assets at the end of the most recent calendar year, the bank must have at least one issue of outstanding eligible debt that is rated in one of the three highest rating categories by a nationally recognized statistical rating organization (debt rating requirement). If the bank is one of the second 50 largest insured banks, the bank must meet either this debt rating requirement or an alternative criteria that the Board and the Secretary of the Treasury jointly determine by regulation to be comparable to and consistent with the purpose of the rating requirement.[1]

The interim rule provided that a national bank or state member bank within the second 50 largest insured banks satisfies the alternative criteria if the bank has a current long-term issuer credit rating from a nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the rating organization (see 65 FR 15050). The interim rule defined a long-term issuer credit rating as a written opinion issued by a nationally recognized statistical ratings organization that assesses the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

The Board and Treasury received two comments from the public on the interim rule. One comment, which was filed by a trade association for banking institutions, supported the actions taken by the Board and Treasury and concurred that the long-term issuer credit rating requirement established by the interim rule is comparable to and consistent with the eligible debt requirement established by section 121 of the GLBA. The other comment, which was filed on behalf of a state member bank, suggested that the Board and Treasury rely on a bank's examination rating, rather than a rating assigned by an independent ratings agency, for determining whether a bank is eligible to own or control a financial subsidiary.

### Description of Final Rule

After reviewing public comments, the Board and Treasury have adopted a final rule that is substantially identical to the interim rule. A national or state member bank meets the requirements of the final rule if the bank has a current long-term issuer credit rating from a nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization. An issuer credit rating is one that assesses the bank's overall capacity and willingness to pay on a timely basis its unsecured financial obligations. Thus, an issuer credit rating differs from a debt rating in that it does not assess the bank's ability and

[1] A bank does not have to satisfy the debt rating requirement or the alternative criteria established by this rule if the bank's financial subsidiaries engage in the newly authorized financial activities solely as agent and not as principal.

willingness to make payments on any individual class or issue of debt, nor does it reflect priority or preference in payment among financial obligations.

The issuer credit rating must be assigned to the national or state member bank that controls or holds an interest in the financial subsidiary. Issuer credit ratings that are assigned to a subsidiary or affiliate of the parent bank, such as a subsidiary engaged in derivatives activities, do not meet the rule's requirements. Furthermore, ratings organizations may issue long-term or short-term issuer credit ratings for the same bank and separate ratings for dollar-denominated and foreign currency-denominated obligations. Only long-term issuer credit ratings for dollar-denominated obligations satisfy the requirements of the rule. An issuer credit rating is long-term if it reflects an assessment of the bank's ability over a period of not less than one year to fulfill its financial obligations on a timely basis.

The Board and Treasury have reviewed the ratings and rating categories used by nationally recognized statistical rating organizations in the United States. The Board and Treasury believe that the following ratings assigned by the indicated rating agencies currently meet the requirements of the rule, provided that they assess the parent bank's ability and willingness to meet its financial obligations denominated in U.S. dollars.

| Rating organization | Type of rating | Rating |
|---|---|---|
| Standard & Poor's | Issuer credit rating (including a Counterparty credit rating). | AAA, AA or A. |
| Moody's | Issuer credit rating | Aaa, Aa or A. |
| Fitch | International credit rating | AAA, AA or A. |

Standard & Poor's and Fitch may modify their AA or A ratings with the addition of a plus (+) or minus (-) sign to show relative standing within these rating categories. Any rating from A minus to AAA would satisfy the long-term issuer credit rating requirement; an A minus would constitute the lowest acceptable rating in the case of Standard & Poor's and Fitch. Moody's top three investment grade categories for long-term issuer credit ratings are Aaa, Aa, or A, with Aaa denoting the highest rating. Moody's applies numerical modifiers of 1, 2 and 3 in the Aa and A rating categories, with 3 denoting the lowest end of the letter-rating modifiers. Any rating from A–3 to Aaa would satisfy the long-term issuer credit rating requirement; a rating of A–3 would be the lowest acceptable rating in the case of Moody's.

The long-term issuer credit rating assigned large banks generally is identical to the rating given the bank's senior long-term unsecured debt, where such rated debt exists. Furthermore, representatives of rating organizations have indicated that the rating given to a specific long-term unsecured financial obligation of an issuer is anchored to the issuer's long-term issuer credit rating because the latter rating exemplifies the issuer's fundamental creditworthiness over the long-term. For these reasons, the Board and Treasury believe that long-term issuer credit ratings that meet the requirements of the rule are comparable to, and consistent with, the debt rating requirement of section 121.

The Board and Treasury intend to monitor the criteria used by Standard & Poor's, Moody's and Fitch in assigning ratings to ensure that the ratings and rating categories listed above remain comparable to, and consistent with, the debt rating requirement of section 121. In addition, the Board and Treasury will monitor developments in the ratings industry to see whether additional types of ratings assigned by the rating organizations listed above or by other rating organizations may in the future be determined to be comparable to, and consistent with, the debt rating requirement of section 121. The Board and Treasury may modify the listing of ratings that meet the requirements of the rule as appropriate.

**Regulatory Flexibility Act Analysis**

The rule applies only to national banks and state member banks that are within the second 50 largest insured banks. Accordingly, the final rule is not expected to have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

**Executive Order 12866 Determination**

The Department of the Treasury has determined that the rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

**List of Subjects**

*12 CFR Part 208*

Administrative practice and procedure, Federal Reserve System, Banks.

*12 CFR Part 1501*

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

**Federal Reserve System**

**12 CFR Chapter II**

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of Chapter II, Title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. Section 208.71(c) is revised to read as follows:

### § 208.71 What are the requirements to invest in or control a financial subsidiary?

* * * * *

(c) *Alternative requirement.* A state member bank satisfies the alternative criteria referenced in paragraph (b)(1)(ii) of this section if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

3. Section 208.77(e) is revised to read as follows:

### § 208.77 Definitions.

* * * * *

(e) *Long-term issuer credit rating.* The term ''long-term issuer credit rating'' means a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-

denominated financial obligations maturing in not less than one year.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 19, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

**Department of the Treasury**

**12 CFR Chapter XV**

**Authority and Issuance**

For the reasons set forth in the preamble, the Department of the Treasury amends part 1501 of Chapter XV of Title 12 of the Code of Federal Regulations as follows:

## PART 1501—FINANCIAL SUBSIDIARIES

1. The authority citation for part 1501 continues to read as follows:

**Authority:** Section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a).

2. Section 1501.3 is amended to read as follows:

**§ 1501.3 Comparable ratings requirement for national banks among the second 50 largest insured banks.**

(a) *Scope and purpose.* Section 5136A of the Revised Statutes permits a national bank that is within the second 50 largest insured banks to own or control a financial subsidiary only if, among other requirements, the bank satisfies the eligible debt requirement set forth in section 5136A or an alternative criteria jointly established by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. This section establishes the alternative criteria that a national bank among the second 50 largest insured banks may meet, which criteria is comparable to and consistent with the purposes of the eligible debt requirement established by section 5136A.

(b) *Alternative criteria.* A national bank satisfies the alternative criteria referenced in Section 5136A(a)(2)(E) of the Revised Statutes (12 U.S.C. 24a) and 12 CFR 5.39(g)(3) if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(c) *Definition of long-term issuer credit rating.* A ''long-term issuer credit rating'' is a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

Dated: January 18, 2001.

**Gregory A. Baer,**

*Assistant Secretary for Financial Institutions, Department of the Treasury.*

[FR Doc. 01–2732 Filed 2–1–01; 8:45 am]

BILLING CODE 6210–01–P; 4810–25–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–CE–74–AD; Amendment 39–12094; AD 2001–02–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 60, A60, and B60 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 60, A60, and B60 airplanes. This AD requires you to inspect for the existence of any lower forward wing bolts with the Mercury Aerospace trademark, and replace any such bolt with an FAA-approved bolt without this trademark. This AD is the result of a report that wing bolts supplied by Mercury Aerospace may not meet the required Rockwell hardness specifications. The actions specified by this AD are intended to detect and correct wing bolts that do not meet strength requirements. Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

**DATES:** This AD becomes effective on March 19, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 19, 2001.

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–74–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The FAA has received a report indicating that about 70 lower forward wing bolts that Mercury Aerospace supplied for certain Raytheon Models 60, A60, and B60 airplanes may not meet Rockwell hardness specifications. The bolts were distributed between 1995 and 1996. An independent test lab has confirmed that the bolts do not meet the structural requirements for an MS21250–14034 bolt.

Specifically, these wing bolts are required to meet Rockwell hardness specifications of C39–C43. Laboratory tests indicate that bolts from this manufacturing batch are below these specifications.

*What are the consequences if the condition is not corrected?* Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 60, A60, and B60 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 2000 (65 FR 60599). The NPRM proposed to require you to inspect for the existence of any lower forward wing bolt with the Mercury Aerospace trademark and replace such bolt with an FAA-approved bolt without this trademark.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

### The FAA's Determination

*What is FAA's final determination on this issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor

editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

**Cost Impact**

*How many airplanes does this AD impact?* We estimate that this AD affects 593 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | Not applicable | $60 per airplane | $60 × 593 = $35,580. |

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. Based on manufacturer data from its warranty program, 10 bolts were replaced, which leaves 60 suspect bolts still in the field.

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 8 workhours × $60 per hour = $480 | Approximately $500 per airplane | $480 + $500 = $980 per airplane. |

Please note that the warranty credit has expired.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2001–02–10 Raytheon Aircraft Company:** Amendment 39–12094; Docket No. 99–CE–74–AD.

(a) *What airplanes are affected by this AD?* This AD affects Beech Models 60, A60, and B60 airplanes, serial numbers P–4 through P–596, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct wing bolts that do not meet strength requirements. Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

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

| Action | Compliance time | Procedures |
|---|---|---|
| (1) Inspect the lower forward wing bolts (left and right) for the Mercury Aerospace trademark. | Within the next 100 hours time-in-service (TIS) after March 19, 2001 (the effective date of this AD), unless already accomplished. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 57–3328, Issued: July, 1999. |
| (2) Replace any lower forward wing bolt that has the Mercury Aerospace trademark with an FAA-approved bolt that does not have this trademark. Replace the associated nuts and washers. | Prior to further flight after the inspection, unless already accomplished. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 57–3328, Issued: July, 1999, and the instructions in the applicable maintenance manual. |
| (3) Do not install, on any affected airplanes, a forward wing bolt that has the Mercury Aerospace trademark. | As of March 19, 2001 (the effective date of this AD). | Not Applicable. |

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

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

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so

that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin No. SB 57–3328, Issued: July, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 19, 2001.

Issued in Kansas City, Missouri, on January 18, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–2300 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–54–AD; Amendment 39–12098; AD 2000–25–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland GmbH (Formerly BMW Rolls-Royce GmbH) Model BR700–715A1–30, BR700-715B1–30, and BR700–715C1–30 Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000–25–51 that was sent previously to all known U.S. owners and operators of Rolls-Royce Deutschland GmbH (formerly BMW Rolls-Royce GmbH) model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. This action requires that certain high pressure turbine (HPT) stage 1 disks, part numbers (P/N's) BRH20009, BRH20010, BRH12167, BRH12168, BRH12466, and BRH12467; and stage 2 disks, P/N's BRH19349 and BRH19350, be removed before exceeding the new reduced cyclic limit, and replaced with a serviceable disk. This amendment is prompted by a reduction of the life limit for several high pressure turbine (HPT) stage 1 and stage 2 disks. The actions specified in this AD are intended to prevent an uncontained failure of the HPT stage 1 or stage 2 disk due to exceeded life-cycle limits.

**DATES:** Effective February 20, 2001, to all owners and operators except those to whom it was made immediately effective by emergency AD 2000–25–51, issued on December 4, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 3, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–54–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On December 4, 2000, the Federal Aviation Administration (FAA) issued emergency AD 2000–25–51, applicable to certain Rolls-Royce Deutschland GmbH (RRD) (formerly BMW Rolls-Royce GmbH) BR700–715A1–30, BR700–715B1—30, and BR700–715C1–30 turbofan engines. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain RRD BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. The LBA advises that it has received a report of a change in the process used to manufacture several HPT stage 1 and stage 2 disks. That change resulted in a condition that has decreased the cyclic life of the disks from the maximum cyclic life published in the Time Limits Manual. This condition, if not corrected, could result in an uncontained failure of the HPT stage 1 or stage 2 disk due to exceeded life-cycle limits.

The LBA has issued AD 2000–358/2 in order to assure the airworthiness of these RRD engines in Germany.

### Bilateral Airworthiness Agreement

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

### Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other RRD BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines of the same type design, this AD requires replacing HPT stage 1 and stage 2 disks, listed by P/N and SN in this AD, before exceeding the new reduced life limits.

### Immediate Adoption

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by emergency AD issued on December 4, 2000 to all known U.S. owners and operators of RRD BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

## 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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended 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.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–54–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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:

**2000–25–51 Rolls-Royce Deutschland GmbH:** Amendment 39–12098. Docket 2000–NE–54–AD.

*Applicability:* This airworthiness directive (AD) is applicable to certain Rolls-Royce Deutschland GmbH (formerly BMW Rolls-Royce GmbH) model BR700–715A1–30, BR700–715B1–30, and BR700-715C1–30 turbofan engines that are listed by serial number in Table 1 and Table 2 of this AD, and that have a high pressure turbine (HPT) stage 1 disk, part number (P/N) BRH20009, BRH20010, BRH12167, BRH12168, BRH12466, or BRH12467 with a SN that is listed in Table 1; or a stage 2 disk, P/N's BRH19349 or BRH19350 with a SN that is listed in Table 2. These engines are installed on but not limited to McDonnell Douglas Corporation 717 airplanes.

**Note 1:** This AD applies to each engine 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 engines 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**

Compliance with this AD is required as indicated, unless already done.

To prevent an uncontained failure of the HPT stage 1 or stage 2 disk due to exceeded life-cycle limits, do the following:

(a) Remove HPT stage 1 disks listed in Table 1 before exceeding the cycles-since-new (CSN) in the ''Replace By'' column, and replace with serviceable disks.

TABLE 1.—HPT STAGE 1 DISKS BY ENGINE SN, DISK P/N, AND DISK SN

| Engine Serial No. | Disk P/N | Disk SN | Replace by |
|---|---|---|---|
| 13111 ..... | BRH12466 | 312 | 2600 CSN |
| 13112 ..... | BRH12466 | 308 | 2600 CSN |
| 13113 ..... | BRH12167 | 130 | 2600 CSN |
| 13118 ..... | BRH12467 | 330 | 2600 CSN |
| 13119 ..... | BRH12467 | 319 | 2600 CSN |
| 13120 ..... | BRH12467 | 331 | 2600 CSN |
| 13139 ..... | BRH12168 | 154 | 2600 CSN |
| 13174 ..... | BRH20010 | 380 | 2600 CSN |
| 13175 ..... | BRH20010 | 381 | 2600 CSN |
| 13176 ..... | BRH20010 | 378 | 2600 CSN |
| 13178 ..... | BRH20009 | 221 | 2600 CSN |
| 13179 ..... | BRH20009 | 211 | 2600 CSN |
| 13180 ..... | BRH20009 | 228 | 2600 CSN |
| 13182 ..... | BRH20009 | 204 | 2600 CSN |
| 13183 ..... | BRH20009 | 205 | 2600 CSN |
| 13184 ..... | BRH20009 | 230 | 2600 CSN |
| 13185 ..... | BRH20010 | 377 | 2600 CSN |
| 13177 ..... | BRH20010 | 376 | 3600 CSN |
| 13181 ..... | BRH20009 | 199 | 3600 CSN |
| 13186 ..... | BRH20010 | 366 | 3600 CSN |
| 13187 ..... | BRH20009 | 224 | 3600 CSN |
| 13192 ..... | BRH20009 | 202 | 3600 CSN |
| 13193 ..... | BRH20009 | 225 | 3600 CSN |

(b) Remove HPT stage 2 disks listed in Table 2 before exceeding 3800 CSN, and replace with serviceable disks.

TABLE 2.—HPT STAGE 2 DISKS BY ENGINE SN, DISK P/N, AND DISK SN

| Engine Serial No. | Disk P/N | Disk SN |
|---|---|---|
| 13111 | BRH19349 | 316 |
| 13112 | BRH19349 | 318 |
| 13114 | BRH19349 | 317 |
| 13120 | BRH19350 | 301 |
| 13138 | BRH19350 | 334 |

(c) After effective date of this AD, do not install any HPT stage 1 or stage 2 disks except as allowed by paragraphs (a), (b), or (d) of this AD.

**Alternative Methods of Compliance**

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

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

**Effective Date of This AD**

(f) This amendment becomes effective on February 20, 2001, to all owners and operators except those to whom it was made immediately effective by emergency AD 2000–25–51, issued on December 4, 2000, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts on January 24, 2001.

**Thomas A. Boudreau,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 01–2609 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–14–AD; Amendment 39–12102; AD 2001–03–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model Galaxy airplanes. This action requires revising the Airplane Flight Manual to advise of the proper operation of the main entry door. This action is necessary to prevent the main entry door from jamming, which could impede the safe evacuation of passengers and crew during an emergency. This action is intended to address the identified unsafe condition.

**DATES:** Effective February 20, 2001.

Comments for inclusion in the Rules Docket must be received on or before March 5, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–14–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.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model Galaxy airplanes. The CAAI advises that, following a landing and complete stop of a Model Galaxy airplane, an attempt to open the main entry door failed when the door jammed partially open because the door handle had been improperly operated, *i.e.,* the handle was not rotated all the way up in one continuous motion. The door sprung out about 18 inches, remained in the vertical position, and dropped about 6 inches, making it nearly impossible to open or close the door from inside the airplane. The door was finally opened with assistance from outside the airplane. Improper operation of the main entry door could cause the door to jam and impede the safe evacuation of passengers and crew during an emergency.

**Foreign Airworthiness Directive**

The CAAI issued Israeli emergency airworthiness directive 52–00–12–15, dated January 2, 2001, to ensure the continued airworthiness of these airplanes in Israel.

**FAA's Conclusions**

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

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the main entry door from jamming, which could impede the safe evacuation of passengers and crew during an emergency. This AD requires a revision of the FAA-approved airplane flight manual (AFM) to advise of the proper operation of the main entry door.

**Interim Action**

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

**Difference Between this AD and the Israeli Airworthiness Directive**

The CAAI mandates the installation of placards to advise of the proper operation of the main entry door. However, this AD does not require this action. The FAA has been advised that

the placards have been installed on all airplanes in the worldwide fleet, and that the placards are installed on airplanes during production.

Whereas the CAAI mandates that a copy of its airworthiness directive be carried in the airplane, this AD requires that the Normal and Emergency Procedures sections of the AFM be revised.

**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 2001–NM–14–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:

**2001–03–01 Israel Aircraft Industries, Ltd.:** Amendment 39–12102. Docket 2001–NM–14–AD.

*Applicability:* All Model Galaxy airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the main entry door from jamming, which could impede the safe evacuation of passengers and crew during an emergency, accomplish the following:

**Revisions of the Airplane Flight Manual (AFM)**

(a) Within 10 days after the effective date of this AD, revise the the FAA-approved AFM to include the following statements under Section II, Emergency Procedures, Passenger Evacuation, item 5., ''Main entrance door/emergency exit—OPEN.'' This may be accomplished by inserting a copy of this AD into the AFM.

''If the main entrance door is jammed in a partially opened state, the door may be opened by pushing it out with a force of approximately 88 lbs. This will bend the aircraft sill and skin, allowing the door to open in an emergency.''

(b) Within 10 days after the effective date of this AD, revise the AFM to include the following statements under Section IV, Normal Procedures, Exterior Inspection, Passenger Compartment, item 4.c., ''Passenger briefing—COMPLETE, Emergency procedures.'' This may be accomplished by inserting a copy of this AD into the AFM.

''When opening the main entrance door from inside the aircraft, the operating handle must be rotated all the way up in one continuous motion, as shown on the placard. If the handle is left at an intermediate position, it may cause the door to slip down and jam in a vertical, unlocked position, preventing egress. The handle is also jammed in the process. The door may be released by exerting a high upwards force on the operating handle or by assistance from outside the airplane.

If the main entrance door is jammed in a partially opened state, the door may be opened by pushing it out with a force of approximately 88 lbs. This will bend the aircraft sill and skin, allowing the door to open in an emergency.''

**Alternative Methods of Compliance**

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

**Note 1:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Note 2:** The subject of this AD is addressed in emergency Israeli airworthiness directive 52–00–12–15, dated January 2, 2001.

**Effective Date**

(e) This amendment becomes effective on February 20, 2001.

Issued in Renton, Washington, on January 29, 2001.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–2829 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–16–AD; Amendment 39–12101; AD 2001–02–51]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 and EMB–135 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2001–02–51 that was sent previously to all known U.S. owners and operators of EMBRAER Model EMB–145 and EMB–135 series airplanes by individual notices. This AD requires revising the FAA-approved airplane flight manual and installing placards to alert the flight crew to the maximum speed for airplane retrimming after takeoff and during the climb phase. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. The actions specified by this AD are intended to prevent high pitch control forces, which could result in possible loss of control of the airplane.

**DATES:** Effective February 7, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–02–51, issued January 19, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 5, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–16–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The applicable service information may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Carla Worthey, Program Manager, Program Management and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6062; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** On January 19, 2001, the FAA issued emergency AD 2001–02–51, which is applicable to certain EMBRAER Model EMB–145 and EMB–135 series airplanes.

That action was prompted by reports of approximately 10 incidents involving the temporary loss of pitch trim command after takeoff and during the climb phase. On these airplanes, longitudinal trim is controlled by positioning the horizontal stabilizer. The actuator for the horizontal stabilizer has been identified by the manufacturer and the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, as inadequate and the likely cause of the pitch trim problem. If the pilot fails to trim before reaching a certain speed, airloads may overpower the actuator, and the horizontal stabilizer may fail to move in response to a pitch trim command from the flight crew. Currently, the crew would receive no indication of this type of pitch trim failure, except for extremely high pitch control forces. This condition, if not corrected, could result in possible loss of control of the airplane.

### Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145–27–A077, dated January 8, 2001, which describes procedures for the installation of two placards to alert the flight crew to the maximum speed for airplane retrimming after takeoff and during the climb phase.

EMBRAER has also issued EMB145 Airplane Flight Manual 145/1153, Revision 43, dated January 11, 2001, which provides information for the flight crew concerning the maximum speed for airplane retrimming after takeoff and during the climb phase.

The DAC has classified this service bulletin and the AFM revision as mandatory and issued Brazilian airworthiness directive 2001–01–01, dated January 18, 2001, in order to ensure the continued airworthiness of these airplanes in Brazil.

### FAA's Conclusions

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

### Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2001–02–51 to prevent high pitch control forces, which could result in possible loss of control of the airplane. The AD requires revising the FAA-approved airplane flight manual and installing placards to alert the flight crew to the maximum speed for airplane retrimming after takeoff and during the climb phase. The actions are required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and

good cause existed to make the AD effective immediately by individual notices issued on January 19, 2001, to all known U.S. owners and operators of EMBRAER Model EMB–145 and EMB–135 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

**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.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–16–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:

**2001–02–51 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–12101. Docket 2001–NM–16–AD.

*Applicability:* Model EMB–145 and EMB–135 series airplanes, certificated in any category; having any serial number listed below:

145004 through 145103 inclusive
145105 through 145121 inclusive
145123 through 145139 inclusive
145141 through 145153 inclusive
145155 through 145189 inclusive
145191 through 145256 inclusive
145258 through 145262 inclusive
145264 through 145349 inclusive
145351 through 145362 inclusive
145364
145366 through 145369 inclusive

*Compliance:* Required as indicated, unless accomplished previously.

To prevent high pitch control forces, which could result in possible loss of control of the airplane, accomplish the following:

**AFM Revision**

(a) Within 3 days after the effective date of this AD, revise the FAA-approved Airplane Flight Manual (AFM), as specified by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD. This may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise the Limitations Section of the AFM, under ''FLIGHT CONTROLS,'' to include the following.

''PITCH TRIM
Maximum Airspeed after Takeoff/During Climb without Retrimming ..... 160 KIAS''

(2) Revise the Emergency Procedures Section of the AFM, under ''PITCH TRIM INOPERATIVE,'' to delete the current information and replace it with the following:

''PITCH TRIM INOPERATIVE
EICAS WARNING: PIT TRIM 1(2) INOP (may be presented)
EICAS CAUTION: AUTO TRIM FAIL (may be presented)
If at least one Message is presented:
Affected Pitch Trim System ..... OFF
Continue the flight with the remaining Pitch Trim System.
If both Pitch Trim Systems are inoperative:
Pitch Trim Main System ..... OFF
Pitch Trim Back Up System ..... OFF
Consider landing at the nearest suitable airport.
If no Message is presented:
Pitch Trim Command ..... CHECK ALL SWITCHES
If any Pitch Trim command is reestablished:
Continue the flight with the remaining Pitch Trim System.

NOTE: When Main Pitch Trim System is INOP, Autopilot is not available.

WARNING: IF PITCH TRIM COMMAND IS NOT REESTABLISHED, DO NOT OPEN SPEEDBRAKE.

If pitch trim command is not reestablished and the airplane presents a NOSE UP tendency:

Airspeed ..... REDUCE

Airspeed reduction alleviates control column forces and may permit
Pitch Trim command to be recovered.
NOTE: Turning the airplane and extending the landing gear helps to maintain minimum airspeed with unwanted pitch up tendency.
If it is necessary to reduce airspeed below 180 KIAS (or 200 KIAS in icing conditions), extend flaps to 9° (at 20,000 ft maximum).
If it is necessary to reduce airspeed below 160 KIAS, extend flaps to 22°

Pitch Trim Command ..... CHECK ALL SWITCHES

If pitch trim is recovered, retrim the airplane and proceed with flight normally.
If pitch trim is not recovered:

Consider landing at the nearest suitable airport.
Approach and landing configuration:

Landing Gear ..... DOWN
Flaps ..... 22°
Airspeed ..... $V_{REF\ 45}$ + 10 KIAS

*CAUTION:* TO DETERMINE THE MINIMUM SUITABLE LANDING DISTANCE, MULTIPLY THE UNFACTORED LANDING DISTANCE FOR FLAPS 45° BY 1.27.

If pitch trim command is not reestablished and the airplane presents a NOSE DOWN tendency:

Airspeed ..... REDUCE AS REQUIRED
Below 250 KIAS:
Flaps (at 20,000 ft maximum) ..... 9°
Below 200 KIAS:
Flaps ..... 22°
Approach and landing configuration:
Landing Gear ..... DOWN
NOTE: Gear extension should be delayed as long as possible.
Flaps ..... 22°
Airspeed ..... $V_{REF\ 45}$ + 25 KIAS

*CAUTION:* TO DETERMINE THE MINIMUM SUITABLE LANDING DISTANCE, MULTIPLY THE UNFACTORED LANDING DISTANCE FOR FLAPS 45° BY 1.44.

(3) Revise the Normal Procedures Section of the AFM, under the ''BEFORE START'' checklist, to delete the current information and insert the following:

''Trims ..... CKD/SET

Actuate the pilot and copilot's Pitch Trim Switches and the backup pitch trim switch nose up and then nose down, and check correct indication on the EICAS. Hold trim input to verify that the trim motion stops after approximately 3 seconds. Set the pitch trim to the units required for takeoff. Set the roll and yaw trims to zero.

| | | | | | |
|---|---|---|---|---|---|
| PITCH TRIM UNITS | 8 | 7 | 6 | 5 | 4'' |
| CG POSITION (%) | LESS THAN 25 | 30 | 35 | 40 | 43 |

(4) In the Normal Procedures Section of the AFM, under the ''AFTER TAKEOFF'' checklist, add the following:

''Pitch Trim ..... AS REQUIRED
Keep the airplane trimmed to avoid excessive loads on the Horizontal Stabilizer Actuator (HSA). The airplane should be trimmed before 160 KIAS.''

**Note 1:** Incorporation of EMB145 AFM 145/1153, Revision 43, dated January 11, 2001, is also acceptable for compliance with the requirements of paragraph (a) of this AD.

**Placard Installation**

(b) Within 3 days after the effective date of this AD, install placards P/N 145–46718–001 at two positions on the main control panel within the pilot's primary field of view.

**Note 2:** Installation per EMBRAER Alert Service Bulletin 145–27–A077, dated January 8, 2001, is also acceptable for compliance with the requirements of paragraph (b) of this AD.

**Alternative Methods of Compliance**

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

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

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

**Note 4:** The subject of this AD is addressed in Brazilian emergency airworthiness directive 2001–01–01, dated January 18, 2001.

**Effective Date**

(e) This amendment becomes effective on February 7, 2001, to all persons except those persons to whom it was made immediately effective by emergency AD 2001–02–51, issued January 19, 2001, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 26, 2001.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–2742 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000-SW-34-AD; Amendment 39-12087; AD 2001-02-03]**

**RIN 2120-AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, B, L, L1, and L3 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 206A, B, L, L1, and L3 helicopters. This AD requires inspecting the collective lever assembly (assembly) for a raised forging boss, inspecting the assembly for adequate clearance between the collective lever and the swashplate outer ring (outer ring), and modifying any assembly with a raised forging boss and inadequate clearance before further flight. Modifying any assembly that has a raised forging boss and adequate clearance would be required before further flight after January 31, 2001. This AD is prompted by the discovery that a raised forging boss could result in control system interference. The actions specified by this AD are intended to prevent interference between the collective lever and the outer ring, damage to flight controls, and subsequent loss of control of the helicopter.

**DATES:** Effective March 9, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTC Model 206A, B, L, L1, and L3 helicopters was published in the Federal Register on September 11, 2000 (65 FR 54888). That action proposed to require, for each assembly, P/N 206-010-467-001:

- Within 30 days, inspecting for a raised forging boss and for adequate clearance;
- Before further flight, modifying any collective lever if the clearance is 0.060 inch (1.52mm) or less between the assembly and the outer ring; and
- Before further flight after January 31, 2001, modifying any assembly that has a forging boss and adequate clearance.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Regulatory Impact

In the NPRM, we estimated that 6,000 helicopters would be affected by this AD; however, only 2,200 helicopters are currently on the U.S. registry. It will take approximately 0.5 work hours per helicopter to inspect and 2 work hours to modify the assembly, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330,000.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding the following new airworthiness directive:

**Federal Aviation Administration (FAA)**
**Airworthiness Directive (AD) 2001-02-03**

**Docket No. 2000-SW-34-AD, Amendment 39-12087**
**Bell Helicopter Textron Canada**
**Subject: Inspecting and Modifying Collective Lever Assemblies**

| | |
|---|---|
| **(a) Effective Date** | Effective March 9, 2001. |
| **(b) Affected Documents** | None. |

**Federal Aviation Administration (FAA)**—Continued

**Airworthiness Directive (AD) 2001-02-03**

**Docket No. 2000-SW-34-AD, Amendment 39-12087**
**Bell Helicopter Textron Canada**
**Subject: Inspecting and Modifying Collective Lever Assemblies**

| | |
|---|---|
| **(c) Applicability** | Bell Helicopter Textron Canada Model 206A (serial numbers (S/N) 004 through 660 and 672 through 715); 206B (S/N 661 through 671, 716 through 4529, and 5101 through 5267); 206L (S/N 45004 through 45153, and 46601 through 46617); 206L1 (S/N 45154 through 45790); and 206L3 (S/N 51001 through 51612) helicopters, with a collective lever assembly (assembly), part number (P/N) 206-010-467-001, installed, certificated in any category. |
| **(d) Unsafe Condition and Background Information** | A raised forging boss could interfere with the control system. That could damage flight controls and cause loss of control of the helicopter. |
| **(e) Compliance** | Unless previously accomplished, inspect each assembly within 30 days. Modify any assembly that has a raised forging boss. Modify the assembly before further flight if the clearance is 0.060 inch (1.52mm) or less or before further flight after January 31, 2001 if the clearance is greater than 0.060 inch (1.52mm). |
| **(f) Required Actions** | (1) Within 30 days:<br>(i) Inspect each assembly for a raised forging boss in accordance with the Accomplishment Instructions, Part I, paragraphs 1.a., of Bell Helicopter Textron Alert Service Bulletin Nos. 206L-00-116, dated March 10, 2000 (ASB 206L), or 206-00-93, Revision A, dated May 10, 2000 (ASB 206), as applicable, and<br>(ii) If the assembly has a raised forging boss, inspect for clearance in accordance with the Accomplishment Instructions, Part I, paragraphs 2.a. through f., of ASB 206L or ASB 206, as applicable.<br>(2) Modify each assembly in accordance with the Accomplishment Instructions, Part II, paragraphs 1 through 10, of ASB 206L or ASB 206, as applicable, as follows:<br>(i) If the clearance is 0.060 inch (1.52mm) or less at one of the outer ring horns, before further flight.<br>(ii) If the clearance is greater than 0.060 inch (1.52mm) at one of the outer ring horns, before further flight after January 31, 2001. |
| **(g) Other Provisions** | (1) Alternative Methods of Compliance (AMOC):<br>(i) You may use an AMOC or adjust the time you take to meet the requirements of this AD if your alternative provides an acceptable level of safety and if the Manager, Regulations Group, approves your alternative.<br>(ii) Submit your request for approval through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Regulations Group.<br>(iii) You can get information about the existence of already approved AMOC's from the FAA, Rotorcraft Directorate, Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137.<br>(2) Modifications, Alterations, or Repairs:<br>This AD applies to each helicopter identified in the applicability paragraph, even if it has been modified, altered, or repaired in the area subject to this AD. If that change in any way affects accomplishing the required actions, you must request FAA approval for an AMOC. Your request should assess the effect of the change on the unsafe condition addressed by this AD.<br>(3) Special Flight Permits:<br>The FAA may issue you a special flight permit under 14 CFR 21.197 and 21.199 to operate your helicopter to a location where you can comply with this AD. |
| **(h) Incorporation by Reference** | You must accomplish the inspections and modifications in accordance with Part I, paragraphs 1.a. and 2.a. through f.. and Part II, paragraphs 1 through 10,of Bell Helicopter Textron Alert Service Bulletin Nos. 206L-00-116, dated March 10, 2000, or 206-00-93, Revision A, dated May 10, 2000, as applicable. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. If you need a copy of the service bulletin, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. You can review a copy of the service bulletin at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, TX; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington DC. |

**Federal Aviation Administration (FAA)**—Continued
**Airworthiness Directive (AD) 2001-02-03**

**Docket No. 2000-SW-34-AD, Amendment 39-12087**
**Bell Helicopter Textron Canada**
**Subject: Inspecting and Modifying Collective Lever Assemblies**

| | |
|---|---|
| **(i) Related Information** | Transport Canada AD No. CF-2000-13, dated May 23, 2000. |

Issued in Fort Worth, Texas on January 18, 2001.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 01–2427 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–S**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 201

**[Release Nos. 33–7946; 34–43897; IA–1921; IC–24846]**

## Adjustments to Civil Monetary Penalty Amounts

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires that the Commission adopt a regulation adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Levine, Assistant General Counsel at (202) 942–0890, or Scot E. Draeger, Attorney, Office of the General Counsel at (202) 942–0852.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This regulation implements the Debt Collection Improvement Act of 1996 (''DCIA'').[1] The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'')[2] to require that each federal agency adopt regulations at least once every four years, adjusting for inflation the maximum amount of the civil monetary penalties (''CMPs'') under the statutes administered by the agency.[3]

A civil monetary penalty (''CMP'') is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.[4] This definition covers the monetary penalty provisions contained in the statutes administered by the Commission.

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in Section 5 of the FCPIAA.[5] The cost-of-living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index[6] (''CPI'') for the month of June for the year preceding the adjustment exceeds the CPI for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.[7] The statute contains specific rules for rounding each increase based on the size of the penalty.[8] Agencies do not have discretion in whether to adjust a maximum CMP, or the methods used to determine the adjustment. Although the DCIA imposed a 10 percent maximum increase for each penalty for the first adjustment pursuant thereto, which adjustment was made in 1996, that limitation does not apply to the adjustments subsequently made.

The Commission administers four statutes which provide for civil monetary penalties: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. Penalties administered by the Commission were first adjusted by rules effective December 9, 1996.[9] The DCIA requires the civil monetary penalties to be adjusted for inflation every four years. Therefore, the Commission is directed by statute to increase the maximum amount of each penalty by the appropriate formulated amount.[10]

Accordingly, the Commission is adopting an amendment to 17 CFR 201 to add section 201.1002 and Table II to Subpart E, increasing the amount of each civil monetary penalty authorized by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

The amendment also provides for a revision to 17 CFR 201.1001 to clarify the time period for which the new adjustments to the civil monetary penalties will govern, and a revision to correct a typographical error in the earlier rule. The chart[11] accompanying the 1996 adjustments erroneously stated the amount of the CMP for a violation of 15 U.S.C. 78u(d)(3) by a natural person. The correct amount of the CMP for that violation is $5,500, not $5,000.

### II. Summary of the Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 1996, we will use the following example. Under the CMP provisions, as amended in 1996, the Commission may impose a maximum CMP of $1,100,000 for certain insider trading violations by a controlling person. First, we determine the appropriate CPI for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2001, we use the CPI for June of 2000, which was 516.5. We must also determine the CPI for June of the year the CMP was last adjusted for inflation. Because the Commission last adjusted CMPs in 1996, we use the CPI for June of 1996, which was 469.5.

Second, we calculate the cost-of-living adjustment or inflation factor. To

[1] Pub. L. No. 104–134, section 31001(s) (April 26, 1996).

[2] 28 U.S.C. 2461 (1990).

[3] An increased CMP applies only to violations that occur after the increase takes effect.

[4] 28 U.S.C. 2461(3)(2).

[5] Pub. L. No. 104–134.

[6] ''Consumer Price Index'' means the Consumer Price Index for all urban consumers (''CPI–U'') published by the Department of Labor.

[7] 28 U.S.C. 2461(5)(b).

[8] 28 U.S.C. 2461(5)(a)(1)–(6).

[9] *See* 17 CFR 201.1001.

[10] The CPI-All Urban Consumers—for June of the year in which the penalties were last adjusted (June 1996) was 469.5. The CPI for June of the year preceding the proposed adjustments (June 2000) was 516.5. Therefore, the inflation factor for the cost-of-living adjustment for penalties last amended in 1996 is 1.10 (i.e., an increase of 10%).

[11] 17 CFR 201, Subpart E, Table I.

do this we divide the CPI for June of 2000 (516.5) by the CPI for June of 1996 (469.5). Our result is 1.10 (*i.e.*, a 10 percent increase).

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,100,000 multiplied by the inflation factor of 1.10 equals $1,210,000.

Fourth, we round the raw inflation amounts according to the rounding rules in Section 5(a) of the FCPIAA. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $110,000 (*i.e.*, $1,210,000 less $1,100,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase in our example is $100,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,100,000 plus $100,000 yields a maximum inflation adjustment penalty amount of $1,200,000.[12]

## III. Related Matters

### *A. Administrative Procedure Act—Immediate Effectiveness of Final Rule*

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impractical, unnecessary, or contrary to public interest.[13] Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by the cost-of-living adjustment formula set forth in Section 5 of the FCPIAA, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the Administrative Procedure Act (''APA'').[14] Specifically, the Commission finds that because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary.

Under the DCIA, agencies must make the required inflation adjustment to civil monetary penalties: (1) According to a very specific formula in the statute, and (2) within four years of the last inflation adjustment. Agencies have no discretion as to the amount or timing of the adjustment. The regulation and amendments discussed herein are ministerial, technical, and noncontroversial. Furthermore, because the regulation and amendments concern penalties for conduct that is already illegal under existing law, there is no need for effected parties to have thirty days prior to the effectiveness of the regulation and amendments during which to adjust their conduct. Accordingly, the Commission believes that there is good cause to make this regulation and amendments effective immediately upon publication.

### *B. Regulatory Flexibility Act*

A regulatory flexibility analysis under the Regulatory Flexibility Act (''RFA'') is required only when an agency must publish a general notice of proposed rulemaking for notice and comment.[15] As already noted, notice and comment are not required for this final rule. Therefore, the RFA does not require a regulatory flexibility analysis.[16]

### *C. Cost-Benefit Analysis*

The Commission considers generally the costs and benefits of its rules and regulations. The regulation and minor amendments merely adjust civil monetary penalties in accordance with inflation as required by the DCIA, and have no impact on disclosure or compliance costs. Furthermore, Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments.

The regulation and amendments are in the interest of the public and in furtherance of investor protection. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation.

### *D. Paperwork Reduction Act*

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[17] Therefore, Office of Management and Budget review is not required.

**List of Subjects in 17 CFR Part 201**

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Securities.

**Text of Amendment**

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 201—RULES OF PRACTICE

## Subpart E—Adjustments to Civil Monetary Penalties

1.The authority citation for Part 201, Subpart E continues to read as follows:

**Authority:** Pub. L. 104–134, 110 Stat. 1321.

2. Section 201.1001 is revised to read as follows:

**§ 201.1001 Adjustment of civil monetary penalties—1996.**

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 are adjusted for inflation in accordance with Table I to this subpart. The adjustments set forth in Table I apply to violations occurring after December 9, 1996 and before February 2, 2001.

3.Table I to Subpart E for the entry 15 USC 78u(d)(3) is amended by revising ''5,000'' to read ''5,500'' in the last column.

4. Section 201.1002 and Table II to Subpart E are added following Table I to Subpart E to read as follows:

**§ 201.1002 Adjustment of civil monetary penalties—2001.**

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 are adjusted for inflation in accordance with Table II to this subpart. The adjustments set forth in Table II apply

[12] When examining Table II to Subpart E of Part 201, you will notice that the operation of the statutorily mandated computation, together with rounding rules, does not result in any adjustment to certain penalties. These particular penalties (the ones for which no adjustment is being made in 2001) will be subject to slightly different treatment when calculating the 2005 adjustment. Under the statute, when we adjust these particular penalties in 2005, we will be required to use the CPI-U for June of the year when these particular penalties (the ones for which no adjustment is being made in 2001) were ''last adjusted.'' When calculating the 2005 adjustment to the particular penalties not being adjusted in 2001, we will use the CPI-U for 1996 (the year that these particular penalties were last adjusted).

[13] 5 U.S.C. 553(b).

[14] 5 U.S.C. 553(b)(3)(B).

[15] 5 U.S.C. 603.

[16] 5 U.S.C. 601–612.

[17] 44 U.S.C. 3501 *et. seq.*

to violations occurring after February 2, 2001.

TABLE II TO SUBPART E—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

| U.S. Code citation | Civil monetary penalty description | Year penalty amount was last adjusted | Maximum penalty amount pursuant to 1996 adjustment | Adjusted maximum penalty amount |
|---|---|---|---|---|
| Securities and Exchange Commission: | | | | |
| 15 USC 77t(d) | For natural person | 1996 | $5,500 | $6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses or risk of losses to others. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses or risk of losses to others. | 1996 | 550,000 | 600,000 |
| 15 USC 78ff(b) | Exchange Act/failure to file information documents, reports. | 1996 | 110 | 110 |
| 15 USC 78ff(c)(1)(B) | Foreign Corrupt Practices—any issuer | 1996 | 11,000 | 11,000 |
| 15 USC 78ff(c)(2)(C) | Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer. | 1996 | 11,000 | 11,000 |
| 15 USC 78u–1(a)(3) | Insider Trading—controlling person | 1996 | 1,100,000 | 1,200,000 |
| 15 USC 78u–2 | For natural person | 1996 | 5,500 | 6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses to others/gains to self. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses to others/gain to self. | 1996 | 550,000 | 600,000 |
| 15 USC 78u(d)(3) | For natural person | 1996 | 5,500 | 6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses or risk of losses to others. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses or risk of losses to others. | 1996 | 550,000 | 600,000 |
| 15 USC 80a–9(d) | For natural person | 1996 | 5,500 | $6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses to others/gains to self. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses to others/gain to self. | 1996 | 550,000 | 600,000 |
| 15 USC 80a–41(e) | For natural person | 1996 | 5,500 | 6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses or risk of losses to others. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses or risk of losses to others. | 1996 | 550,000 | 600,000 |
| 15 USC 80b–3(i) | For natural person | 1996 | 5,500 | 6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses to others/gains to self. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses to others/gain to self. | 1996 | 550,000 | 600,000 |
| 15 USC 80b–9(e) | For natural person | 1996 | 5,500 | 6,500 |
| | For any other person | 1996 | 55,000 | 60,000 |
| | For natural person/fraud | 1996 | 55,000 | 60,000 |
| | For any other person/fraud | 1996 | 275,000 | 300,000 |
| | For natural person/substantial losses or risk of losses to others. | 1996 | 110,000 | 120,000 |
| | For any other person/substantial losses or risk of losses to others. | 1996 | 550,000 | 600,000 |

Dated: January 29, 2001.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2846 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–U**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 232

**[Release Nos. 33–7933; 34–43843; 35–27338; 39–2388; IC–24827]**

**RIN 3235–AG96**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the Commission) is adopting revisions to the EDGAR Filer Manual (Release 7.5), Volume II—Modernized EDGARLink and is providing for their incorporation by reference into the Code of Federal Regulations. EDGAR Release 7.5, the most recent step in the Commission's modernization project, was implemented on November 27, 2000. The main purpose of EDGAR Release 7.5 was to deploy internal SEC software.

**EFFECTIVE DATE:** February 2, 2001. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Richard Heroux at (202) 942–8800; for questions concerning Investment Management company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Attorney, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2930.

**SUPPLEMENTARY INFORMATION:** Today we are adopting an updated Volume II—Modernized EDGARLink of the EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[1] Volume II describes the requirements for filing using modernized EDGARLink.[2]

Volume II of the Manual contains all the technical specifications for filers to submit filings using the new modernized EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

EDGAR Release 7.5, the most recent step in the Commission's modernization project, was implemented on November 27, 2000. The main purpose of EDGAR Release 7.5 was to deploy internal SEC software. At the same time, certain updates and improvements were made to the EDGARLink system, which are now reflected in Filer Manual (Release 7.5), Volume II—Modernized EDGARLink.

We have added the form type 40–8B25, for investment companies requesting extension of time for filing certain information, documents or reports pursuant to Investment Company Act of 1940 Rule 8b–25(a). We have eliminated the previously rescinded forms DEF13E3 and PRE13E3 and F–6EF/A. We have modified the SRO (self-regulatory organization) field in EDGAR header information to accept the data item ISE (International Stock Exchange). As an aid to filers, we have also enhanced certain features of filing preparation under modernized EDGARLink. Finally, we have updated the filer manual to note the discontinuation of the TRW/UUNET Private Mail Service, previously known as the CompuServe Public Data Network. The functions that had been provided by this service have been made available through the EDGAR Filing Website, <*https://www.edgarfiling.sec.gov*>.

We are also amending today rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the revisions to the Filer Manual. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronic format copies on the Commission's Web Site; the address for the Filer Manual is <*http://www.sec.gov/asec/ofis/filerman.htm*>. You may also obtain copies from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is February 2, 2001. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. Because the revisions to Volume II do not require any significant adjustments in filing procedure, any hardship to affected persons due to not having additional time to adjust to changes in the manual is more than offset by the need for administrative expediency to conform the filer manual to recent system upgrades and to minimize filer confusion.

### Statutory Basis

We are adopting the amendments to Regulation S–T under sections 6, 7, 8, 10, and 19(a) of the Securities Act,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 20 of the Public Utility Holding Company Act of 1935,[10] Section 319 of

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on June 23, 2000. *See* Release No. 33–7867 (June 14, 2000) [65 FR 39086].

[2] This is the Filer Assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (Feb. 23, 1993) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40935 (Jan. 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; and Release No. 33–7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0.

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[9] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.

[10] 15 U.S.C. 79t.

the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

**List of Subjects in 17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

**Text of the Amendment**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

**§ 232.301 EDGAR Filer Manual.**

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. For the period during which Legacy EDGAR will be available, prior to the complete transition to the use of Modernized EDGAR, the EDGAR Filer Manual will consist of three parts. For filers using modernized EDGARLink, the requirements are set forth in EDGAR Filer Manual (Release 7.5), Volume II—Modernized EDGARLink. For filers using Legacy EDGAR, the applicable provisions are set forth in EDGAR Filer Manual (Release 7.0), Volume I—Legacy EDGARLink. Additional provisions applicable to Form N–SAR filers are set forth in EDGAR Filer Manual (Release 7.0), Volume III—N–SAR Supplement. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0102 or by calling Disclosure Incorporated at (800) 638–8241. Electronic format copies are available on the Commission's Web Site; the address for the Manual is *http://www.sec.gov/asec/ofis/filerman.htm.* You can also photocopy the document at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Dated: January 16, 2001.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–1906 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–U

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

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## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Parts 10, 12, 19, 103, 111, 112, 143, 146, 178, and 191

**[T.D. 01–14]**

## Technical Amendments to the Customs Regulations

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by correcting various referencing and typographical errors, and by making certain editorial changes to improve the clarity of the regulations. None of these technical corrections involve changes in substantive legal requirements.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Greg Rogers, Investigative Services, Office of Investigations, (202) 927–0525; or Mike Craig, Chief, Broker Management Program, Office of Field Operations, (202) 927–1684.

**SUPPLEMENTARY INFORMATION:**

### Background

It is Customs policy to periodically review its regulations to ensure that they are as accurate and up-to-date as possible, so that the importing and general public are aware of Customs programs, requirements, and procedures regarding import-related activities. As part of this review policy, Customs has determined that certain changes affecting parts 10, 12, 19, 103, 111, 112, 143, 146, 178, and 191 of the Customs Regulations (19 CFR parts 10, 12, 19, 103, 111, 112, 143, 146, 178, and 191) are necessary to correct referencing and typographical errors, or to improve the clarity of the regulations. Following is a summary of these changes:

### Discussion of Changes

*Fingerprint Form References*

In T.D. 93–18 (published in the **Federal Register** on March 24, 1993, at 58 FR 15770), Customs amended several sections of the Customs Regulations (19 CFR chapter I) to clarify Customs position regarding the submission of fingerprints when individuals apply for certain occupations or request various identification cards necessitating a fingerprint records check. Six sections of the Customs Regulations that pertain to employment or licensing matters were amended; five specifying that a particular fingerprinting form was to be used to collect the fingerprints. The Standard Form (SF) 87 fingerprint form was specified at §§ 19.2(f), 111.12(a), 112.42, and § 146.6(a) of the Customs Regulations (19 CFR 19.2(f), 111.12(a), 112.42, and 146.6(a)), and the form FD 258 fingerprint form was specified at § 122.182(d). It has come to Customs attention that designating the SF 87 for fingerprinting purposes at §§ 19.2(f), 111.12(a), 112.42, and § 146.6(a) is in error. This document corrects those errors and explains the reason different forms are used to collect fingerprints.

The government uses different fingerprint forms for different purposes. The Federal Bureau of Investigation, which processes all requests for fingerprint information, uses different form numbers and color codes of forms based on the reason the background check is to be performed. The FD 258 is used for background checks for a non-government position, such as when the government provides a license to a private party. The SF 87 is used when a background check is required for Federal employment or a security clearance.

The provisions of § 19.2(f) pertain to an application for a Customs warehouse bond. The provisions of § 111.12(a) pertain to an application for a Customs broker's license. The provisions of § 112.42 pertain to an application for an identification card for a licensed cartman or lighterman. The provisions of § 146.6(a) pertain to an application to activate a foreign trade zone. None of these provisions pertain to Federal employment or to a security clearance. Thus, the use of the FD 258, and not the SF 87, is appropriate. Accordingly, the references at §§ 19.2(f), 111.12(a), 112.42, and § 146.6(a) to the SF 87 will be replaced by a reference to the FD 258. Also, because Customs is beginning to collect fingerprints electronically at certain locations, a proviso allowing for electronic fingerprints will also be added to these sections.

*Environmental Protection Agency (EPA) Requirements*

Section 12.73 of the Customs Regulations (19 CFR 12.73) pertains to motor vehicle and engine compliance with Federal antipollution emission requirements. Paragraph (d) of this section pertains to when individuals and businesses must import certain motor vehicles through an independent commercial importer (ICI). This provision was amended in T.D. 88–40 ostensibly to provide that only ICIs with valid Environmental Protection Agency (EPA) certificates of conformity could import nonconforming vehicles or engines. Individuals or businesses who previously could import nonconforming vehicles or engines are now required to arrange for such importations through an ICI certificate holder. However, the regulatory text adopted was overbroad in its reach and provided, in relevant part, that ''* * * an individual or business * * * may not enter a motor vehicle *to which EPA emission requirements apply.*'' (Emphasis supplied.) The language is changed in this paragraph to clarify that individuals or businesses may import vehicles into the United States that conform with EPA emission requirements and that ICIs are required only if the vehicles do not conform to EPA requirements.

Section 12.74 of the Customs Regulations (19 CFR 12.74) pertains to nonroad engine compliance with Federal antipollution emission requirements. Paragraph (b)(2) of this section pertains to the retention and submission of records to Customs. The paragraph references § 162.1c of the Customs Regulations. In T.D. 98–56 (63 FR 32946) Customs amended the recordkeeping requirements formerly contained in part 162 by creating a new part 163. Record retention requirements are now set forth in § 163.4. This document corrects the reference in § 12.74(b)(2).

*Customs Brokers Permits*

Section 111.19 of the Customs Regulations (19 CFR 111.19), as amended by T.D. 00–17, published in the **Federal Register** on March 15, 2000 (65 FR 13880), discusses both district permits and national permits for Customs brokers. At paragraph (e) of this section a reference is made to an application for ''a permit''. It is unclear in this paragraph whether the reference is to a district permit or a national permit. This document clarifies that the paragraph relates to a district permit.

*Miscellaneous Referencing and Typographical Errors*

In § 10.31, the third sentence of paragraph (a)(1) is supposed to be the last sentence of that paragraph; however, a period was inadvertently placed after a reference to a Customs Form description, instead of a comma, effectively making the remaining text a fourth sentence. The punctuation error is now corrected.

In § 103.31, the third sentence of paragraph (e) makes reference to § 103.14(d). Section 103.14 was redesignated as § 103.31 in T.D. 96–36. Customs inadvertently failed to conform the reference within the sentence to the redesignated § 103.31. Accordingly, the reference in § 103.31 to § 103.14(d) is now corrected.

Section 143.1(a) references a definition for Customs brokers at § 111.1(b). Because of the publication of T.D. 00–17 discussed above, there are no longer lettered paragraphs at § 111.1; the words and phrases defined are merely listed alphabetically. Accordingly, the reference in § 143.1(a) to the definition for Customs brokers at § 111.1(b) is corrected to read § 111.1.

Section 178.2 describes Customs information collections and lists the control numbers assigned by the Office of Management and Budget for these information collections. The entry for § 103.14 is in error, because this provision was redesignated as § 103.31 in T.D. 96–36. Accordingly, the reference in § 178.2 to § 103.14 is corrected to read § 103.31.

Section 191.51 pertains to the completion of drawback claims. In T.D. 98–16, paragraph (b) of this section was amended to provide how drawback claims are to be correctly calculated. The third sentence of this revision was meant to be parenthetical, *i.e.,* providing an example of how to correctly calculate the substance of the second sentence. However, the closing parenthesis was mistakenly placed after the fourth sentence, which has a different substance than the second sentence. This typographical error is corrected by removing the closing parenthesis from the end of the fourth sentence and relocating it to the end of the third sentence.

**Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866**

Because these regulatory amendments merely correct various referencing and typographical errors and make certain editorial changes to improve the clarity of the regulations, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary and contrary to public interest. For the same reasons, the requirement for a delayed effective date also does not apply, pursuant to 5 U.S.C. 553(d)(3). Further, because this document is not subject to 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These amendments do not meet the criteria for a ''significant regulatory action'', as specified in E.O. 12866.

**Drafting Information**

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch.

**List of Subjects**

*19 CFR Part 10*

Bonds, Customs duties and inspection, Entry requirements, Imports, Reporting and recordkeeping requirements.

*19 CFR Part 12*

Air pollution control, Customs duties and inspection, Entry requirements, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Vehicles.

*19 CFR Part 19*

Customs duties and inspection, Licensing, Reporting and recordkeeping requirements, Warehouses.

*19 CFR Part 103*

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy, Reporting and recordkeeping requirements.

*19 CFR Part 111*

Administrative practice and procedure, Brokers, Customs duties and inspection, Licensing, Reporting and recordkeeping requirements.

*19 CFR Part 112*

Administrative practice and procedure, Customs duties and inspection, Freight forwarders, Licensing, Reporting and recordkeeping requirements.

*19 CFR Part 143*

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

*19 CFR Part 146*

Administrative practice and procedure, Customs duties and inspection, Foreign trade zones,

Reporting and recordkeeping requirements.

*19 CFR Part 178*

Administrative practice and procedure, Collection of information, Paperwork requirements, Reporting and recordkeeping requirements.

*19 CFR Part 191*

Administrative practice and procedure, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Parts 10, 12, 19, 103, 111, 112, 143, 146, 178, and 191, Customs Regulations (19 CFR parts 10, 12, 19, 103, 111, 112, 143, 146, 178, and 191), are amended as set forth below:

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

### § 10.31 [Amended]

2. In § 10.31, paragraph (a)(1) is amended by removing the period at the end of the third sentence and adding, in its place, a comma.

## PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority for sections 12.73 and 12.74 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601;

### § 12.73 [Amended]

2. In § 12.73, paragraph (d) is amended by removing the words ''to which EPA emission requirements apply'' and adding, in their place, the words ''which does not conform with EPA emission requirements''.

### § 12.74 [Amended]

3. In § 12.74, paragraph (b)(2) is amended by removing the reference ''§ 162.1c'' and adding, in its place, the reference ''§ 163.4''.

## PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

### § 19.2 [Amended]

2. In § 19.2, paragraph (f) is amended at the second sentence by removing the words ''Standard Form 87'' wherever they appear and adding, in their place, the words ''form FD 258 or electronically ''.

## PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

### § 103.31 [Amended]

2. In § 103.31, paragraph (e)(1) is amended at the third sentence by removing the reference ''§ 103.14(d)'' and adding, in its place, the reference ''paragraph (d) of this section''.

## PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 1641;

### § 111.12 [Amended]

2. In § 111.12, paragraph (a) is amended at the sixth sentence by removing the words ''Standard Form 87'' and adding, in their place, the words ''form FD 258 or electronically''.

### § 111.19 [Amended]

3. In § 111.19, paragraph (e) is amended by adding the word ''district'' before the word ''permit'' wherever it appears.

## PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for part 112 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1551, 1565, 1623, 1624.

### § 112.42 [Amended]

2. Section 112.42 is amended at the second sentence by removing the words ''Standard Form 87'' and adding, in their place, the words ''form FD 258 or electronically''.

## PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for part 143 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1481, 1484, 1498, 1624.

### § 143.1 [Amended]

2. In § 143.1, paragraph (a) is amended by removing the reference ''§ 111.1(b)'' and adding, in its place, the reference ''§ 111.1''.

## PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 continues to read as follows:

**Authority:** 19 U.S.C. 66, 81a–81u, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1623, 1624.

### § 146.6 [Amended]

2. In § 146.6, paragraph (a) is amended at the fourth sentence by removing the words ''Standard Form 87'' and adding, in their place, the words ''form FD 258 or electronically''.

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

### § 178.2 [Amended]

2. In § 178.2, in the ''19 CFR Section'' column the section number ''§ 103.14'' is removed and the section number ''§ 103.31'' is added in its place.

## PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

2. In § 191.51, paragraph (b) is revised to read as follows:

### § 191.51 Completion of drawback claims.

* * * * *

(b) *Drawback due.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been

corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

* * * * *

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: January 8, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 01–2784 Filed 2–1–01; 8:45 am]

BILLING CODE 4820–02–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

### Federal Old–Age, Survivors and Disability Insurance (1950– )

*CFR Correction*

In Title 20 of the Code of Federal Regulations, parts 400 to 499, revised as of April 1, 2000, in part 404, subpart P, appendix 1, beginning on page 449, in section 9.08 following paragraph D, remove the tables up to section 10.00.

[FR Doc. 00–55522 Filed 2–1–01; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 115

**RIN 1076–AE00**

### Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of the Interior, Bureau of Indian Affairs (BIA) today is making a technical amendment to its rulemaking published on January 22, 2001, regarding Trust Funds for Tribes and Individual Indians. In formatting explanatory charts for publication, the question which refers to a particular chart regarding sources of money that will be accepted for deposit into a trust account was inadvertently omitted from the published regulation. The technical amendment is to simply include this question to appropriately make reference to the explanatory chart that has been published. This question is included in the table of contents and was in the copy of the regulation placed on public display before publication.

**EFFECTIVE DATE:** March 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Duncan L. Brown, Office of the Secretary, U.S. Department of the Interior, 1849 C Street, NW, MS 7229 MIB, Washington, DC 20240, Telephone: 202/208–4582.

**SUPPLEMENTARY INFORMATION:** This technical amendment simply includes a question, already included in the table of contents, for part 115 of ''Trust Management Reform: Leasing/Permitting, Grazing, Probate and Funds Held in Trust,'' as published on January 22, 2001, 66 FR 7068, that was inadvertently omitted from the text of the rule. We, therefore, insert this question for § 115.702 between the two charts that now follows § 115.701 as this omitted question for § 115.702 pertains to (and explains) the second chart only. Pursuant to 5 U.S.C. 553(b), public comment is not required for this technical amendment as this amendment does not make any substantive regulatory change and simply promotes administrative efficiency and corrects an inadvertent omission of text. Pursuant to 5 U.S.C. 553(d), the rulemaking will take effect immediately for good cause as the omission of the question for § 115.702 would only confuse the public and defeat the efficiency of the rulemaking.

### List of Subjects in 25 CFR Part 115

Administrative practice and procedure, Indians—business and finance.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, Amends 25 CFR part 115 as follows:

## PART 115—[AMENDED]

1. The authority citation for part 115 continues to read as follows:

**Authority:** R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87–283; Pub. L. 97–100; Pub. L. 97–257; Pub. L. 103–412; Pub. L. 97–458; 44 U.S.C. 3010 *et seq.*

2. The second chart in § 115.701 is redesignated as § 115.702 and the section leading and introductory text are added preceding the chart to read as follows:

**§ 115.702 What specific sources of money will be accepted for deposit into a trust account?**

We must accept proceed on behalf of tribes or individuals from the following sources:

* * * * *

Dated: January 26, 2001.

**James McDivitt,**

*Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 01–2737 Filed 2–1–01; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 170

**[T.D. ATF–439]**

**RIN 1512–AC23**

### Delegation of Authority in Part 170

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision, final rule.

**SUMMARY:** This final rule places all ATF authorities contained in part 170, title 27 Code of Federal Regulations (CFR), with the ''appropriate ATF officer'' and requires that persons file documents required by 27 CFR part 170, with the ''appropriate ATF officer.'' Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.20 is being published. Through this Order, the Director has delegated the authorities in 27 CFR part 170 to the appropriate ATF officers and specified the ATF officers with whom applications, notices, and reports that are not ATF forms are filed.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226, (202–927–9347) or e-mail at alctob@atfhq.atf.treas.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 51 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities

to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or other delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 51, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in 27 CFR part 170 that were previously delegated and places those authorities with the ''appropriate ATF officer.'' Most of the authorities of the Director that were not previously delegated are also placed with the ''appropriate ATF officer.'' Along with this final rule, ATF is publishing ATF Order 1130.20, Delegation Order—Delegation of the Director's Authorities in Part 170, Miscellaneous Regulations Relating To Liquor, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 170 into one delegation instrument. This action both simplifies the process for determining which ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule amends part 170 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the ''appropriate ATF officer'' identified in ATF Order 1130.20. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart C of 27 CFR part 170. Specifically, the authority citation for part 170 has been removed and the authority citation for Subpart C has been revised. In addition, a new § 170.42 is added to recognize the authority of the Director to delegate regulatory authorities in part 170 and to identify ATF Order 1130.20 as the instrument reflecting such delegations. Also, § 170.43 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed. In addition, § 170.43 is amended to correct the address to which requests for forms should be mailed.

ATF intends to make similar changes in delegations to all other parts of 27 CFR through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

## Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

## Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedures Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). We received a comment about specifying the reason why the Regulatory Flexibility Act does not apply and have addressed their concern.

## Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

## Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly, because of the nature of this final rule, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

## Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

## List of Subjects in 27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Distilled spirits, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Stills.

## Authority and Issuance

Title 27, Chapter I, of the Code of Federal Regulations is amended as follows:

# PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

**Paragraph 1.** Remove the authority citation for part 170 and revise the authority citation for Subpart C to read as follows:

**Authority:** 26 U.S.C. 5002, 5101, 5102, 5179, 5291, 5601, 5615, 5687, 7805.

### § 170.42 [Added]

**Par. 2.** Add a new § 170.42 in Subpart C to read as follows:

### § 170.42 Delegations of the Director.

All of the regulatory authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.20, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 170—Miscellaneous Regulations Relating to Liquor. ATF delegation orders, such as ATF Order 1130.20, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

### §§ 170.43, 170.47, 170.49 [Amended]

**Par. 3.** Amend part 170 by removing the word ''Director'' or the words ''regional director (compliance)'' each place they appear and add, in their place, the words ''appropriate ATF officer'' in the following places:

a. Section 170.43(a);
b. Section 170.47(a) and (c); and
c. Section 170.49(a), (b) and (c).

### § 170.43 [Amended]

**Par. 4.** Amend § 170.43 as follows:

a. Add the sentence ''The form will be filed in accordance with the instructions for the form.'' at the end of paragraph (a);

b. Remove paragraph (b); and

c. Redesignate paragraph (c) as paragraph (b) and revise it to read as follows:

### § 170.43 Forms prescribed.

* * * * *

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

* * * * *

**§ 170.45 [Amended]**

**Par. 5.** Amend § 170.45 by removing the definitions of ''ATF officer'' and ''Regional director (compliance)'' and by adding and listing alphabetically, the new definition, ''Appropriate ATF officer,'' to read as follows:

**§ 170.45 Meaning of Terms.**

* * * * *

*Appropriate ATF Officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.20, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 170 '' Miscellaneous Regulations Relating to Liquor.

* * * * *

**§ 170.55 [Amended]**

**Par. 6.** In § 170.55, revise paragraph (a) and the first sentence of paragraph (c) to read as follows:

**§ 170.55 Registry of stills and distilling apparatus.**

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or distilling apparatus, except that a still or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits is not required to be registered. Registration may be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. chapter 51 or, if qualification is not required under 26 U.S.C. chapter 51, on a letter application, and filing the application with the appropriate ATF officer. Approval of the application by the appropriate ATF officer will constitute registration of the still or distilling apparatus.

* * * * *

(c) *Change in location or ownership.* Where any distilling apparatus registered under this section is to be removed to another location, sold or otherwise disposed of, the registrant shall, prior to the removal or disposition, file a letter notice with the appropriate ATF officer. * * *

**§ 170.59 [Amended]**

**Par. 7.** Amend the last sentence of § 170.59 by adding the word ''appropriate'' in front of the words ''ATF officer.''

Signed: October 30, 2000.

**Bradley A. Buckles,**

*Director.*

Approved: December 14, 2000.

**Helen B. Belt,**

*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01–2782 Filed 2–1–01; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 300

### Assistance to States for the Education of Children With Disabilities; Delay of Effective Date

**AGENCY:** Department of Education.

**ACTION:** Final regulations; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' this regulation temporarily delays the effective date of the regulations entitled Assistance to States for Education of Children With Disabilities published in the **Federal Register** on January 8, 2001 (66 FR 1474).

**EFFECTIVE DATE:** The effective date of the regulations amending 34 CFR Part 300 published at 66 FR 1474, January 8, 2001 is delayed 60 days from February 9, 2001 until April 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Depew, Acting Assistant General Counsel for Regulations, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, FB–6, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: January 24, 2001.

**Rod Paige,**

*Secretary of Education.*

[FR Doc. 01–2781 Filed 2–1–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 361

### State Vocational Rehabilitation Services Program; Delay of Implementation Date

**AGENCY:** Department of Education.

**ACTION:** Final regulations; delay of implementation date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' this regulation amends the implementation date of the regulations entitled State Vocational Rehabilitation Services Program published in the **Federal Register** on January 22, 2001 (66 FR 7250) with respect to the voluntary implementation of the regulations by States prior to the effective date of the regulations.

**EFFECTIVE DATE:** The effective date of the regulations amending 34 CFR Part 361 published at 66 FR 7250, January 22, 2001, continues to be October 1, 2001, unless amended as a result of the review of these regulations.

*Implementation Date:* These regulations may be implemented by States April 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Depew, Acting Assistant General Counsel for Regulations, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, FB–6, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: January 25, 2001.

**Rod Paige,**

*Secretary of Education.*

[FR Doc. 01–2780 Filed 2–1–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### 34 CFR Part 361

### State Vocational Rehabilitation Services Program; Delay of Effective Date

**AGENCY:** Department of Education.

**ACTION:** Final regulations; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001 (66 FR 7702, January 24, 2001), from the Assistant to the President and Chief of

Staff, entitled ''Regulatory Review Plan,'' this regulation temporarily delays the effective date of the regulations entitled State Vocational Rehabilitation Services Program published in the **Federal Register** on January 17, 2001 (66 FR 4380).

**EFFECTIVE DATE:** The effective date of the regulations amending 34 CFR Part 361 published at 66 FR 4380, January 17, 2001 is delayed for 60 days until April 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth C. Depew, Acting Assistant General Counsel for Regulations, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, FB–6, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: January 26, 2001.

**Rod Paige,**

*Secretary of Education.*

[FR Doc. 01–2699 Filed 2–1–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 411 and 424

**[HCFA–1809–F2]**

### Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Delay of Effective Date of Final Rule and Technical Amendment

**AGENCY:** Health Care Financing Administration (HCFA), DHHS.

**ACTION:** Delay of effective date of final rule and technical amendment.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of revised § 424.22 contained in the rule entitled ''Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001 (66 FR 856). That rule prohibits physicians from referring patients for the furnishing of certain designated health services to health care entities with which they (or their immediate family members) have financial relationships under the Medicare and Medicaid programs. Home health services are a designated health service. Section 424.22 revises the physician certification and plan of treatment requirements for home health services to comply with provisions in section 1877 of the Social Security Act (the Act). Section 424.22, which would have become effective February 5, 2001, will now become effective April 6, 2001.

The 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001.

**DATES:** The effective date of the revision to paragraph (d) and the removal of paragraphs (e), (f), and (g) in § 424.22 of the final rule entitled ''Physicians'' Referrals to Health Care Entities With Which They Have Financial Relationships,'' published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed for 60 days, from February 5, 2001 to a new effective date of April 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Joanne Sinsheimer, Center for Health Plans and Providers, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland 21244, (410) 786–4620.

**SUPPLEMENTARY INFORMATION:**

### Technical Correction

In FR Doc. 01–4 of January 4, 2001 (66 FR 856), there was a technical error. In amendatory instruction number 2, in column three, on page 962, we correctly stated that in § 424.22, paragraph (d) was revised and paragraphs (e), (f), and (g) were removed. We intended that these changes would take effect at the same time, that is, February 5, 2001 (now being delayed until April 6, 2001). However, in the ''Effective date'' section of the January 4, 2001 final rule, we indicated that only paragraph (d) of § 424.22 would take effect February 5, 2001 (now April 6, 2001). We failed to state that the removal of paragraphs (e), (f), and (g) of § 424.22 would also be effective February 5, 2001 (now April 6, 2001). This document corrects that error.

The exceptions in § 424.22(e) through (g) have been superseded by section 1877 of the Act. As noted in the preamble to the January 4, 2001 final rule, we believe that we do not have the legal authority to retain these exceptions in any meaningful way. We therefore explained that we did not intend to include the exceptions in the revised home health certification regulations (66 FR 936–937). As we pointed out in the preamble to the January 9, 1998 proposed rule (63 FR 1680), even if a physician and a home health agency are involved in an arrangement that meets one of the home health exceptions at issue, the arrangement simultaneously remains subject to the requirements in section 1877 of the Act.

### Correction of Error in the Preamble

On page 856, in column two, the ''Effective date'' section is corrected to read as follows:

''*Effective date:* The regulations delineated in Phase I of this rulemaking are effective on January 4, 2002, except for the revision to paragraph (d) and the removal of paragraphs (e), (f), and (g) in § 424.22, which are effective April 6, 2001.''

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program; No. 93.778, Medical Assistance Program)

Dated: January 26, 2001.

**Michael McMullan,**

*Acting Deputy Administrator, Health Care Financing Administration.*

Approved: January 30, 2001.

**David Satcher,**

*Acting Secretary.*

[FR Doc. 01–2937 Filed 2–1–01; 8:45 am]

BILLING CODE 4120–01–P

# Proposed Rules

Federal Register
Vol. 66, No. 23
Friday, February 2, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AEA–05]**

### Establishment of Class E Airspace; Rome, NY

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Griffis Airpark, Rome, NY. Development of Standard Instrument Approach Procedures (SIAP), for Griffis Airpark has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing an instrument approach. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before March 5, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 00–AEA–5, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica NY, 11434–4809; telephone; (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AEA–05. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Rome, NY. Standard Instrument Approach Procedures (SIAPs) have been developed for Griffis Airpark, Rome, NY. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for Instrument Flight Rules operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

### PART 71—[AMENDED]

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9H dated September 1, 2000, and effective September 16, 2000, is proposed to be amended as follows:

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

* * * * *

**AEA NY E5, Rome NY [NEW]**

Griffis Airpark, Rome, NY (431401.68N/ 0752425.30W

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Griffis Airpark, Rome, NY

* * * * *

Issued in Jamaica, New York on January 5, 2001.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 01–1856 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–AEA–13]**

## Establishment of Class E Airspace; Harrisonburg, VA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Harrisonburg, VA. A helicopter Point in Space approach, has been developed for Rockingham Memorial Hospital, Harrisonburg, VA. Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish Class E airspace to include the Point in Space approach to Rockingham Memorial Hospital Heliport. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before March 5, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 00–AEA–13, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AEA–13''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Harrisonburg, A RNAV Point in Space Approach has been developed for Rockingham Memorial Hospital Heliport, Harrisonburg, VA. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the approach. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

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

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation order 7400.9H dated September 1, 2000, and effective September 16, 2000, is proposed to be amended as follows:

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

**AEA VA E5 Harrisonburg, VA [NEW]**

Rockingham Memorial Hospital Heliport (Lat. 3826.898N-long 07852.683W)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Rockingham Memorial Hospital Heliport.

* * * * *

Issued in Jamaica, New York on January 5, 2001.

**F.D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 01–1854 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 100

**[IB Docket 98–21; FCC 00–426]**

### Non-Conforming Use of Direct Broadcast Satellite Service Spectrum

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission is evaluating the rules and regulations governing the Direct Broadcast Satellite service. Since the *Notice of Proposed Rulemaking* was adopted in 1998, new issues have arisen concerning non-conforming use of the spectrum allocated to the Direct Broadcast Satellite service. This *Public Notice* seeks comment on this additional issue.

**DATES:** Comments may be filed on or before March 5, 2001; Reply Comments may be filed on or before March 14, 2001.

**ADDRESSES:** Electronic comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via Internet to *http://www.fcc.gov/e-file/ecfs.html.* All other filings must be sent to Office of the Secretary, Federal Communications Commission, 445 12th St., SW., rm. TW–A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Selina Khan of the International Bureau at 202–418–7282.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Public Notice* in IB Docket No. 98–21, FCC 00–426 (released December 8, 2000).

On February 26, 1998, the Commission released a Notice of Proposed Rulemaking [1] (*Part 100 Notice*) seeking comment on its proposal to integrate the direct broadcast satellite (''DBS'') service rules incorporated in part 100 of the Commission's rules into part 25 (Satellite Communications) and to streamline and eliminate any unnecessary DBS rules. In addition, the Commission sought comment on its proposal to apply the revised part 1 general auction rules to DBS and eliminate separate DBS auction rules. By applying the parts 1 and 25 application processing and licensing procedures to the DBS service, the Commission seeks to simplify procedures applicable to DBS, eliminate unnecessary paperwork, and harmonize the DBS licensing process with the licensing processes for other satellite services.

The Commission received significant comment on the issues raised in this proceeding. Since that time, however, another issue has arisen as a result of the continuing evolution of the DBS industry. In particular, the public has made inquires about other potential uses of DBS spectrum. Accordingly, by this Public Notice, the Commission seeks to augment the record in the *Part 100 Notice* on this issue. Specifically, we seek additional comment on the issue of non-conforming uses of DBS spectrum. Under the current policy, a DBS operator must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum prior to expiration of the five-year period. After this initial five-year period, a DBS licensee ''may continue providing non-DBS service during the remainder of the life of its first satellites (presuming its license is renewed) only on those transponders on which [it] continues to provide DBS service, and that non-DBS use cannot exceed fifty percent of each 24-hour day on any such transponder.'' [2] In accordance with this policy, the Commission has stated that it would consider continuing ''to permit some degree of non-conforming use of DBS satellites during future generations given the circumstances prevailing at that time.'' [3]

The Commission established its ''non-conforming use'' policy in a series of three decisions: (1) *1986 USSB Declaratory Ruling;* [4] (2) *1991 Potential Uses of DBS Order;* [5] and (3) *1995 DBS Auction Order.* [6] This policy, which was adopted when DBS was still in its infancy, was intended to provide DBS operators with a source of early revenues that could, in turn, help operators meet the very high up-front costs of launching a DBS system and reduce the risk of monetary loss if the DBS service proved unsuccessful. The Commission has since recognized that DBS is no longer in its early stages. [7] Rather, it is an established competitor to cable. Consequently, we question whether the original justification for the non-conforming use policy continues to be valid. In addition, we ask for comment on whether there are now other reasons to continue and perhaps even expand the non-conforming use policy. For example, advances in technology, ability to compete with cable services, and new service offerings, may warrant revisiting this policy.

By this *Public Notice,* we request comment on non-DBS services. Specifically, we seek comment on whether we should eliminate, relax, or maintain time or other restrictions on satellite uses of DBS spectrum. We seek comment on the appropriateness of such restrictions before and after the initial five years of the license term, particularly at those orbital locations in the western arc that are currently under-utilized. Commenters should address whether permitting flexible use of DBS spectrum will enhance or impede competition in the multi-channel video programming distribution (MVPD) market. Commenters should address the types of non-DBS services likely to be provided, and whether these services could result in corresponding benefits to MVPD or other competition. We also request comment on whether we should limit other uses to the fixed-satellite service (FSS), as permitted by the U.S. Table of Frequency Allocations. [8] Moreover, if we allow non-conforming uses of DBS spectrum, should we require those services to conform to the interference criteria associated with DBS, the primary service. We note that two DBS licensees are providing full and robust DBS from locations capable of serving the contiguous United States

[1] *See* In re Policies and Rules for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, IB Docket No. 98–21, 63 FR 11202 (March 6, 1998), 13 FCC Rcd. 6907 (1998) (*Part 100 Notice).*

[2] Petition of United States Satellite Broadcasting Company, Inc. for Declaratory Ruling Regarding Permissible Uses of the Direct Broadcast Satellite Service, 1 FCC Rcd 977 (*1996 USSB Declaratory Ruling*) at ¶ 13. *See also* In the Matter of Rules and Policies for the Direct Broadcast Satellite Service, 60 FR 65587 (December 20, 1995), 11 FCC Rcd 9712 (1995) (*DBS* Auction *Order*) at ¶ 17.

[3] *USSB Declaratory Ruling, supra* n. 2. at ¶ 13.

[4] *See generally USSB Declaratory Ruling, supra* n. 2.

[5] In the Matter of Potential Uses of Certain Orbital Allocations by Operators in the Direct Broadcast Satellite Service, 6 FCC Rcd 2581 (1991) (*1991 Potential Uses of DBS Order*).

[6] *See DBS Auction Order, supra* n. 2 at ¶ 17; *See also* In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 60 FR 55822 (November 3, 1995), 11 FCC Rcd 1297 (1995).

[7] *See, e.g. Part 100 Note.*

[8] 47 CFR 2.106.

(CONUS), but that locations in the western portion of the orbital arc that are not capable of serving the East Coast are under-utilized. Commenters should address whether a flexible use policy will help ensure that these western locations are used more efficiently. Commenters should address whether we should apply a flexible use policy to all of the orbit locations available for DBS service or only to the western orbital locations. Commenters should also address whether and to what extent permitting other use of DBS spectrum will impact the Commission's geographic service rules.[9] Finally, if we apply a flexible use policy to all U.S. orbit locations, should we apply this policy to foreign licensed facilities that are permitted to serve the U.S. (*i.e.* those satellite systems licensed in Argentina and Mexico).[10] Commenters should support their views with concrete analysis and documentation.

**Procedural Matters**

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file Supplemental Comments, limited to the issues addressed in this *Public Notice,* no later than March 5, 2001. Supplemental Reply Comments must be filed no later than March 14, 2001. In view of the pendency of this proceeding, we expect to adhere to the schedule set forth in this *Public Notice* and do not contemplate granting extensions of time. Comments should reference IB Docket No. 98–21 and should include the FCC number shown on this *Public Notice.* Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[11] Comments filed through the ECFS can be sent as an electronic file via Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, parties responding should include their full name, mailing address, and the applicable docket number, IB Docket 98–21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking appear 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, Magalie Roman Salas. Office of the Secretary, Federal Communications Commission, 445 12th St., SW., rm. TW–A325, Washington, DC 20554. One copy of all comments should also be sent to the Commission's copy contractor. Copies of all filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Washington, DC 20554, telephone 202–857–3800, facsimile 202–857–3805.

In the *Part 100 Notice,* the Commission presented an Initial Regulatory Flexibility Analysis,[12] as required by the Regulatory Flexibility Act (RFA).[13] If commenters believe that the proposals discussed in this Public Notice require additional RFA analysis, they should include a discussion of these issues in their Supplemental Comments.

For *ex parte* purposes, this proceeding continues to be a ''permit-but-disclose'' proceeding, in accordance with § 1.1200(a) of the Commission's rules, and is subject to the requirements set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–2753 Filed 2–1–01; 8:45 am]

BILLING CODE 6712–01–P

[9] 47 CFR 100.53.

[10] *See* Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States of America and United Mexican States (November 8, 1996), Article VI; Agreement Between the Government of the Argentine Republic Concerning the Provision of Satellite Facilities and the Transmission and Reception of Signals to and from Satellites for the Provision of Satellite Service to Users in the United States of America and the Republic of Argentina (June 5, 1998), Article VI.

[11] *See* Electronic Filing of Documents in Rulemaking Proceeding, 63 FR 24121 (May 1, 1998).

[12] *Part 100 Notice,* 13 FCC Rcd at 6907.

[13] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

# Notices

Federal Register

Vol. 66, No. 23

Friday, February 2, 2001

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.

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List, Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** March 5, 2001.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:**

### Additions

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Services**

Administrative Services, Internal Revenue Service, Oxon Hill, Maryland, NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Furnishings Management Services, McGuire Air Force Base, New Jersey, NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey

Janitorial/Custodial, VA Outpatient Clinic, Allentown, Pennsylvania, NPA: Via of the Lehigh Valley, Inc., Bethlehem, Pennsylvania

Operation of Environmental Remediation Service, Puget Sound Naval Shipyard, Bremerton, Washington, NPA: Skookum Educational Programs, Port Townsend, Washington

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 01–2893 Filed 2–1–01; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** March 5, 2001.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:**

### Additions

On December 8, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 76985 and 76986) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service are hereby added to the Procurement List:

**Commodity**

Holder, Label w/Slit, 9905–01–365–2125

**Service**

Janitorial/Custodial, I.C. Hewgley Jr., USARC, Knoxville, Tennessee

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 01–2894 Filed 2–1–01; 8:45 am]

BILLING CODE 6353–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 5:00 p.m. and adjourn at 8:30 p.m. on February 12, 2001, at the Doubletree Hotel, 424 West Markham, Little Rock, Arkansas 72201. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 26, 2001.

**Edward A. Hailes, Jr.,**

*General Counsel.*

[FR Doc. 01–2810 Filed 2–1–01; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–813]**

### Canned Pineapple Fruit From Thailand; Final Results of Full Sunset Review of Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of full sunset review: Canned pineapple fruit from Thailand.

**SUMMARY:** On September 29, 2000, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on Canned Pineapple Fruit from Thailand (65 FR 58509) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received comments only from the domestic interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Lyons or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0374 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and in 19 CFR part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

#### Background

On June 5, 2000, the Department initiated a sunset review of the antidumping duty order on CPF from Thailand (65 FR 35604), pursuant to section 751(c) of the Act. On September 29, 2000, the Department published a notice of preliminary results of the full sunset review of the antidumping duty order on canned pineapple fruit from Thailand (65 FR 58509) pursuant to section 751(c) of the Act. In our preliminary results, we found that revocation of the order would likely result in continuation or recurrence of dumping with net margins of 1.73 percent for The Dole Food Company, Inc., and its affiliates Dole Packaged Foods Company and Dole Thailand, Inc. (collectively, ''Dole''); 38.68 percent for The Thai Pineapple Public Co., Ltd. (''TIPCO''); 51.16 percent for Siam Agro Industry Pineapple and Others Co., Ltd. (''SAICO''); 41.74 percent for Malee Sampran Factory Public Co., Ltd. (''Malee''); and 24.64 percent for ''all others.''

On November 8, 2000, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received a case brief on behalf of the domestic industry.

#### Scope of Review

The product covered by this review is CPF from Thailand. CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Bernard T. Carreau, fulfilling the duties of Assistant Secretary for Import Administration, dated January 26, 2001, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''Thailand.'' The paper copy and electronic version of the Decision Memo are identical in content.

#### Final Results of Review

We determine that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of dumping

at the following percentage weighted-average margins:

| Manufacturer/exporters | Margin (percent) |
|---|---|
| Dole | 1.73 |
| TIPCO | 38.68 |
| SAICO | 51.16 |
| Malee | 41.74 |
| All Others | 24.64 |

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 26, 2001.

**Bernard T. Carreau,**

*Fulfilling the duties of Assistant Secretary for Import Administration.*

[FR Doc. 01–2794 Filed 2–01–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–824]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order.

**SUMMARY:** On December 12, 2000, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part (''Preliminary Results''),* 65 FR 77564 (December 12, 2000). In our *Preliminary Results,* we gave interested parties an opportunity to comment; however, we did not receive any comments. Therefore, we are now revoking this order in part, with respect to the particular carbon steel flat product described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to this particular carbon steel flat product.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Laurel LaCivita, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 482–0182, or (202) 482–4243, respectively.

*Applicable Statute and Regulations:* Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to the regulations codified at 19 CFR part 351 (2000).

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 23, 2000, Taiho Corporation of America (''Taiho America'') requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Taiho America requested that the Department revoke the order with respect to imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Taiho America is an importer of the products in question. Also, on November 16, 2000, domestic producers of the like product, Bethlehem Steel Corporation; Ispat Inland Steel; LTV Steel Company, Inc.; National Steel Corporation; and U.S. Steel Group, a unit of USX Corporation, stated that they have no interest in the importation or sale of steel from Japan with these specialized characteristics. As noted above, we gave interested parties an opportunity to comment on the *Preliminary Results.* We received no comments from interested parties.

#### Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

#### Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning carbon steel flat products, as described herein, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Preliminary Results.* Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d)(1). Also, we will instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of the administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: January 26, 2001.

**Bernard T. Carreau,**

*fulfilling the duties of Assistant Secretary for Import Administration.*

[FR Doc. 01–2795 Filed 2–1–01; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 012601A]**

### Endangered Species; Permits

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

**ACTION:** Withdrawal of two incidental take permit applications (1151 and 1255) and a scientific research permit application (1160).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received notice from the Oregon Department of Fish and Wildlife at Roseburg, OR (ODFW) to withdraw its permit application for an incidental take of an ESA-listed anadromous fish species associated with non-listed fish hatchery operations in the Umpqua River Basin in OR. NMFS has received notice from ODFW at Portland, OR and the Washington Department of Fish and Wildlife at Vancouver, WA (WDFW) to withdraw their joint permit application for an incidental take of ESA-listed anadromous fish species associated with fisheries directed at non-listed species in the fall of 2000. NMFS has received notice from WDFW at Vancouver, WA to withdraw an application for a permit for a take of an ESA-listed species associated with scientific research.

**ADDRESSES:** For permit application 1255: Sustainable Fisheries Division, F/NWR2, 7600 Sand Point Way NE, Seattle, WA 98115-0070 (ph: 206-526-4655, fax: 206-526-6736).

For permit applications 1151 and 1160: Protected Resources Division, F/NWR3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-4169 (ph: 503-230-5400, fax: 503-230-5435).

**FOR FURTHER INFORMATION CONTACT:** For permit application 1255: Enrique Patino, Seattle WA (206-526-4655, fax: 206-526-6736, e-mail: enrique.patino@noaa.gov).

For permit applications 1151 and 1160: Robert Koch, Portland, OR (503-230-5424, fax: 503-230-5435, e-mail: robert.koch@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

#### Species Covered in This Notice

The following species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): threatened SnR, endangered naturally produced and artificially propagated upper Columbia River, threatened middle Columbia River, threatened LCR, threatened upper Willamette River.

Chum salmon (*O. keta*): threatened Columbia River.

#### Permit Applications Withdrawn

Notice was published on June 10, 1998 (63 FR 31739), that ODFW applied for an incidental take permit under section 10(a)(1)(B) of the ESA. The permit was requested for a take of adult and juvenile, endangered, Umpqua River cutthroat trout (*O. clarki clarki*) associated with non-listed fish hatchery operations in the Umpqua River Basin in OR. Subsequent to the submittal of ODFW's permit application, and the conduct of a 30-day public comment period on the application, NMFS determined that the Umpqua River cutthroat trout, formerly identified as an Evolutionarily Significant Unit of the species, is part of a larger population segment that previously was determined to be neither endangered nor threatened as defined by the Endangered Species Act (see 65 FR 20915, April 19, 2000). Therefore, NMFS determined that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened species. As such, on September 14, 2000, ODFW notified NMFS to withdraw its section 10(a)(1)(B) permit application from consideration.

Notice was published on May 3, 2000 (65 FR 34442), that ODFW and WDFW jointly applied for an incidental take permit under section 10(a)(1)(B) of the ESA. The permit was requested for a take of ESA-listed adult and juvenile salmonids associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries during the fall of 2000. Subsequent to the submittal of ODFW/WDFW's permit application, and the conduct of a 30-day public comment period on the application and a draft Environmental Assessment/Finding of No Significant Impact for the proposed permit, an incidental take of ESA-listed species was authorized on July 31, 2000 using the section 7 consultation process. As such, ODFW/WDFW jointly notified NMFS to withdraw the section 10(a)(1)(B) permit application from consideration.

Notice was published on June 26, 1998 (63 FR 34852), that WDFW applied for a scientific research permit under section 10(a)(1)(A) of the Endangered Species Act. The permit was requested for an annual take of adult and juvenile, threatened, LCR steelhead associated with research designed to monitor steelhead genetic and biological parameters in the Wind River Basin in WA. At the time that the permit was requested, protective regulations for threatened LCR steelhead under section 4(d) of the ESA had not been promulgated by NMFS. After the protective regulations for threatened LCR steelhead were established (see 65 FR 42422, July 10, 2000), NMFS determined that WDFW's annual take of LCR steelhead associated with the proposed scientific research in the Wind River Basin would best be handled using WDFW's scientific research take limit under the 4(d) rule for that species. As such, on January 5, 2001, WDFW

notified NMFS to withdraw its permit application from consideration.

Dated: January 26, 2001.

**Chris Mobley,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01–2883 Filed 2–1–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Availability of the Finding of No Significant Impact for the Lease of 22 Recreation Areas at Lake Oahe, Lake Francis Case, and Lewis and Clark Lake to the State of South Dakota

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act and implementing regulations, an Environmental Assessment (EA) has been prepared to evaluate the environmental impacts of a request by the State of South Dakota (State) to lease several recreation areas at Lake Oahe, Lake Francis Case, and Lewis and Clark Lake in South Dakota. The Omaha District, Corps of Engineers (Corps) proposes to issue a lease for 22 recreation areas to the State until they are transferred to the State pursuant to Section 225 of the Water Resources Development Act (WRDA) of 1999, Public Law 106–53 (Title VI), as amended by WRDA 2000.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the EA can be addressed to Patsy Freeman, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978, telephone at (402) 221–3803, or E-Mail *patricia.l.freeman@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** The State has requested that the Government enter into a lease in order for the State to provide for the repair, maintenance, management, and operation of the recreation areas that will be transferred to the State under Title VI of Public Law 106–53. This EA evaluates the lease action and respective activities that are proposed at the 22 recreation areas and their expected environmental impacts.

The alternatives evaluated consisted of either leasing the 22 recreation areas to the State or denying the lease request (No Federal Action). Improvements proposed for several of the recreation areas are evaluated in detail. Under the no action alternative, the operation of the facilities would remain under the management of the Corps until the transfer occurred (January 2002), with the Corps responsible for all operations and maintenance.

The EA and comments received from the public and other agencies have been used to determine whether the proposed action requires the preparation of an Environmental Impact Statement (EIS). Adverse effects of this action were deemed not to be significant. No adverse effects to federally listed threatened and endangered species are expected as a result of the proposed project. Conditions have been agreed upon by the Corps, the U.S. Fish and Wildlife Service, and the State that will reduce any potential effects. No historic properties would be adversely affected. The South Dakota State Historic Preservation Officer concurred with this determination, and all Missouri River Indian Tribes with an interest in the proposed action were given an opportunity to provide input on the preliminary finding. No Tribes objected or refuted the conclusions. No known sites involving the Native American Graves Protection and Repatriation Act (NAGPRA) are located on the sites proposed to be leased where proposed activities are to occur. All other environmental effects identified would be temporary and not significant.

The majority of comments received by the public and Native American Tribes relate to perceived violation of treaties. Although Tribes are concerned that the lease of lands to the State would provide in essence an interest in the lands, the land would stay in Federal ownership throughout the short term of the lease, and activities thereon would be subject to Federal environmental and cultural protection laws.

The cumulative effects of reasonably foreseeable future actions without the leases were assessed, including proposed urban development, land transfers, habitat mitigation, bank stabilization, recreation development, and future development on Tribal lands. The with and without lease future conditions would be the same. Therefore, the incremental cumulative impact of the proposed activities under the lease is not significant.

It is my finding that the proposed action will not have a significant adverse effect on the environment and will not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement will not be prepared.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01–2776 Filed 2–1–01; 8:45 am]

BILLING CODE 3710–62–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. Docket No. ER01–556–000, ER01–557–000, ER01–558–000, ER01–559–000, ER01–560–000]**

### Constellation Power Source; Notice of Issuance of Order

January 29, 2001.

Constellation Power Source (Constellation) submitted for filing a rate schedule under which Constellation will engage in wholesale electric power and energy transactions at market-based rates. Constellation also requested waiver of various Commission regulations. In particular, Constellation requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuance of securities and assumptions of liability by Constellation.

On January 19, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Constellation should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Constellation is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of Constellation's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 20, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2837 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–747–001]**

### Attala Generating Company, LLC; Notice of Filing

January 29, 2001.

Take notice that on January 24, 2001, Attala Generating Company, LLC submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an amendment to its FERC Electric Tariff No. 1 that was included in its application for authorization to sell capacity, energy, and certain Ancillary Services at market-based rates filed with the Commission on December 21, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 8, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2840 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–688–000]**

### IPP Energy LLC; Notice of Issuance of Order

January 29, 2001.

IPP Energy LLC (IPP) submitted for filing a rate schedule under which IPP will engage in wholesale electric power and energy transactions at market-based rates. IPP also requested waiver of various Commission regulations. In particular, IPP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by IPP.

On January 19, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by IPP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, IPP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of IPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 20, 2001.

Copies of the full text of the Order are available fro the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rim.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2839 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG01–102–000]**

### Panda Culloden Power, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

January 26, 2001.

Take notice that on January 12, 2001, Panda Culloden Power, L.P. (Panda) with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and part 365 of the Commission's regulations.

Panda is a Delaware limited partnership, which will construct, own and operate a nominal 1100 MW natural gas-fired generating facility within the region governed by the East Central Area Reliability Coordination Agreement (ECAR) and sell electricity at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before February 16, 2001, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the

Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2833 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–687–000]**

### Reliant Energy Aurora, LP; Notice of Issuance of Order

January 29, 2001.

Reliant Energy Aurora, LP (Reliant Aurora) submitted for filing a rate schedule under which Reliant Aurora will engage in wholesale electric power and energy transactions tar market-based rates. Reliant Aurora also requested waiver of various Commission regulations. In particular, Reliant Aurora requested that the commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Reliant Aurora.

On January 17, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Reliant Aurora should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 3856.214).

Absent a request for hearing within this period, Reliant Aurora is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Reliant Aurora's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 16, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2838 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–67–000]**

### Southwest Gas Storage Company; Notice of Application

January 29, 2001.

On January 17, 2001, Southwest Gas Storage Company (Southwest), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP01–67–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and subpart A of Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing Southwest to abandon by removal and replace certain pipeline facilities, and to recomplete five existing injection/withdrawal wells in the Howell Storage Field in Livingston County, Michigan, all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* (call 202–208–2222 for assistance).

Specifically, Southwest proposes to re-enter five existing wells and drill a horizontal lateral wellbore extension from each well and to replace existing 4-inch storage lines with 8-inch lines in two Phases. Southwest asserts that the completion of the wellbore extensions will improve the ratio of working gas to base gas, with working gas increasing by approximately 1.25 Bcf and the amount of base gas decreasing by a corresponding amount. Southwest further states the reworking of the wells will yield higher maximum withdrawal and maximum injection rates toward the beginning of withdrawal season, with the maximum withdrawal rate increasing from 360 MMcf/d to 410 MMcf/d and the maximum injection rate increasing from 120 MMcf/d to 150 MMcf/d, thus allowing Southwest to improve operation of the Howell Storage Field.

Southwest estimates the cost of Phase I, which involves the re-entering of two of the five existing wells, excluding the segment of pipe to be abandoned by removal, at approximately $1,683,500, while the estimated cost of Phase II, which involves the re-entering of the remaining three wells, is approximately $2,222,100. Southwest states that the cost of abandonment of the existing 4-inch storage lines is approximately $11,000.

Any questions regarding this application should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056–5306 at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 20, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2835 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–6–000]**

### Gulfstream Natural Gas System, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Gulfstream Pipeline Project

January 29, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (FEIS) on natural gas pipeline facilities proposed by Gulfstream Natural Gas System, L.L.C. (Gulfstream) in the above-referenced docket. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS menu, and follow the instructions.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the Gulfstream Pipeline Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The FEIS assesses the potential environmental effects of the construction and operation of the proposed facilities in Mississippi, Alabama, and Florida, and State and Federal waters in the Gulf of Mexico. Gulfstream proposes to construct about 743 miles of various diameter pipeline, 128,000 horsepower (hp) of compression, 1 pressure regulating station, 22 meter stations, 4 manifold stations, 34 mainline valve sites, and 28 pig launchers or receivers.

The purpose of the Gulfstream Pipeline Project is to provide natural gas transportation service for up to 1.13 billion cubic feet per day (bcf/d) of natural gas from supply areas in Alabama and Mississippi to new and existing markets in Florida. The primary market is for natural gas-fueled electric generation plants. The plants are needed to meet the forecasted substantial increases in consumption driven by Florida's projected population growth over the next 10 to 20 years.

This FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, the FEIS has been mailed to Federal, state, and local agencies; public interest groups, individuals, and affected landowners who requested a copy of the FEIS; libraries; newspapers; and parties to this proceeding. The document is also available for viewing on the FERC website at www.ferc.fed.us, using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC website described in the preceding paragraph. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2834 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–114–000]**

### Trunkline Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Line 100–1 Abandonment Project

January 29, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed for abandonment by Trunkline Gas Company (Trunkline) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed Line 100–1 Abandonment Project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of abandoning

719.5 miles of Trunkline's Line 100–1 pipeline. The 26-inch-diameter Line 100–1 extends from Douglas County, Illinois through Kentucky, Tennessee, Arkansas, and Mississippi, and terminates in Beauregard Parish, Louisiana. Abandonment activities would involve minor ground disturbing activities at 147 sites along Line 100–1 to disconnect it from the other two pipelines on this portion of Trunkline's system. The majority of the work would be conducted at existing compressor station and meter station sites or within Trunkline's existing right-of-way. About 67 acres would be disturbed by these activities.

Following its abandonment, Line 100–1 would be transferred to Trunkline's affiliate, CMS Trunkline Pipeline Holdings, Inc. (TPH). TPH has entered into an agreement with Centennial Pipeline (a joint venture between Texas Eastern Products Pipeline Company, L.P. [TEPPCO] and Marathon Ashland Petroleum, L.L.C. [Marathon] to convert and jointly operate the pipeline to transport refined petroleum products from the Texas-Louisiana Gulf Coast area to the Midwest. Although the conversion and related construction activities proposed by Centennial Pipeline (Centennial) are beyond the Commission's regulatory jurisdiction, the EA identifies the location and status of Centennial's proposed facilities, any known environmental impacts, and the agencies responsible for issuing permits for Centennial's project.

Once Line 100–1 has been disconnected from Trunkline's system, Centennial plans to conduct the following activities to convert Line 100–1 and develop its refined petroleum transportation system:

- Construct taps, valves, and other minor appurtenant facilities at 171 work sites (101 of which would also be affected by Trunkline's abandonment activities);
- Construct six new pump stations adjacent to Line 100–1;
- Construct about 75 miles of new 24-inch-diameter pipeline extending from TEPPCO's existing Beaumont, Texas breakout storage terminal (BST) to the southern end of Line 100–1 near Longville, Louisiana;
- Construct a new 2.57-million-barrel BST near Creal Springs, Illinois [1]; and
- Construct an interconnect to Marathon's existing pipeline system near Effingham, Illinois.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. 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 comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 1, PJ–11.1;
- Reference Docket No. CP00–114–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 26, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket#'' from the RIMs Menu, and follow the instruction. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2836 Filed 2–01–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Centennial began site work at its Creal Springs BST in October 2000. Foundation work is scheduled to begin at the site in late January 2001.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No:* DI01–4–000.

c. *Date Filed:* December 22, 2000.

d. *Applicant:* North Hartland, LLC.

e. *Name of Project:* North Hartland Project.

f. *Location:* The North Hartland Hydroelectric Project is located at the U.S. Army Corps of Engineers' North Hartland Dam on the Ottauquechee River in Windsor County, Vermont. The project does not occupy additional Federal or Tribal land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Robert L. Carey, Jr., North Hartland, LLC, P.O. Box 1107, Great Falls, VA 22066, telephone (703) 561–0611, FAX (703) 561–0609, E-Mail *rcarey84@erols.com*

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: *diane.murray@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* February 23, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.201(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

Please include the docket number (DI01–4–000) on any comments or motions filed.

k. Description of Project: The existing project consists of: (1) an outlet lined with a 12-foot diameter steel pipe; (2) a 470-foot-long extension of the existing outlet connecting to two 7.5-foot diameter penstocks; (3) a powerhouse containing two 2,000 kW generating units; (4) a 12-foot diameter gated bypass outlet works branching from the penstock upstream of the powerhouse; and (5) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre–1935 design or operation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address 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.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'',''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2841 Filed 2–1–01; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Amendment of license to remove the 20.23-mile-long section of the jurisdictional Lolo-Oxbow Transmission Line from the Project No. 1971 license and include that transmission line in the Project No. 2261 license.

b. *Projects Nos:* 1971–070 and 2261–002.

c. *Date Filed:* November 20, 2000.

d. *Applicants:* Idaho Power Company Avista Corporation.

e. *Names of Projects:* Hells Canyon Lolo-Divide Creek Transmission Line (minor part).

f. *Location:* The Hells Canyon Project is located on the Snake River, in Baker County, Oregon, and Adams County, Idaho, and the Lolo-Divide Creek Transmission Line Project is located in Nez Perce and Idaho Counties, Idaho. The 20.23-mile-long section of the Lolo-Oxbow Transmission Line is located in Nez Perce County, Oregon.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r), Section 4.201 of the Commission's Regulations.

h. *Applicant Contact for Idaho Power Company:* Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, 1221 West Idaho St., P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *Applicant Contact for Avista Corp.:* Steven A. Fry, Avista Corporation, P.O. Box 3727, Spokane, WA 99220–3727, (509) 495–4084; William Madden, Jr., Winston & Strawn, 1400 L. St., NW., Washington, DC 20005–3502.

j. *FERC Contact:* William Guey-Lee, (202) 219–2808, or william.gueylee@ferc.fed.us.

k. *Deadline for filing comments, motions to intervene or protests:* March 8, 2001.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm

1. *Description of Project:* The applicants are requesting Commission approval to delete the 20.23-mile-long section of the Lolo-Oxbow Transmission Line from the license for Project No. 1971, and to add it to the license for Project No. 2261. On December 18, 2000, the Commission approved the sale of the above section of the transmission line from Idaho Power Company to Avista Corporation.

m. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in items h and i above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. 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.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original; and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2842 Filed 2–1–01; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 29, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 3090–008.

c. *Date filed:* January 27, 1999.

d. *Applicant:* Village of Lyndonville Electric Department.

e. *Name of Project:* Vail Power Project.

f. *Location:* On Passumpsic River in Caledonia County, Vermont. No Federal Lands are used in this project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)825(r).

h. *Applicant Contact:* Mr. Kenneth C. Mason, Village of Lyndonville Electric Department, 20 Park Avenue, P.O. Box 167, Lyndonville, VT 05851, (802) 626–3366.

i. *FERC Contact:* Any questions on this notice should be addressed to Timothy Looney, E-mail address: *timothy.looney@ferc.fed.us*, or telephone 202–219–2852.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

1. *Description of Project:* The existing project consists of: (1) the 96-foot-long ogee-shaped concrete gravity dam varying in height from 8 to 15 feet and topped with 20 ⅝-inch-high wooden flashboards; (2) the impoundment having a surface area of 79 acres, with negligible storage and normal water surface elevation of 688.63 feet msl; (3) the intake structure; (4) the powerhouse containing one generating unit with an installed capacity of 350–kW; (5) the tailrace; (6) a 0.8-mile-long, 2.4–kV transmission line; and (7) appurtenant facilities.

The applicant does not propose any modifications to the project features or operation.

The project would have an average annual generation of 1,850 MWh and would be used to provide energy to its customers.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2843 Filed 2–1–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2001.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 4656–015.

c. *Date Filed:* December 18, 2000.

d. *Applicant:* Boise-Kuna Irrigation District, Napa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District.

e. *Name of Project:* Arrowrock Dam.

f. *Location:* At the U.S. Bureau of Reclamation's (Reclamation) existing Arrowrock Dam and Reservoir on the South Fork of the Boise River, in Elmore and Ada Counties, Idaho. Parts of the project would occupy lands managed by Reclamation and the U.S. Corps of Engineers and lands managed by the U.S. Forest Service within the Boise National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Albert P. Barker, Hawley Troxell Ennis & Hawley LLP, 877 Main Street, Suite 1000, Boise, ID 83701–1617, (208) 344–6000.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* March 1, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the Project Number (4656–015) on any comments or motions filed.

k. Description of Amendment: The licensees request, among other things, pursuant to sections 4.200(c) and 4.202(a) of the Commission's regulations and Public Law No. 106–343, that the license be amended to extend the deadline for commencement of construction to March 26, 2003. The licensees also request that the deadline for completion of construction be extended to March 26, 2005.

l. Location of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address 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.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2844 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Request for Extension of Time To Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

January 29, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time.

b. *Project No:* 11060–003.

c. *Date Filed:* December 20, 2000.

d. *Applicant:* J. M. Miller Enterprises, Inc.

e. *Name and Location of Project:* The Sahko Hydroelectric Project is located on the Kastelu Drain about 0.5 mile from its confluence with the Snake River in Twin Falls County, Idaho. The project does not occupy federal or tribal land.

f. *Filed Pursuant to:* Federal Power Act, Section 13.

g. *Applicant Contact:* Mr. James M. Miller, P.O. Box 1, Filer, ID 83328, (208) 326–4729.

h. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell at (202) 219–2806.

i. *Deadline for filing comments and or motions:* March 1, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11060–003) on any comments or motions filed.

j. *Description of Proposal:* The licensee requests a two-year extension of time to start and complete construction. The licensee reports it has secured a stream modification permit from the U.S. Army Corps of Engineers and met with representative of the Twin Fall Canal Company to discuss sediment control and flow volumes. The licensee indicates it is reanalyzing project economics but anticipates hydropower marketing in the northwest U.S. will be favorable in the long term.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the

Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. 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.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–2845 Filed 2–1–01; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6615–1]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 *www.epa.gov/oeca/ofa.*

Weekly Receipt of Environmental Impact Statements Filed January 22, 2001 Through January 26, 2001, Pursuant to 40 CFR 1506.9.

EIS No. 010027, FINAL EIS, FRC, AL, FL, MS, Gulfstream Natural Gas System Project, Construction and Operation, To Provide Natural Gas Transportation Service, AL, MS and FL, Due: March 05, 2001, Contact: Paul McKee (202) 208–1611.

EIS No. 010028, DRAFT EIS, FHW, IL, Illinois Route 3 (FAP–14) Relocation, Improved Transportation from Sauget to Venice, Funding, NPDES Permit and COE Section 404 Permit, Madison and St. Clair Counties, IL, Due: March 19, 2001, Contact: Ronald C. Marshall (217) 492–4640.

*Amended Notices:*

EIS No. 000447, DRAFT EIS, HUD, NY, City of Yonkers Construction of a 524 Units of Mixed-Income Housing at 1105–11354 Warburton Avenue, River Club Apartment Complex, City of Yonkers, Westchester County, NY, February 05, 2001, Published FR 12–22–00—This draft statement was inadvertently filed with EPA on 12–11–00. The correct NOA was published in the 12–01–00 FR, CEQ #000410, Filed 11/22/01, the correct date comments are due back to the preparing agency is 01/30/01.

Dated: January 30, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–2880 Filed 2–1–01; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6614–9]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements
Filed January 16, 2001 Through January 19, 2001
Pursuant to 40 CFR 1506.9.

**Note:** This notice of availability of EPA EISs filed during the week of January 16, 2001 through January 19, 2001 which should have appeared in the January 26, 2001 **Federal Register** is appearing in the February 2, 2001 **Federal Register**. The 45-day review period and 30-day wait periods will be calculated from January 26, 2001.

*EIS No. 010019, DRAFT EIS, EDA, CT,* Adrian's Landing Project, Development from Columbus Boulevard south of the Founders Bridge and Riverfront Plaza, City of Hartford, CT, Due: March 12, 2001, Contact: Dennis Johnson (860) 522–4888.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 01/26/2001.

*EIS No. 010020, DRAFT SUPPLEMENT, EPA, MO,* Lower Meramec Basin Wastewater Management Plan, Proposed New Regional Wastewater Treatment Plan and Associated Facilities, St. Louis and Jefferson Counties, MO, Due: March 12, 2001, Contact: Joe Cothern (913) 551–7148.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 01/26/2001.

*EIS No. 010021, DRAFT EIS, IBR, SD,* Angostura Unit—(Dam, Reservoir and Irrigation Facilities) Renewal of a Long-Term Water Service Contract, Cheyenne River Basin, Pine Ridge Reservation, Bismarck County, SD, Due: April 27, 2001, Contact: Kenneth Parr (605) 394–9751.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 01/26/2001.

*EIS No. 010022, FINAL EIS, FHW, MN,* TH–23 Reconstruction, MN–TH–22 in Richmond extending through the Cities of Richmond, Cold Spring and Rockville to I–94, Funding, Stearns County, MN, Due: February 26, 2001, Contact: Cheryl Martin (651) 291–6120.

This EIS should have appeared in the FR on 01/26/2001. The 30-day Wait Period is Calculated from 01/26/2001.

*EIS No. 010023, FOURTH DRAFT SUPPLEMENT, NOA, AK,* Groundfish Fishery Management Plan, Implementation, Bering Sea and Aleutian Islands, AK, Due: April 26, 2001, Contact: James W. Balsiger (907) 586–7221.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 02/26/2001.

*EIS No. 010024, DRAFT EIS, FAA, CA,* Los Angeles International Airports, Proposed Master Plan Improvements on Runway, New Taxiways, New Terminal, New Air Cargo and Maintenance, Funding, Los Angeles, Los Angeles County, CA, Due: July 25,

2001, Contact: David B. Kessler (310) 725–3615.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 01/26/2001.

*EIS No. 010025, DRAFT EIS, FHW, MI,* M–24 Reconstruction Project, From One Mile North of the Oakland County Line to I–69, Funding, Lapeer County, MI, Due: March 12, 2001, Contact: James A. Kirschensteiner (517) 377–1880.

This EIS should have appeared in the FR on 01/26/2001. The 45-day Review Period is Calculated from 01/26/2001.

*EIS No. 010026, FINAL EIS, USN,* Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), To Improved Capability to Detect Quiter and Harder-to-Find Foreign Submarines, Implementation, Due: February 26, 2001, Contact: J. S. Johnson (703) 601–1687.

This EIS should have appeared in the FR on 01/26/2001. The 30-day Wait Period is Calculated from 01/26/2001.

*Amended Notices*

*EIS No. 010003, DRAFT EIS, NOA, HI, GU, AS,* Coral Reef Ecosystems of the Western Pacific Region, Fishery Management Plan, Including Amendments to Four Existing (FMPs), Amendment 7—Bottomfish and Seamount Groundfish Fisheries, Amendment 11—Crustaceans Fisheries; Amendment 5—Precious Corals Fisheries and Amendment 10—Pelagics Fisheries, HI, GU and AS, Due: February 26, 2001, Contact: Charles Karnella (808) 673–2937.

Revision of FR notice published on 01/12/2001: Contact Person's Phone Number Changed from 202–482–5916 to 808–673–2937. This amended notice should have appeared in the FR on 01/26/2001.

Dated: January 30, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–2881 Filed 2–1–01; 8:45 am]

**BILLING CODE 6560–50–U**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6615–2]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

### Draft EISs

ERP No. D–AFS–L65370–OR Rating LO, South Bend Weigh and Safety Station Establishment, Special Use Permit for Construction, Maintenance and Operation, Deschutes National Forest Lands along US 97 near the Newberry National Volcanic Monument, Deschutes County, OR.

*Summary:* EPA expressed a lack of objections with the proposed project. However, EPA recommended that the cumulative effects analyses on Mule Deer be revised including additional information to support conclusions presented in the EIS.

ERP No. D–BLM–G65077–NM Rating LO, Santo Domingo Pueblo and Bureau of Land Management Proposed Land Exchange Project, Sandoval and Santa Fe Counties, NM.

*Summary:* EPA had no objections to the selection of the preferred alternative and was pleased with the inclusion of conservation easements.

ERP No. D–IBR–L28008–ID Rating EO2, Arrowrock Dam Outlet Works Rehabilitation, Construction and Operation, To Remove 10 Lower Level Ensign Valves and Replace with 10 Clamshell Gates, Boise River, City of Boise, ID.

*Summary:* EPA expressed objections because all alternatives would likely result in violations of Idaho water quality standards (WQS), including the exceedance of the Total Maximum Daily Load allocation of sediment, and endanger threatened bull trout populations that overwinter in Arrowrock Reservoir. EPA recommends that the Bureau examine additional alternatives and mitigation measures to avoid or minimize impacts to water quality and bull trout and that the EIS compare results of numerical modeling for water quality to WQS thresholds, include additional information on the effects to bull trout, and contain a more comprehensive monitoring plan.

ERP No. DS–FHW–J40149–CO Rating EC2, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62, Clear Creek County Road 381 and Forest Development Road 118), Additional Alternative includes Rehabilitation, Light Reconstruction and Full Construction, Funding, Clear Creek and Park Counties, CO.

*Summary:* EPA continues to express concerns regarding project impacts to wetlands, water quality and wildlife.

ERP No. DS–NOA–B91025–00 Rating LO, Federal Lobster Management in the Exclusive Economic Service, Implementation, American Lobster Fishery Management Plan, NY, NH and MA.

*Summary:* EPA had no objections to the project.

### Final EISs

ERP No. F–AFS–A65168–00, Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas.

*Summary:* While the final EIS generally addressed EPA's major concerns, EPA did suggest that the Record of Decision outline the details of the Tongass transition regarding duration of timber sale contracts pursuant to 36 CFR 223.31.

ERP No. F–AFS–J60020–00 Yellowstone Pipeline Proposed Changes to Existing Pipeline between Thompson Fall and Kingston, Sanders County, MT and Shoshone County, ID.

*Summary:* EPA supports the Forest Service's efforts to reduce the risk of future pipeline exposoures, and conflicts between maintenance and repair of the pipeline and stream protection goals. EPA also suggests that additional recommended mitigation measures shown in Appendix E (FEIS) be included in final preferred alternative selected in the Record of Decision, to further reduce the potential for petroleum releases.

ERP No. F–AFS–J65326–MT, Ashland Post-Fire Project, Proposal to Implement Restoration Activities to Maintain Watershed, Custer National Forest, Powder River and Rosebud Counties, MT.

*Summary:* EPA supports the purposed project to stabilize soils and maintain watershed function by minimizing soil erosion and maintaining soil productivity, stream function and water quality. EPA continues to express concerns with erosion and sediment production from timber harvest activities.

ERP No. F–BLM–A99217–00, Programmatic EIS—Surface Management Regulations for Locatable Mineral Operation, (43 CFR 3809), Public Land.

*Summary:* While the FEIS did address EPA's concerns with performance standards, bonding, reclamation provisions and ''unnecessary or undue degradation'' EPA continues to express

concerns with potential environmental impacts resulting from inadequate financial guarantees and not fully linking the EIS to the plan of operation and applicable permits.

ERP No. F–COE–D36118–DE, Fenwick Island Feasibility Study, Storm Damage Reduction, Delaware Coast from Cape Henlopen to Fenwick Island, Protective Berm and Dune Construction, Community of Fenwick Island, Sussex County, DE.

*Summary:* EPA did not have any objections regarding this proposed project.

ERP No. F–DOD–A11075–00, National Missile Defense (NMD) Deployment System, Analysis of Possible Deployment Sites: AK, AS and ND.

*Summary:* While EPA has no additional concerns, EPA did express concern about the PAVE PWQS radar facilities which are a component of NMD and will be assessed in a separate EIS.

ERP No. F–DOE–L00008–00, PROGRAMMATIC—Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test, ID, TN, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. F–FAA–B51019–RI, T.F. Green Airport Project, To Implement the Part 150 Noise Abatement Procedures in a Safe and Efficient Manner, Warwick County, RI.

*Summary:* EPA requested that the Record of Decision include a more thorough EJ analysis, additional information about cumulative impacts, and firm commitments to mitigation measures.

ERP No. F–FHW–D40302–WV, US 522 Upgrade and Improvements Project, From the Virginia State Line through Morgan County to the Maryland State Line, Funding, NPDES and COE Section 404 Permit, Berkeley Springs, Morgan County, WV.

*Summary:* EPA maintained concerns with the potential wetland, stream, and residential impacts of the proposed highway project. In addition, EPA expressed concern with the potential impacts this project may have on the Potomac River Bridge and Route 522 in Maryland.

ERP No. F–FHW–K53008–NV, Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV.

*Summary:* EPA expressed continuing concerns regarding the adequacy of the Dust Control Plan. EPA requested the inclusion of specific PM–10 control measures in the Dust Control Plan and requested a stated commitment to these measures from the lead agency in the Record of Decision.

ERP No. F–FHW–L40204–WA, NE 8TH/I–405 Interchange Project, Construction, Funding, Right-of-Way Use Permit and NPDES Stormwater Permit, City of Bellevue, King County, WA.

*Summary:* Due to a lack of objections. EPA did not comment on this proposed project.

ERP No. F–NPS–F39038–00, Lower Saint Croix National Scenic Riverway Cooperative Management Plan, Implementation, MN and WI.

*Summary:* EPA continued to express concerns about impacts to water quality, managing camping to reduce trampling and inappropriate disposal of human waste and the zebra mussel infestation of the Lower St. Croix River. EPA asked that these issues be addressed in the Record of Decision.

ERP No. F–USN–C11017–NY, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY.

*Summary:* Although the FEIS addressed a number of issues identified in EPA's comment letter on the DEIS, there are still outstanding concerns about transportation-related air quality impacts and indoor air quality.

ERP No. FS–AFS–J65287–UT, Rhyolite Fuel Reduction Project to the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

*Summary:* No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–E64016–FL, Florida Keys National Marine Sanctuary (FKNMS) Comprehensive Management Plan, Updated Information concerning a Proposal to Establish a No-Take Ecological Reserve in the Tortugas Region, FL.

*Summary:* EPA had concerns about preventing unauthorized activities in the ''no-take'' zones and controlling access to these areas, enforcement, and jurisdiction of the project because there are many multi-jurisdictional (Local/State/Federal) agencies that were and will be involved in the completion of this project. In particular, management details for the Tortugas Ecological Reserve warrant further discussion in the FSEIS.

ERP No. FS–UAF–E11032–FL, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: January 30, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01–2882 Filed 2–1–01; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34159A; FRL–6765–7]**

## Amendment to Reregistration Eligibility Decision for Aluminum Phosphide and Magnesium Phosphide; Notice of Availability

**AGENCY** Environmental Protection Agency (EPA).

**ACTION** Notice.

**SUMMARY** In the Reregistration Eligibility Decision (RED) document issued for Aluminum Phosphide and Magnesium Phosphide in December 1998, several risks of concern were identified and mitigation measures proposed to address those risks. The RED also set forth a stakeholder process for obtaining input on the proposed mitigation measures or suggestions on how other methods could be employed to reduce the risks identified in the document. On November 8, 2000, after extensive discussions with USDA and interested stakeholders, the registrants of these pesticide active ingredients (a.i.) entered into a Memorandum of Agreement (MOA) with the Agency, the purpose of which is to implement mitigation measures to reduce risks and to gather information to better characterize risks to workers and bystanders. This MOA, which amends the Aluminum Phosphide and Magnesium Phosphide RED, is summarized below.

**DATES:** Comments, identified by docket control number OPP–34159A, must be received on or before March 5, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34159A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Mark Hartman, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460; telephone number: (703) 308–0734; fax number: (703) 308–8041; e-mail address: hartman.mark@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons or companies who fumigate grains and other commodities, trade organizations whose membership relies on fumigation and pest control operators who fumigate rodent burrows. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the reregistration status of aluminum and magnesium phosphide on the internet, go directly http://www.epa.gov/REDs, and select ''aluminum phosphide'' or ''magnesium phosphide.''.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34159A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electroniccomments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34159A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34159A. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

*What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA completed a risk assessment for the pest control fumigants aluminum and magnesium phosphide in September 1998. These materials release highly toxic phosphine gas when they react with the moisture in the atmosphere. This risk assessment identified risks of concern for applicators and occupational/residential bystanders, based on the available data and information. EPA issued a RED for Aluminum and Magnesium Phosphide in December 1998. The RED contained a series of proposed risk mitigation measures which are the focal point of an ongoing stakeholder process. These measures generally have been viewed very negatively by members of the user community who believe that implementation of such measures would be tantamount to cancellation of the chemical.

In the RED, EPA proposed risk mitigation measures which were designed to address the risks identified

in the risk assessment. The Agency, recognizing the importance of phosphine to agriculture, the lack of viable alternatives, and the potential impacts of the initial set of mitigation measures on the continued use of the chemicals, committed to pursue an extensive stakeholder involvement process regarding these measures with the expressed intent to gather information on the impacts of the proposed measures and, most importantly, to explore possible alternative mitigation measures that would achieve risk reduction while maintaining the ability to continue to use phosphine and achieve the benefits derived from that use.

The Agency has conducted an intensive stakeholder involvement program to address the risk issues associated with the use of phosphine fumigants. This process began with a lengthy public comment period. Over 570 comments were received during the comment period which ended in March 1999. The main issues of contention were the 500 foot buffer zone, notification of local residents prior to fumigation, and the lowering of the exposure standard from 0.3 ppm to 0.03 ppm, each of which were proposed as mitigation measures in the RED.

Further, USDA commissioned a Phosphine Task Force in 1999, whose purpose was to work with the Agency and the agricultural community during the phosphine review process. EPA worked closely with the Phosphine Task Force to further discuss use of fumigants and related risk issues, and to explore other measures to further mitigate those risks.

In addition to the Phosphine Task Force, the Phosphine Coalition, a broad-based group consisting of over 80 registrants, fumigation companies, trade organizations and users, was formed in 1998 to address issues related to the reregistration of the phosphine fumigants. This group has worked with EPA, USDA, and the registrants on the phosphine issue. Among other activities, the Phosphine Coalition arranged fumigation demonstrations in the field where Agency personnel and the user community had productive interactions. This group has also figured prominently in technical discussions with the registrants and EPA on risk assessment and risk management issues, and has provided extensive feedback and valuable input to the Agency throughout the reregistration process and the development of the MOA. Meanwhile, EPA has also conducted outreach with state lead agencies including several presentations at SFIREG and conference calls with interested state officials.

Based in large part on input and feedback received during this stakeholder process, EPA and the registrants have entered into a Memorandum of Agreement, the purpose of which is to implement mitigation measures to meaningfully reduce risks and gather information to better characterize risks to workers and bystanders. The following is a short summary of the main points in the agreement. The text of the entire agreement can be found at http://www.epa.gov/REDs.

1. Site Fumigation Management Plans
   (a) Monitoring
   (b) Notification of authorities
   (c) Notification of bystanders in the event of a release
2. Development of guidance for plans as part of the label language.
3. Conducting Air monitoring Studies (worker and bystander)
4. Toxicology Studies or 0.01 ppm standard
5. 2 annual incident analyses reports
6. Financial and technical support for a training and certification improvement program.
7. Prohibition of in-transit aeration
8. Stricter definition of ''under the supervision of a certified applicator''
9. Enhanced notification of receivers of fumigated rail cars and other containers
10. Two-person rule for fumigations requiring entry into a structure
11. Provision of safety material to residents having burrows treated

The MOA requires that registrants submit draft interim fumigation management plan guidance to the EPA by January 1, 2001 which has been completed. Draft label revisions are due to the EPA from the registrants no later than June 1, 2001. Further, the MOA requires the submission of the first annual incident analysis report and draft protocols/feasibility studies for the collection of monitoring data to the EPA by April 1, 2001. The training and certification improvement program required in the MOA will also begin in 2001.

### List of Subjects

Environmental protection, aluminum phosphide, magnesium phosphide,reregistration.

Dated:January 18, 2001.

**Jack E. Housenger,**

*Acting Director, Special Review and Registration Division, Office of Pesticide Programs*

[FR Doc. 01–2773 Filed 2–1–01; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1354–DR]**

## Arkansas; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1354–DR), dated December 29, 2000, and related determinations.

**EFFECTIVE DATE:** January 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 29, 2000:

Greene County for Individual Assistance.

Cleburne, Fulton, Marion, and Stone Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 01–2822 Filed 2–1–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3161–EM]**

## Illinois; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an

emergency for the State of Illinois (FEMA–3161–EM), dated January 17, 2001, and related determinations.

**EFFECTIVE DATE:** January 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated January 17, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the emergency conditions in certain areas of Illinois, resulting from record/near record snow on December 10–31, 2000, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared emergency:

Bureau, Cook, DeWitt, DuPage, Ford, Fulton, Grundy, Henry, Iroquois, Kane, Kankakee, Kendall, Lake, Livingston, Marshall, McDonough, McHenry, McLean, Stark, Will, and Winnebago Counties for Emergency Protective measures under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 01–2824 Filed 2–1–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3161–EM]**

### Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–3161–EM), dated January 17, 2001, and related determinations.

**EFFECTIVE DATE:** January 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 17, 2001:

Henderson, La Salle, Menard, Ogle, and Peoria for emergency protective measures under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 01–2825 Filed 2–1–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3162–EM]**

### Indiana; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Indiana (FEMA–3162–EM), dated January 24, 2001, and related determinations.

**EFFECTIVE DATE:** January 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated January 24, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the emergency conditions in certain areas of Indiana, resulting from record/near record snow on December 11–31, 2000, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for

subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert Colangelo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared emergency:

Allen, Carroll, Cass, Elkhart, Fulton, Howard, Huntington, Jasper, Kosciusko, Lagrange, Lake, Miami, Noble, Pulaski, St. Joseph, Steuben, White, and Whitley Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**John W. Magaw,**

*Acting Director.*

[FR Doc. 01–2826 Filed 2–1–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1357–DR]**

### Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1357–DR), dated January 12, 2001, and related determinations.

**EFFECTIVE DATE:** January 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 12, 2001:

Bossier and Ouachita Parishes for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 01–2823 Filed 2–1–01; 8:45am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3163–EM]**

### Wisconsin; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Wisconsin (FEMA–3163–EM), dated January 24, 2001, and related determinations.

**EFFECTIVE DATE:** January 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated January 24, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the emergency conditions in certain areas of the State of Wisconsin, resulting from record/near record snow on December 11–31, 2000, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you may deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared emergency:

Dane, Door, Green, Kenosha, Kewaunee, Manitowoc, Milwaukee, Racine, Rock, Sheboygan, and Walworth Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**John W. Magaw,**

*Acting Director.*

[FR Doc. 01–2827 Filed 2–1–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.)

(BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 March 1, 2001.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Border Capital Group, Inc.*, McAllen, Texas, and Border Capital Group of Delaware, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of McAllen National Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, January 30, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–2873 Filed 2–1–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, February 7, 2001.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**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: January 31, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01–2938 Filed 1–31–01; 10:15 am]

BILLING CODE 6210–01–P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 10:00 a.m. (EST) February 12, 2001.

**PLACE:** 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the January 8, 2001, Board member meeting.

2. Labor Department audit briefing.

3. Thrift Savings Plan activity report by the Executive Director.

4. Investment policy review.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 31, 2001.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 01–2974 Filed 1–31–01; 1:38 pm]

BILLING CODE 6760–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 01020]**

### Childhood Lead Poisoning Prevention Programs (CLPPP); Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for new State and competing continuation State programs to develop and improve Childhood Lead Poisoning Prevention activities which include building Statewide capacity to conduct surveillance of blood lead levels in children. CDC is committed to achieving the health promotion and disease prevention objectives of A Healthy People, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Environmental Health. For a copy of ''Healthy People 2010,'' (Full Report: Stock No. 017–001–00547–9), write or call: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800 or visit the Internet site: http://www.health.gov/healthypeople/.

The purpose of this program is to provide the impetus for the development, implementation, expansion, and evaluation of State and local childhood lead poisoning prevention program activities which include Statewide surveillance capacity to determine areas at high-risk for lead exposure. Also, this cooperative agreement is to carry out the core public health functions of Assessment, Policy Development, and Assurance in childhood lead poisoning prevention programs.

Funding for this program will be to:

1. Develop and/or enhance a surveillance system that monitors all blood lead levels (BLLs).

2. Assure screening of children who are at high-risk of lead exposure and follow-up care for children who are identified with elevated BLLs.

3. Assure awareness and intervention for the general public and affected professionals in relation to preventing childhood lead poisoning.

4. Expand primary prevention of childhood lead poisoning in high-risk areas in collaboration with appropriate government and community-based organizations.

As programs have shifted emphasis from providing direct screening and follow-up services to the core public health functions, cooperative agreement funds may be used to support and emphasize health department responsibilities to ensure high-risk children are screened and receive appropriate follow-up services. This includes developing and improving coalitions and partnerships; conducting better and more sophisticated assessments; and developing and evaluating new and existing policies, program performance, and effectiveness based on established goals and objectives.

**B. Eligible Applicants**

Applicant eligibility is divided into Part A (New Applicants), Part B (Competing Continuation), and Part C (Supplemental Studies) defined in the following section: In FY 2000, CDC shifted its program emphasis from the direct funding of local programs with jurisdictional populations of 500,000 to the funding of State programs. However, the top five metropolitan statistical areas (SMSAs)/largest cities in the United States based on census data will be eligible for direct funding for childhood lead poisoning prevention activities indefinitely. They are New York City, Los Angeles, Chicago, Philadelphia, and Houston.

I. Part A: Eligible applicants are State health departments or other State health agencies or departments not currently funded by CDC and any eligible SMSA not currently receiving direct funding from CDC for childhood lead poisoning prevention activities. Also eligible are health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all federally-recognized Indian tribal governments. Please note: Local Health Departments are not eligible to apply for cooperative agreement funding under Part A of this program announcement unless they are one of the top five SMSAs.

Applicants encouraged to apply under Part A are: Arkansas; Chicago; Florida; Idaho; Kentucky; Mississippi; Nevada; North Dakota; Oregon; Philadelphia; South Dakota; Tennessee; Washington and Wyoming.

2. Part B: Eligible applicants are those states currently funded by the CDC with a project period that expires June 30, 2001. These applicants are: Los Angeles; Louisiana; Massachusetts; Missouri; Montana; New Jersey; New Mexico; New York City; North Carolina; Ohio; Pennsylvania; Rhode Island; West Virginia and Vermont. In FY 2000, CDC shifted its program emphasis from the direct funding of local programs with jurisdictional populations of 500,000 to the funding of State programs. However, the top five metropolitan statistical areas (SMSAs)/largest cities in the United States based on census data will be eligible for direct funding for childhood lead poisoning prevention activities. This includes New York City and Los Angeles. These SMSAs are eligible for direct funding indefinitely under Part B.

3. Part C: Eligible applicants are those State applicants that apply under Part B or non-competing State applicant programs currently funded under a non-expired project period. For Part B applicants, funding under Part C will only be considered if the Part B application is successful and chosen for funding. All Part C applicants must meet the program requirement of submitting data to CDC's national surveillance database. Please Note: Non-competing applicants currently funded with a Part C award are not eligible.

Additional information for all State applicants: If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided (for example, the State Environmental Health Agency).

**C. Availability of Funds**

*Part A: New Applicants*

Up to $1,700,000 will be available in FY 2001 to fund up to six new applicants. CDC anticipates that awards for the first budget year will range from $75,000 to $800,000.

*Part B: Competing Continuations*

Up to $10,000,000 will be available in FY 2001 to fund up to 14 competing continuation applicants. CDC anticipates that awards for the first budget year will range from $250,000 to $1,500,000.

*Part C: Supplemental Studies*

Up to $400,000 will be awarded in FY 2001 to fund up to four assessment/evaluation studies with a two-year project period or not to exceed the current established project period. These funds will be awarded to support the development of alternative surveillance assessments and/or to conduct evaluation of the impact of lead screening recommendations. Awards are expected to range from $70,000 to $100,000, with the average award being approximately $85,000. Funds will be awarded for assessment/evaluation studies that address one of the following:

1. Alternative Surveillance Assessment—Assessment of lead exposure in a jurisdictional population or sub-population using an approach to surveillance that differs from the Statewide Childhood Blood Lead Surveillance (CBLS) system described in this announcement.

2. Screening Recommendation Evaluation—Evaluation of the impact of lead screening recommendations on screening for high-risk children.

Funding for State applicants: To determine the type of program activities and the associated level of funding for an individual State applicant for Part A or Part B, please refer to the table below. These are funding limits which should be used to determine program funding levels. Addendum 2 in the application package provides an explanation of the factors used to develop categorical funding limits.

FUNDING CATEGORIES BASED ON PROJECTED LEVEL OF EFFORT REQUIRED TO PROVIDE LEAD POISONING ACTIVITIES TO A STATE POPULATION

| | |
|---|---|
| Alabama | 2 |
| Alaska | 3 |
| Arizona | 3 |
| Arkansas | 2 |
| California * | 1 |
| Colorado | 3 |
| Connecticut | 2 |
| Delaware | 3 |
| Florida * | 3 |
| Georgia | 2 |
| Hawaii | 3 |
| Idaho | 3 |
| Illinois | 1 |
| Indiana * | 3 |
| Iowa | 2 |
| Kansas | 2 |
| Kentucky * | 3 |
| Louisiana | 2 |
| Maine | 3 |
| Maryland | 2 |
| Mass. | 2 |
| Michigan * | 2 |
| Minnesota | 2 |
| Mississippi | 2 |
| Missouri | 2 |
| Montana | 3 |
| Nebraska | 2 |
| Nevada | 3 |
| N. Hampshire | 3 |
| New Jersey | 2 |
| New Mexico | 3 |
| New York * | 2 |
| N. Carolina | 2 |
| North Dakota | 3 |
| Ohio | 1 |
| Oklahoma | 2 |
| Oregon | 3 |
| Pennsylvania | 1 |
| Rhode Island | 2 |
| S. Carolina | 2 |

FUNDING CATEGORIES BASED ON PROJECTED LEVEL OF EFFORT REQUIRED TO PROVIDE LEAD POISONING ACTIVITIES TO A STATE POPULATION—Continued

| | |
|---|---|
| South Dakota | 2 |
| Tennessee | 2 |
| Texas * | 1 |
| Utah * | 3 |
| Vermont | 3 |
| Virginia | 2 |
| Washington | 2 |
| West Virginia | 2 |
| Wisconsin | 2 |
| Wyoming | 3 |

* Projected level of effort adjusted to account for currently funded locales.

**Note:** Please see section entitled ''Funding Level for SMSA Applicants.''

Funding State Applicants—Part A or Part B: Determine your funding category (Category 1, 2, or 3) and associated program activities by category using the descriptions below. Funding levels are associated with category type and level of program activity to be supported by CDC. Regardless of category type, all programs are required to develop and implement screening plans and have a surveillance system designed to monitor all blood lead levels in children. Following are the minimum requirements for each category and the range and average awards for each category.

Category 1: $800,000–$1,500,000, average award $1,000,000 Applicants are to use CDC funding to: Implement and evaluate screening plans; submit and analyze data from a Statewide surveillance system; ensure screening and follow-up care; provide public and professional health education and health communication; conduct program impact evaluation; and implement primary prevention activities.

Category 2: $250,000–$800,000, average award $520,000 Applicants are to use CDC funding to: Implement and evaluate screening plans; submit and analyze data from a Statewide surveillance system; assure screening and follow-up care; provide public and professional health education and health communication; and conduct program impact evaluation.

Category 3: $75,000–$250,000, average award $150,000 Applicants are to use CDC funding to: Implement and evaluate screening plans; submit and analyze data from a Statewide surveillance system; assure screening and follow-up care; and conduct program impact evaluation.

Funding Levels for SMSA Applicants (under Part B only): The range of awards for eligible SMSAs is $250,000 to $800,000.

Additional Information on Funding for all Applicants for Part A, Part B, and Part C New awards are expected to begin on or about July 1, 2001, and are made for 12-month budget periods within a project period not to exceed two-years for State programs. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Awards cannot supplant existing funding for CLPP or Supplemental Funding Initiatives. Funds should be used to enhance the level of expenditures from State, local, and other funding sources.

**Note:**

• Funds may not be expended for medical care and treatment or for environmental remediation of sources of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.

• Not more than 10 percent (exclusive of Direct Assistance) of any cooperative agreement or contract through the cooperative agreement may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

## D. Program Requirements

1. Special Requirement regarding Medicaid provider status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by sec. 303 of the ''Preventive Health Amendments of 1992'' (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:

• Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.

• Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

In order to satisfy this program requirement, please provide a copy of a Medicaid provider certificate or statement as proof that you meet this requirement. Failure to include this information will result in your application being returned. Please place this information immediately behind the budget and budget justification pages.

2. Assure that income earned by the CLPP program will be returned to the program for its use.

*Cooperative Activities*

Part A and Part B: New and Competing Continuations

To achieve the purpose of this cooperative agreement program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Establish, maintain, or enhance a statewide surveillance system in accordance with legislation. For eligible SMSAs (under Part B), enhance a data management system that links with the State's surveillance system or develop an automated data management system to collect and maintain laboratory data on the results of blood lead analyses and data on follow-up care for children with elevated BLLs. State recipients should ensure receipt of data from local programs. Local recipients should transfer relevant data to the appropriate State entity in a timely manner for annual submission to CDC.

b. Manage, analyze and interpret individual State surveillance data, and present and disseminate trends and other important public health findings.

c. Develop, implement and evaluate a statewide/jurisdiction-wide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials. (A copy of this document can be obtained at the following internet address *http://www.cdc.gov/nceh/lead/guide/guide97.htm.* For eligible SMSAs, participate in the Statewide planning process. Make screening recommendations and appropriate local screening strategies available and known to health care providers.

d. Assure appropriate follow-up care is provided for children identified with elevated BLLs.

e. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities; environmental agencies; maternal and child health programs; State and local Medicaid agencies and programs such as Early Periodic Screening, Diagnosis, and Treatment (EPSDT); community and migrant health centers; community-based organizations providing health and

social services in or near public housing units, as authorized under Section 330(i) of the PHS Act; State and local epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).

f. Provide managerial, technical, analytical, and program evaluation assistance to local agencies and organizations in developing or strengthening CLPP program activities.

2. CDC Activities

a. Provide technical, and scientific assistance and consultation on program development, implementation and operational issues.

b. Provide technical assistance and scientific consultation regarding the development and implementation of all surveillance activities including data collection methods and analysis of data. Specifically assist with improving data linkages with Federally-funded means-tested public benefit programs (WIC, Head Start, etc.)

c. Assist with data analysis and interpretation of individual State surveillance data and release of national reports. Reports will include analysis of national aggregate data as well as state-specific data on Federally-funded means-tested public benefit programs (WIC, Head Start, etc).

d. Assist Part B recipients with communication and coordination among Federal agencies, and other public and private agencies and organizations.

e. Conduct ongoing assessment of program activities to ensure the use of effective and efficient implementation strategies.

*Part C: Supplemental Studies*

To achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a study protocol to include the following: Methodology, sample selection, field operation, and statistical analysis. Applicants must provide a means of assuring that the results of the study will be published.

b. Revise, refine, and carry out the proposed methodology for conducting Supplemental Studies.

c. Monitor and evaluate all aspects of the assessment activities.

d. Publish and disseminate study findings in scientific journals, as appropriate.

2. CDC Activities

a. Provide technical and scientific consultation on activities related to overall program requirements of supplemental funding activities.

b. Provide technical assistance to program manager and/or principal investigator regarding revision, refinement, and implementation of study design and proposed methodology for conducting supplemental funding activities.

c. Assist program manager and/or principal investigator with data interpretation and analysis issues.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Each applicant should identify Part A, Part B or Part C on their application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan:

- Applications must be developed in accordance with PHS Form 5161–1.
- Part B applicants also competing for Part C funds must submit two separate applications.
- Application pages must be clearly numbered, and a complete index to the application and its appendices must be included.
- The original and two copies of the application sets must be submitted unstapled and unbound. All material must be typewritten, double spaced, printed on one side only, with un-reduced font (10 or 12 point font only) on 8½-inch by 11-inch paper, and at least 1-inch margins and header and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.
- A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, project title, organization, name and address, project director, telephone number, facsimile number, and e-mail address.
- The main body of the CLPP program application (Parts A or B) must include the following: Budget/budget justification; Medicaid certification; progress report (Part B applicants only); understanding the problem; surveillance/data-management activities; statewide/jurisdiction-wide planning and collaboration; core public health functions; goals and objectives; program management and staffing; and program evaluation.
- The main body of the supplemental studies application (Part C) must include the following: Study protocol, project personnel, and project management.
- Each application should not exceed 75 pages. The abstract, budget narrative, and budget justification pages are not included in the 75-page limit. Supplemental information should be placed in appendices and is not to exceed 25 pages.
- Part B applicants must submit a progress report in their competing continuation application. This report is not included in the 75 page limit and should not exceed 10 pages. The report should be placed immediately after the budget and budget justification.

**F. Submission and Deadline**

Submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189) on or before April 2, 2001. Forms are in the application kit. Submit the application to: Lisa T. Garbarino, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Program Announcement 01020, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date, or (2) sent on or before the deadline date and received in time for submission to the objective review. Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**G. Evaluation Criteria**

The review of applications will be conducted by an objective review panel as they relate to the applicant's response to either Part A, Part B, or Part C. The applications will be evaluated according to the following criteria:

*Part A: New Applicants*

1. Understanding of the Problem (10 Points)

The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using available evidence of incidence and/or prevalence and

demographic indicators; including a description of the Medicaid population.

2. Surveillance Activities (20 Points)

The applicant's ability to develop a childhood blood lead surveillance system that includes: (a) A flow chart that describes data transfer, (b) a mechanism for tracking lead screening services to children, especially Medicaid children (as required in Addendum 5—Children's Health Act of 2000), and (c) a mechanism for reporting data annually to the CDC's national surveillance database. The extent to which the surveillance approach is clear, feasible and scientifically sound. Also, the extent to which the proposed time table for accomplishing each activity and methods for evaluating each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs, including ability to identify and assure reporting from private laboratories and portable blood lead technology that perform lead testing.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated on a regular basis (i.e., newsletters, fact sheets, annual reports).

f. Protocols for follow-up of children with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level) as required in the Children's Health Act of 2000.

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Plans to convert paper-based components of the surveillance system to electronic data manipulation.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

k. Ability to link environmental data to blood lead data.

3. Statewide Planning and Collaboration (20 Points)

The applicant's ability to develop statewide screening recommendations, including appropriate local strategies. The following elements will be specifically evaluated:

a. The proposed approach to developing and carrying out an inclusive state-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

b. The extent to which the applicant plans to utilize surveillance and program data to produce a statewide screening recommendation, with specific attention given to the Medicaid population, as required in the Children's Health Act of 2000.

c. The ability of the applicant to involve collaborators in the development of a screening plan and implementation of strategies to strengthen childhood lead poisoning prevention activities.

d. The applicant's demonstrated ability to collaborate with principal partners, including managed-care organizations, the State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies (especially HUD funded programs), and banking, real-estate, and property-owner interests, must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

4. Capacity to Carry Out Public Health Core Functions (10 Points)

The applicant's ability to describe the approach and activities necessary to achieve a balance in the health department's roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all CLPP activities within their respective categories (for example, Category 3 requires screening plans, surveillance systems, assure follow-up care, and evaluation).

5. Goals and Objectives (15 Points)

The extent to which the applicant's goals and objectives relate to the CLPP activities as described in the category under which they applied. Objectives must be relevant, specific, measurable, achievable, and time-framed and must be provided for the first budget year. There must be a formal work plan with a description of methods, a timetable for completing the proposed methods, identification of the program staff responsible for accomplishing each objective, and process evaluation measures for each proposed objective. Also include a tentative work plan and timetable for the remaining years of the proposed project.

6. Project Management and Staffing (10 Points)

The extent to which the applicant has documented the skills and ability to develop and carry out CLPP activities within their respective categories. Specifically, the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and provide assurances that such positions will be authorized to be filled by the applicant's personnel system within reasonable time after receiving funding.

b. Describe a plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (15 Points)

The extent to which the applicant describes a systematic assessment of the operations and outcomes of the program as a means of contributing to the overall improvement of the program. Specific criteria should include:

a. An evaluation plan which describes useful and appropriate strategies and approaches to monitor and improve the quality, effectiveness, and efficiency of the program;

b. Description of how evaluation findings will be used to assess changes in public policy and measure the program's effectiveness of collaborative activities; and

c. Description of how the program will document progress made in childhood lead poisoning prevention which result from planned health department strategies.

8. Budget justification (not scored) The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part B: Competing Continuations*

1. Understanding of the Problem (10 points) The extent to which the applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using available evidence of incidence and/or prevalence and demographic indicators, including a description of the Medicaid population, as required in the Children's Health Act of 2000.

2. Surveillance activity (20 points) The applicant's ability to enhance its childhood blood lead surveillance system that includes: (a) A flow chart that describes data transfer and (b) a mechanism that tracks lead screening for Medicaid children (as required in the Children's Health Act of 2000), evaluating the existing system, and reporting data to the CDC's national surveillance database. Also, the extent to which the proposed time table for accomplishing each activity is

appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs, including ability to identify and assure reporting from private laboratories and portable blood lead technology that perform lead testing.

b. How data are collected and managed.

c. How quality of data and completeness of reporting are assured.

d. How and when data are analyzed.

e. How summary data are reported and disseminated on a regular basis (i.e., newsletters, fact sheets, annual reports).

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level) as required in the Children's Health Act of 2000.

h. Time line and methods for evaluating the Childhood Blood Lead Surveillance (CBLS) approach.

i. Process used to convert paper-based components of the system to electronic data.

j. Use of data including evaluation of prevention activities, especially to target screening and prevention efforts.

k. Ability to link environmental data to blood lead data.

For eligible SMSAs (Part B only): The applicant's ability to expand their data management system, including the approach to participating in the State CBLS. The clarity, feasibility, and scientific soundness of the approach to data management. Also, the extent to which the proposed schedule for accomplishing each activity and method for evaluating each activity are clearly defined and appropriate. Please note: The elements (a–k) detailed under No. 2 Surveillance Activities in the section immediately preceding this one all apply to eligible SMSAs.

3. Statewide/Jurisdiction-Wide Planning and Collaboration (20 Points)

The applicant's demonstrated ability to implement and evaluate statewide/jurisdiction-wide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The approach used to develop, carry out, and evaluate an inclusive State- or jurisdiction-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

b. The extent to which the applicant utilized surveillance and program data to produce statewide/jurisdiction-wide screening recommendations and target the Medicaid population, as required in the Children's Health Act of 2000.

c. Description of how collaborations facilitated the development of a screening plan and strengthened childhood lead poisoning prevention strategies.

d. Evidence of collaboration with principal partners, including managed-care organizations, State Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests. These collaborations must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships.

**Note:** For applicants under Part B, describe progress in implementing the screening plan based upon each of the elements listed above.

4. Capacity To Carry Out Public-Health Core Functions (10 points)

The ability to describe the approach and activities taken to achieve a balance in the health department's roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all CLPP activities within their respective categories (for example, Category 3 requires screening plans, surveillance systems, assure follow-up care, and evaluation).

5. Goals and Objectives (10 Points)

The extent to which the applicant's goals and objectives relate to the CLPP activities as described in the category under which they applied. Objectives must be relevant, specific, measurable, achievable, and time-framed and must be provided for the first budget year. There must be a formal work plan with a description of methods, a timetable for completing the proposed methods, identification of the program staff responsible for accomplishing each objective, and process evaluation measures for each proposed objective. Also include a tentative work plan and timetable for the remaining years of the proposed project.

6. Project Management and Staffing (10 Points)

Specifically the applicant should:

a. Describe the proposed health department staff roles in the extent to which the applicant has the skills and ability to develop and carry out CLPP activities within their respective category/ies. CLPP, their specific responsibilities, and their level of effort and time. Describe a plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (15 Points)

The extent to which the applicant describes a systematic assessment of the operations and outcomes of the program as a means of contributing to the overall improvement of the program. Specific criteria should include:

a. An evaluation plan which describes useful and appropriate strategies and approaches to monitor and improve the quality, effectiveness, and efficiency of the program;

b. Description of how evaluation findings will be used to assess changes in public policy and measure the program's effectiveness of collaborative activities; and

c. Description of how the program will document progress made in childhood lead poisoning prevention which result from planned health department strategies.

8. Budget Justification (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part C: Supplemental Studies—Factors To Be Considered*

1. Study Protocol (45 Points)

The applicant's ability to develop a scientifically sound protocol (including adequate sample size with power calculations), quality, feasibility, consistency with project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way the protocol will be implemented). The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and/or racial groups in the proposed project. This includes: (a) The proposed plan to include of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plan for recruitment and outreach for study participants includes establishing partnerships with community-based agencies and organizations. Benefits of the partnerships should be described.

2. Project Personnel (20 Points)

The extent to which personnel involved in this project are qualified, including experience in conducting relevant studies. In addition, the

applicant's ability to commit appropriate staff time needed to carry out the study.

3. Project Management (35 Points)

The applicant's ability to implement and monitor the proposed study to include specific, attainable, and realistic goals and objectives, and an evaluation plan.

4. Budget Justification (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human Subjects (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR part 46) on the protection of human subjects.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Quarterly progress reports, which are required of all grantees. The quarterly report narrative should not exceed 15 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter.

2. Calendar-year surveillance data must be submitted annually to CDC in the approved OMB format between March–June. In addition to CDC, a written surveillance summary must be disseminated to State and local public health officials, policy makers, and others.

3. Financial Status Reports are due within 90 days of the end of the budget period.

4. Final financial reports and performance reports are due within 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

**Note:** Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under OMB number (0920–0337), ''National Childhood Blood Lead Surveillance System'', Expiration Date: March 31, 2001.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application package.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act (42 U.S.C. 241(a), 247b–1, and 247b–3), as amended by the Children's Health Act of 2000. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b to State and local health departments. The Catalog of Federal Domestic Assistance number is 93.197.

**J. Pre-Application Workshop for New and Competing Continuation Applicants**

For interested applicants, a telephone conference call for pre-application technical assistance will be held on Wednesday, February 14, 2001, from 1:30 p.m. to 3:30 p.m. Eastern Standard Time. The bridge number for the conference call is 1–800–311–3437, and the pass code is 907844. For further information about all workshops, please contact Claudette Grant-Joseph at 404–639–2510.

**K. Where to Obtain Additional Information**

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov. Please refer to program announcement number 01020 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, address, and phone number and will need to refer to Announcement 01020. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Lisa T. Garbarino, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2710.

For programmatic technical assistance, contact: Claudette A. Grant-Joseph, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–25, Atlanta, GA 30333, telephone (404) 639–2510, Internet address cag4@cdc.gov.

Dated: January 29, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01–2828 Filed 2–1–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1198]**

### John J. Ferrante et al; Withdrawal of Approval of 125 Abbreviated New Drug Applications

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 125 abbreviated new drug applications (ANDA's). The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports for these applications.

**DATES:** Effective February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of March 28, 2000 (65 FR 16397), FDA offered an opportunity for a hearing on a proposal to withdraw approval of 158 ANDA's because the firms had failed to submit the required annual reports for these applications.

**I. Annual Reports Submitted**

In response to the notice of opportunity for a hearing (NOOH), 5

firms requested hearings and submitted an annual report for each of 18 ANDA's. Therefore, FDA rescinds its proposal to withdraw approval of the following 18 ANDA's:

1. Ambix Laboratories, 210 Orchard St., East Rutherford, NJ 07073; ANDA 60–453, Neomycin and Polymyxin B Sulfate and Bacitracin Ointment with Diperodon Hydrochloride (HCl).

2. Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220; ANDA 81–008, Chlorzoxazone Tablets USP, 500 milligrams (mg).

3. Hygenics Pharmaceuticals, Inc., 26941 Cabot Rd., suite 128, Laguna Hills, CA 92653; ANDA 71–419, Chlorhexidine Gluconate Topical Solution, 4%.

4. Vintage Pharmaceuticals, Inc., 3241 Woodpark Blvd., Charlotte, NC 28206; ANDA 62–538, Doxycycline Hyclate Tablets USP, 100 mg; ANDA 71–639, Ibuprofen Tablets USP, 200 mg; ANDA 71–644, Ibuprofen Tablets USP, 400 mg; ANDA 89–805, Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg; ANDA 89–828, Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/60 mg; and ANDA 89–990, Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/15 mg.

5. Wendt Laboratories, Inc., 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011; ANDA 84–185, Bethanechol Chloride Tablets, 10 mg; ANDA 84–186, Bethanechol Chloride Tablets, 25 mg; ANDA 85–039, Folic Acid Tablets USP, 1 mg; ANDA 85–040, Isoniazed Tablets USP, 100 mg; ANDA 85–041, Meclizine HCL Tablets, 25 mg; ANDA 85–042, Methocarbamol Tablets USP, 500 mg; ANDA 85–044, Reserpine Tablets USP, 0.25 mg; ANDA 86–766, Nitrofurazone Ointment, 0.2%; and ANDA 87–081, Nitrofurazone Solution, 0.2%.

## II. Requests to Withdraw Approval

In response to the NOOH, Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647 notified the agency that they no longer market the products for ANDA's 83–682, 85–539, 85–733, 85–777, 87–328, 87–375, 87–376, 87–377, 87–427, 87–428, 87–429, 87–430, 87–612, 87–613, and 87–614. In the **Federal Register** of October 2, 2000 (65 FR 58775), the agency withdrew approval of these 15 ANDA's under the written request of the applicant.

Another 7 firms notified the agency that they no longer market the products for 14 of the ANDA's listed in the NOOH. The firms did not request hearings and submitted formal requests for the agency to withdraw approval of the ANDA's for these products. These 14 ANDA's are included in the table in this notice and are marked with a footnote.

## III. No Response to NOOH Received

The holders of the other 111 applications did not respond to the NOOH. Failure to file a written notice of participation and request for hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products.

Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the applications listed in the table of this document.

| ANDA No. | Drug | Applicant |
|---|---|---|
| 60–058 | Chloramphenicol Capsules, 250 mg. | John J. Ferrante, c/o Operations Management Consulting, 11 Fairway Lane, Trumbull, CT 06611. |
| 60–062 | Penicillin G Potassium. | The Upjohn Co., 700 Portage Rd., Kalamazoo, MI 49001. |
| 60–094 | Sterile Penicillin G Procaine Suspension USP. | Do. |
| 60–110 | Sterile Dihydrostreptomycin Sulfate USP. | Pfizer Central Research, Pfizer, Inc., Eastern Point Rd., Groton, CT 06340. |
| 60–170 | Penicillin G Potassium Tablets, 200,000, 250,000, and 400,000 units. | John J. Ferrante. |
| 60–173 | Tetracycline HCl Capsules, 250 mg. | Do. |
| 60–174 | Tetracycline Oral Suspension, 125 mg/5 milliliters (ml). | Do. |
| 60–177 | Bacitracin-Neomycin Sulfate Polymyxin B Sulfate Ointment. | Do. |
| 60–178 | Bacitracin-Neomycin Sulfate Ointment. | Do. |
| 60–179 | Oxytetracycline HCl Capsules, 250 mg. | Do. |
| 60–188[1] | Neomycin Sulfate and Hydrocortisone Acetate Ophthalmic Suspension USP. | Akorn, Inc., c/o Walnut Pharmaceuticals, Inc., 1340 North Jefferson St., Anaheim, CA 92807. |
| 60–360 | Neomycin and Polymyxin B Sulfate and Bacitracin with Benzocaine. | Ambix Laboratories, 210 Orchard St., East Rutherford, NJ 07073. |
| 60–435 | Tetracycline HCl Tablets USP, 250 mg. | Farmitalia Carlo Erba S.p.A., c/o Montedison, USA, Inc., 1114 Avenue of the Americas, New York, NY 10036. |
| 60–464 | Neomycin Sulfate and Prednisolone. | The Upjohn Co. |
| 60–647 | Neo-Polycin Ophthalmic Ointment. | Merrell Dow Pharmaceuticals, Inc., P.O. Box 68511, Indianapolis, IN 46268. |
| 60–666 | Ampicillin Tihydrate for Oral Suspension. | Beecham Laboratories, 501 Fifth St., Bristol, TN 37620. |
| 60–690 | Oxytetracycline HCl. | Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036. |
| 60–720 | Tetracycline HCl Capsules, 250 mg. | Towne Paulsen & Co., Inc., 140 East Duarte Rd., Monrovia, CA 91016. |
| 60–757 | Polymyxin B Sulfate, 500,000 units. | Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709. |
| 60–774 | Griseofulvin Tablets, 500 mg. | McNeil Consumer, Inc., Camp Hill Rd., Fort Washington, PA 19034. |
| 60–809 | Penicillin G Potassium Tablets USP, 100,000, 200,000, 250,000, 400,000, and 500,000 units. | Consolidated Pharmaceutical Group, 6110 Robinwood Rd., Baltimore, MD 21225. |
| 60–855 | Oxytetracycline HCl Capsules, 250 mg. | Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801. |
| 60–869 | Oxytetracycline HCl Capsule, 250 mg. | Proter S.p.A., c/o Arnold Buhl Christen, 1000 Connecticut Ave., Washington, DC 20086. |
| 61–174 | Candicidin. | Penick Corp., 1050 Wall St. West, Lyndhurst, NJ 07071. |

| ANDA No. | Drug | Applicant |
|---|---|---|
| 61–396 | Hetacillin Capsules. | Bristol-Myers, U.S. Pharmaceutical Group, Evansville, IN 47721–0001. |
| 61–523[1] | Tetracycline HCl Susceptibility Powder, 20 mg. | Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965. |
| 61–676 | Ampicillin Trihydrate Capsules, 250 mg and 500 mg. | Public Health Service, Health Service Administration, Perry Point, MD 21902. |
| 61–700[1] | Bacitracin Zinc USP for Compounding. | Alpharma A. S., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. |
| 61–718 | Nystatin Vaginal Tablets USP, 100,000 units. | Holland-Rantos Co., Inc., 310 Enterprise Ave., Trenton, NJ 08638. |
| 61–720 | Doxycycline Oral Suspension USP. | Rachelle Laboratories, Inc. |
| 61–933 | Penicillin G Potassium for Injection USP. | E. R. Squibb & Sons, P.O. Box 191, New Brunswick, NJ 08903–0191. |
| 61–953 | Doxycycline Hyclate Injection. | Rachelle Laboratories, Inc., P.O. Box 187, Culver, IN 46511. |
| 61–957 | Benzylpenicilloyl Polylysine Injection. | Kremers-Urban Co., 5600 West County Line Rd., P.O. Box 2038, Milwaukee, WI 53201. |
| 61–961[1] | Bacitracin Ointment USP. | Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457. |
| 61–994 | Kanamycin Sulfate Injection USP. | Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201. |
| 62–007[1] | Bacitracin USP, 50,000 and 10,000 units/vial. | Alpharma A. S. |
| 62–042[1] | Chloramphenicol Ophthalmic Solution, 0.5%. | Akorn, Inc. |
| 62–138 | Cefoxitin Solution. | Pfizer Pharmaceuticals, Inc., 235 East 42d St., New York, NY 10017. |
| 62–224 | Neomycin Sulfate Ointment. | Clay-Park Labs, Inc. |
| 62–236 | Bacitracin Ointment USP. | Denison Laboratories, Inc., 60 Dunnell Lane, P.O. Box 1305, Pawtucket, RI 02862. |
| 62–248 | Gentamicin Sulfate Injection USP. | The Upjohn Co. |
| 62–345 | Tetracycline HCl Capsules, 250 mg. | Public Health Service, HAS Supply Service Center, Perry Point, MD 21902. |
| 62–354 | Gentamicin Sulfate Injection USP. | Kalapharm, Inc., 145 East 27th St., New York, NY 10016. |
| 62–357 | Amoxicillin Trihydrate Capsules, 250 mg and 500 mg. | Public Health Service, HAS Supply Service Center. |
| 62–359 | Bacitracin Topical Ointment, 500 units/gram. | NMC Laboratories, Inc., 70–36 83d St., Glendale, NY 11385. |
| 62–361 | Bacitracin-Neomycin-Polymyxin B Sulfate. | Do. |
| 62–528 | Amoxicillin Capsules USP, 250 mg and 500 mg. | Laboratories Atral, S.A., c/o Louie F. Turner, P.O. Box 331044, Fort Worth, TX 76133–2924. |
| 71–278 | PEG 3350 and Electrolytes for Oral Solution USP. | E-Z-EM, Inc., 717 Main St., Westbury, NY 11590. |
| 71–320 | PEG 3350 and Electrolytes for Oral Solution USP. | DynaPharm, Inc., P.O. Box 2141, Del Mar, CA 92014. |
| 71–777 | Clorazepate Dipotassium Capsules, 3.75 mg. | Able Laboratories, 333 Cassell Dr., suite 3500, Baltimore, MD 21224. |
| 71–778 | Clorazepate Dipotassium Capsules, 7.5 mg. | Do. |
| 71–779 | Clorazepate Dipotassium Capsules, 15 mg. | Do. |
| 72–319 | Glycoprep (PEG 3350 and Electrolytes for Oral Solution). | Goldline Laboratories, 1900 West Commerical Blvd., Ft. Lauderdale, FL 33309. |
| 72–399 | Sulfamethoxazole and Trimethorprim Oral Suspension USP. | NASKA Pharmacal Co., Inc., P.O. Box 898 Riverview Rd., Lincolnton, NC 28093. |
| 72–409 | Nifedipine Capsules USP, 10 mg. | Chase Laboratories, Inc., 280 Chestnut St., Newark, NJ 07105. |
| 73–421 | Nifedipine Capsules USP, 20 mg. | Do. |
| 74–080 | Carbidopa and Levodopa Tablets USP, 10 mg/100 mg, 25 mg/100 mg, 25 mg/250 mg. | SCS Pharmaceuticals, 4901 Searle Pkwy., Skokie, IL 60077. |
| 80–094 | Triple Sulfoid Tablets. | Pal-Pak, Inc., 1201 Liberty St., Allentown, PA 18102. |
| 80–117 | Nitrofurantoin Tablets, 50 mg. | Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801. |
| 80–118 | Nitrofurantoin Tablets, 100 mg. | Do. |
| 80–335 | Prednisolone Tablets, 5 mg. | Central Pharmaceutical, Inc., 110–128 East Third St., Seymour, IN 47274. |
| 80–375 | Lidocaine HCl Injection USP, 2%. | Rachelle Laboratories, Inc. |
| 80–376 | Lidocaine HCl Injection USP, 1%. | Do. |
| 80–481 | Hydrocortisone Ointment USP. | C & M Pharmacal, Inc., 1721 Maple Lane, Hazel Park, MI 48030–1215. |
| 80–482 | Hydrocortisone Cream USP. | Do. |
| 80–562 | Prednisolone Tablets, 2.5 mg and 5 mg. | John J. Ferrante. |
| 80–568 | Hydrocortisone Tablets, 10 mg and 20 mg. | Do. |
| 80–967 | Vitamin A Capsules USP. | West-Ward, Inc., 465 Industrial Lane, Eatontown, NJ 07724. |
| 83–102 | Vitamin D Capsules, 50,000 units. | Do. |
| 83–156 | Hydrocortisone Acetate Cream, 1.0%. | Parke-Davis, Div. of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950. |
| 83–161[1] | Dexamethasone Sodium Phosphate Injection. | Dell Laboratories, Inc., 668 Front St., Teaneck, NJ 07666. |
| 83–358[1] | Prednisolone Sodium Phosphate Ophthalmic Solution USP. | Akorn, Inc. |
| 83–400 | Propoxyphene HCl Capsules USP, 65 mg. | Rachelle Laboratories, Inc. |
| 83–643 | Acetaminophen and Codeine Phosphate Tablets, 325 mg/30 mg. | Carnrick Laboratories, Inc., 65 Horse Hill Rd., Cedar Knolls, NJ 07927. |
| 83–787 | Chlorpheniramine Maleate Tablets, 4 mg. | West-Ward, Inc. |
| 83–790 | Phendimetrazine Tartrate Tablets USP, 35 mg. | Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837. |

| ANDA No. | Drug | Applicant |
|---|---|---|
| 83–791 | Nitrofurazone Powder. | Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, NJ 07724. |
| 83–829 | Chlorpromazine HCl Tablets USP. | Rachelle Laboratories, Inc. |
| 83–977 | Selenium Sulfide. | USV Pharmaceutical Corp., One Scarsdale Rd., Tuckahoe, NY 10707. |
| 84–030 | Meprobamate Tablets, 400 mg. | Ferndale Laboratories, Inc. |
| 84–255 | Sulfasalazine Tablets, 500 mg. | William H. Rorer, Inc., 500 Virginia Dr., Fort Washington, PA 19034. |
| 84–337 | Sulfisoxasole Tablets, 500 mg. | Rachelle Laboratories, Inc. |
| 84–377[1] | Prednisone Capsules, 50 mg. | R. P. Scherer Corp., 2725 Scherer Dr., St. Petersburg, FL 33702. |
| 84–492[1] | Prednisolone Acetate Injection. | Akorn, Inc. |
| 84–563 | Aminophylline Tablets, 200 mg. | ICN Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213. |
| 84–639 | Chlordiazepoxide HCl Capsules USP, 10 mg. | Rachelle Laboratories, Inc. |
| 84–727 | Lidocaine HCl Injection, 2%. | Pharmaton, Inc., 150 East 58th St., New York, NY 19155. |
| 84–728 | Lidocaine HCl Injection, 2% with Epinephrine 1:50,000. | Pharmaton, Inc., c/o Bass, Ullman & Lustrigman, 747 Third Ave., New York, NY 10017. |
| 84–855[1] | Dexamethasone Sodium Phosphate Ophthalmic Solution USP, 0.1%. | Akorn, Inc. |
| 85–086 | Chlordiazepoxide HCl Capsules, 5 mg. | Rachelle Laboratories, Inc. |
| 85–087 | Chlordiazepoxide HCl Capsules USP, 25 mg. | Do. |
| 85–091 | Isoniazid Tablets USP, 100 mg. | Pharmavite Corp., 15451 San Fernando Mission Blvd., P.O. Box 9606, Mission Hills, CA 91346–9606. |
| 85–104 | Chlorpheniramine Maleate Tablets USP, 4 mg. | Do. |
| 85–118 | Chlordiazepoxide HCl Capsules, 5 mg. | John J. Ferrante. |
| 85–119 | Chlordiazepoxide HCl Capsules, 10 mg. | Do. |
| 85–120 | Chlordiazepoxide HCl Capsules, 25 mg. | Do. |
| 85–341 | Butabartital Sodium Tablets USP, 30 mg. | Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102. |
| 85–345 | Butabartital Sodium Tablets USP, 15 mg. | Do. |
| 85–477 | Secobarbital Sodium Capsules, 100 mg. | ICN Pharmaceuticals, Inc., 222 North Vincent Ave., Covina, CA 91722. |
| 85–509 | Diphenoxylate HCl and Atropine Sulfate Tablets USP, 2.5 mg/0.025 mg. | Inwood Laboratories, Inc., Subsidiary of Forest Labs, Inc., 150 East 58th St., New York, NY 10155. |
| 85–630 | Trichlormethiazide Tablets, 4 mg. | Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136. |
| 85–851 | Imipramine HCl Tablets USP, 25 mg. | A. H. Robins Co., 1407 Cummings Dr., P.O. Box 26609, Richmond, VA 23261–6609. |
| 86–116 | Phendimetrazine Tartrate Tablets, 17.5 mg. | Camall Co., P.O. Box 218, Washington, MI 48094. |
| 86–129 | Heparin Sodium Injection USP, 1,000 units/ml. | Pharma-Serve, Inc., 218–20 98th Ave., Queens Village, NY 11429. |
| 86–543 | Diphenhydramine HCl Capsules, 25 mg. | Newtron Pharmaceuticals, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716. |
| 86–544 | Diphenhydramine HCl Capsules, 50 mg. | Do. |
| 87–489 | Hydrocortisone Lotion USP, 1%. | Heran Pharmaceutical, Inc., 7215 Eckhert Rd., San Antonio, TX 78238. |
| 87–628 | Butalbital, Acetaminophen, and Caffeine Capsules, 50 mg/325 mg/40 mg. | Roberts/Hauck Pharmaceuticals, Inc., Six Industrial Way West, Eatontown, NJ 07724. |
| 87–818 | Sulfacetamide Sodium Ophthalmic Solution, 10%. | Bausch & Lomb Pharmaceuticals, 8500 Hidden River Pkwy., Tampa, FL 33637. |
| 87–834 | Hydrocortisone USP (micronized powder). | Torch Laboratories, Inc., P.O. Box 248, Reisterstown, MD 21136. |
| 87–865 | Chlorpromazine HCl Tablets, 25 mg. | West-Ward, Inc. |
| 88–024 | Phendimetrazine Tartrate Extended-Release Capsules, 105 mg. | Numark Laboratories, Inc. |
| 88–059[1] | Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%. | Akorn, Inc. |
| 88–089 | Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%. | Bausch & Lomb Pharmaceuticals. |
| 88–189 | Reserpine and Hydrochlorthiazide Tablets USP, 0.125 mg/50 mg. | West-Ward, Inc. |
| 88–255[1] | Theophylline Sustained-Release Capsules, 300 mg. | R. P. Scherer North America, P.O. Box 5600, Clearwater, FL 33518. |
| 88–393 | Hydroxyzine Pamoate Capsules, 50 mg. | Vanguard Labs, Packaging Div. of MWM Corp., 101–107 Samson St., P.O. Box K, Glasgow, KY 42141. |
| 88–447[1] | Tropicamide Ophthalmic Solution USP, 1%. | Akorn, Inc. |
| 88–474 | Triprolidine HCl and Pseudoephedrine HCl, 1.25 mg/5 ml and 30 mg/5 ml. | Newtron Pharmaceuticals, Inc. |
| 89–268 | Butalbital and Acetaminophen Capsules, 50 mg/325 mg. | Dunhall Pharmaceuticals, Inc., P.O. Box 100, Gravette, AR 72736. |
| 89–273 | Hydrocortisone Cream USP, 1.0%. | Topiderm, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716. |
| 89–274 | Triamcinolone Acetonide Cream USP, 0.025%. | Do. |
| 89–275 | Triamcinolone Acetonide Cream USP, 0.1%. | Do. |
| 89–276 | Triamcinolone Acetonide Cream USP, 0.5%. | Do. |
| 89–495 | Hydrocortisone Lotion USP, 1%. | Beta Dermaceuticals, Inc., 5419 Bandera Rd., suite 708, San Antonia, TX 78238. |

[1]Applicant requested withdrawal.

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority of 21 CFR 5.82, finds that the holders of the applications listed above have repeatedly failed to submit reports required by § 314.81. Therefore, under this finding, approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective February 2, 2001.

Dated: January 9, 2001.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 01–2790 Filed 2–1–01; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Antiviral Drugs Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Antiviral Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on February 27, 2001, 9 a.m. to 5:30 p.m.

*Location:* Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person:* Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss new drug application (NDA) 21–304, valganciclovir hydrochloride tablets, 450mg, Syntex (U.S.A.) LLC, proposed for treatment of cytomegalovirus retinitis in patients with acquired immunodeficiency syndrome (AIDS).

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 20, 2001. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 20, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 18, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 01–2788 Filed 2–1–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01D–0027]**

### Guidance for Industry on Statistical Approaches to Establishing Bioequivalence; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Statistical Approaches to Establishing Bioequivalence.'' This guidance provides recommendations to sponsors and/or applicants who intend to use equivalence criteria in analyzing in vivo or in vitro bioequivalence (BE) studies for investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's) and supplements to these applications. The guidance discusses the use of average, population, and individual BE approaches to compare in vivo and in vitro bioavailability (BA) measures. (This guidance replaces the draft guidance that was issued in 1999 entitled ''Average, Population, and Individual Approaches to Establishing Bioequivalence.'')

**DATES:** Submit written comments on agency guidances at any time.

**ADDRESSES:** Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mei-Ling Chen, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5688.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a guidance for industry entitled ''Statistical Approaches to Establishing Bioequivalence.'' This guidance provides information on statistical approaches for sponsors and/or applicants intending to provide BA and BE information to the agency in IND's, NDA's, ANDA's, and their supplements.

Over the years, BA/BE data have been analyzed using an average BE approach. This statistical guidance describes two new approaches for analysis, population and individual BE. This guidance does not provide information about when an approach should be used; that information is provided in other FDA BA/BE guidances. Instead, the guidance provides recommendations on how to use each of these approaches once one has been selected.

This guidance is a final revision of a document that began with the publication of a preliminary draft guidance on this subject entitled ''In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches'' in 1997 (62 FR 67880, December 30, 1997), and was followed by a draft guidance entitled ''Average, Population, and Individual Approaches to Establishing Bioequivalence,'' published in 1999 (64 FR 48842, September 8, 1999). This final guidance replaces both of these draft guidances and a 1992 FDA guidance entitled ''Statistical Procedure for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design.''

In September 1999, FDA announced the availability of a draft guidance entitled ''BA and BE Studies for Orally Administered Drug Products—General Considerations'' (64 FR 48409, September 3, 1999). That draft guidance was intended to provide general information on how to comply with the BA and BE requirements in part 320 (21 CFR part 320) for orally administered dosage forms. When that draft guidance was published, FDA received a total of 16 public comments, a number of which

expressed concern about the use of the individual BE approach.

FDA acknowledged the public concerns about the use of the individual BE approach when the final guidance entitled ''BA and BE Studies for Orally Administered Drug Products—General Considerations'' (65 FR 64449, October 27, 2000) was issued. In that guidance, FDA recommends the continued use of the average BE approach for both replicated and nonreplicated studies. However, that guidance states that sponsors have the option to choose another approach, e.g., an individual BE approach for highly variable drugs. The final statistical guidance being made available today provides recommendations on how to use this approach if it is chosen.

This statistical guidance is one of a set of core guidances being developed to provide recommendations on how to meet the provisions of part 320. Taken together, these guidances are designed to address the studies that should be provided to document product quality BA/BE for all drug products regulated by CDER in accordance with the provisions of part 320.

This guidance is being issued consistent with FDA's good guidance practices regulation (65 FR 56468, September 19, 2000). This Level 1 guidance document represents the agency's current thinking on the statistical approaches used in BA and BE studies. 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 an approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Documents Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 24, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01–2789 Filed 2–1–01; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–10030]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection; *Title of Information Collection:* National Medicare Practitioner and Provider Survey; *Form No.:* HCFA–10030 (OMB# 0938–NEW); *Use:* 1. Health Care Financing Administration (HCFA) Program Safeguard Provider Education Project (Contract # 500–99–0013, Task Order 00001)—New

HCFA is conducting a national assessment of Medicare practitioner and provider (hereinafter referred to collectively as providers) educational needs. The purpose of the needs assessment is to obtain information about the education or training related to Medicare claims submission that is required by providers to increase their rate of correct first-time submission of Medicare claims. Specifically, the needs assessment survey will seek information about: (1) What providers need to know about accurate claims submission, and (2) what they believe would be the best methods for obtaining that information.

Responses will be gathered from a random sample of fee-for-service providers representing both Medicare Part A (hospital-based outpatient clinics, emergency rooms, and ambulatory surgery units; home health care agencies; and skilled nursing facilities) and Medicare Part B (physician and non-physician) providers. The information gathered by the needs assessment survey will allow HCFA to develop effective education and training tools and resources that address identified provider needs and focus on the topics that providers indicated were most important for improving accuracy of claims submissions.

The needs assessment survey will be administered one time only. It will be mailed to 9,000 individual and organizational providers nationwide that render Medicare services. HCFA anticipates receiving approximately 7,200 responses. As an alternative to completing the paper survey, respondents will have the option of completing the survey electronically using a computer with an Internet connection. A toll-free telephone line will be available to respondents who have questions or need help completing the survey. HCFA is collaborating with national and State medical societies and organizations to make providers aware of the survey and the importance of their participation in the needs assessment process. Publicity about the survey prior to its dissemination, along with a follow-up mail reminder and conduct of follow-up phone calls to respondents after its dissemination, will increase the survey response rate. Burden estimates are as follows:

| Respondents | Estimated Number of respondents | Number of responses per respondent | Average burden/ response (in hours) |
|---|---|---|---|
| Survey | 7,200 | 1 | ½ |

*Total Burden:* 3,600 hours (at ½ hour each).

*Total Cost to Respondents:* $396,000 ($55 per respondent at an estimated $110 hourly salary).

As a part of the Medicare Integrity Program (MIP), HCFA is seeking to increase the incidence of correct Medicare claims submitted by health care providers. Reduction of incorrect claims will reduce the administrative costs associated with review, return, and correction of claims prior to reimbursement and will increase the ability to make timely payments to providers. By making effective education and training resources available, HCFA will help providers improve their correct submission rates. Results of this survey will provide a sound foundation for the development of those resources.;

*Frequency:* Other: One-time only; *Affected Public:* Business or other for-profit; *Number of Respondents:* 9,000; *Total Annual Responses:* 9,000; *Total Annual Hours:* 3,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to MKlein@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–10030, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 23, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01–2798 Filed 2–1–01; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–855]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* HCFA–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial enrollment/recertification and Every three years; *Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 1,300,000; *Total Annual Responses:* 604,000; *Total Annual Hours:* 792,000. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 24, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards .*

[FR Doc. 01–2799 Filed 2–1–01; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–10017]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New; *Title of Information Collection:* Follow-Up of Medicare+Choice Disenrollees Receiving Fee-for-Service Inpatient Hospital Care; *Form No.:* HCFA–10017 (OMB# 0938–NEW); *Use:* This study will survey Medicare beneficiaries who had a fee-for-service hospital stay after choosing to leave a Medicare+Choice health plan. The purpose is to gather information about their reasons for

disenrolling and to explore the link between the decision to disenroll and their subsequent fee-for-service care; *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 542.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 24, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01–2800 Filed 2–1–01; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–0255]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New collection; *Title of Information Collection:* Suggestion Program on Methods to Improve Medicare Efficiency and Supporting Regulations in 42 CFR 420.410; *Form No.:* HCFA–R–0255 (OMB# 0938–new); *Use:* HCFA is implementing regulations as a means of establishing a program to encourage individuals to submit suggestions that could improve the efficiency of the Medicare program. If the suggestion is adopted, a payment amount will be determined based either on the actual first-year net savings, or the average annual net savings expected to be realized over a period of not more than three years; *Frequency:* On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 150; *Total Annual Responses:* 150; *Total Annual Hours:* 50.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 24, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01–2801 Filed 2–1–01; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**RASS1: A Novel Tumor Suppressor Gene Activated by Ras To Promote Apoptosis**

Geoffrey J. Clark and Michelle Vos (NCI)
DHHS Reference No. E–237–00/0
*Licensing Contact:* Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*

Mutant ras oncogenes are frequently associated with human cancers, and activated Ras proteins have been found to mediate a broad array of biological effects. These effects are generated due to the ability of activated Ras to interact with numerous effector proteins, and the disclosed invention directly relates to such a novel effector, namely, RASS1. While many of Ras' activities are linked to cell growth and cell transformation, this putative tumor suppressor gene and its protein product seem to be effectors which mediate apoptotic cell death. The patent application contains composition of matter claims as well as method claims all of which are directed to the detection, diagnosis and treatment of cancer as well as providing data for cancer susceptibility or prognosis following diagnosis of a cancer. The application also provides claims directed toward gene therapy applications for this technology.

**Antiprogestins With Partial Agonist Activity**

Simons et al. (NIDDK)
DHHS Reference No. E–015–00/0 filed 24 March 2000
*Licensing Contact:* Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Antisteroids block the action of steroid hormones. For this reason, antisteroids have been attractive clinical tools to suppress the effects of endogenous steroids both in a variety of disorders, including breast and uterine cancers, and in birth control. Much research has been devoted to finding pure antisteriods that would prevent any action of endogenous steriods. Unfortunately, antisteriod treatments are associated with many side effects, most of which result from the repression of the wide variety of normally expressed genes. For this reason, attention has recently shifted to selective receptor modulators (SRMs), which are antisteroids with partial agonist activity with some responsive genes. Those SRMs that cause the repression of the fewest genes, other than the genes that are targeted for inhibition, would be expected to have the fewest side effects and the widest clinical applications. Almost all existing antiprogestins suffer from two disadvantages. First, they block virtually all actions of progesterone receptors and display very little partial agonist activity. Second, most progestins are also potent antiglucocorticoids and suppress genes regulated by glucocorticoids, thus expanding the scope of undesirable side effects. Presently, the only antiprogestin reported to have significant amounts of partial agonist activity, and thus any prospect of being a selective progesterone receptor modulator (SPRM), is RTI 3021–020.

The NIH now announces that two derivatives of the potent glucocorticoid dexamethasone (Dex) show partial agonist activity under a variety of conditions and represent novel leads to new SPRMs. These derivatives are Dex-21-mesylate (Dex-Mes) and Dex-oxetanone (Dex-Ox). In direct comparisons with RTI 3021–020, Dex-Mes and Dex-Ox have consistently displayed more partial agonist activity even under conditions where RTI 3021–020 was inactive. Therefore, Dex-Mes, Dex-Ox, or other Dex derivatives, may be useful as partial progesterone agonists under a wider variety of conditions both in the laboratory and in the clinical setting, such as the treatment of endometriosis and leiomyomas of the uterus, to name a few. Furthermore, Dex-Mes and Dex-Ox also possess partial agonist activity with glucocorticoid receptors, thus reducing the side effects resulting from the repression of glucocorticoid-regulated genes.

Dated: January 24, 2001.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 01–2809 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Fogarty International Center; 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 Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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:* Fogarty International Center Advisory Board.

*Date:* February 6, 2001.

*Open:* 8:30 AM to 12:00 PM.

*Agenda:* Report of the Director and presentations on Disease Control Priorities Report of the Macroeconomic Commission on Health, and on FIC programs and plans.

*Place:* Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

*Closed:* 1:00 PM to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

*Contact Person:* Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes Of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

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. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2805 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

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 section 552b(c)(6), Title 5 U.S.C., as amended to disclosure information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Board of Scientific Advisors.

*Date:* March 5–6, 2001.

*Open:* March 5, 2001, 8:00 AM to 12:00 PM.

*Agenda:* Joint meeting of the NCI Board of Scientific Advisors and NCI Board of Scientific Counselors; Report of the Director, NCI; and Scientific Presentations.

*Place:* National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

*Open:* March 5, 2001 12:00 PM to 5:00 PM.

*Agenda:* Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Cancer Institute; 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

*Closed:* March 5, 2001, 5:00 PM to 6:00 PM.

*Agenda:* To review and evaluate personnel issues.

*Place:* National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

*Open:* March 6, 2001, 8:30 AM to 1:00 PM.

*Agenda:* Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

*Place:* National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Paulette S. Gray, Ph.D, Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8141, Bethesda, MD 20892, (301) 496–4218.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 01–2807 Filed 2–1–01; 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:* Heart, Lung, and Blood Program Project Review Committee.

*Date:* March 22, 2001.

*Time:* 8:00 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303, *hurstj@nih.gov.*

(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: January 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2806 Filed 2–1–01; 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 The Assay of Human Hematopoietic Stem Cells.

*Date:* February 27, 2001.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Review Branch, DEA, NHLBI/NIH, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert B. Moore, PhD, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301/435–3541.

(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: January 25, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2808 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

*Date:* March 23, 2001.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Shan S. Wong, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

*Date:* April 12–13, 2001..

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Dan Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 649, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Dated: January 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2802 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 M1.
*Date:* March 14–16, 2001.
*Time:* 7 p.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Houston Marriott Medical Center, 6580 Fannin Street, Houston, TX 77030.
*Contact Person:* Shan S. Wong, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 643, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: January 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2803 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communications Disorders; 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 Deafness and Other Communications Disorders Special Emphasis Panel.
*Date:* February 23, 2001.
*Time:* 8 a.m. to 1 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott, 5451 Pooks Hill Road, Bethesda, MD 20814.
*Contact Person:* Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 25, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–2804 Filed 2–1–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4644–N–05]**

### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** February 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 25, 2001.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 01–2650 Filed 2–1–01; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes or laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract

work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

None.

*Volume II*

None.

*Volume III*

None.

*Volume IV*

None.

*Volume V*

None.

*Volume VI*

None.

*Volume VII*

None.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 24th day of January 2001.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 01–2629 Filed 2–1–01; 8:45 am]

BILLING CODE 4510–27–M

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

January 25, 2001.

**TIME AND DATE:** 2 p.m., Thursday, February 1, 2001.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** It was determined by a majority vote of the Commission that the Commission consider and act upon the following in closed session:

1. Disciplinary Matter, Docket No. D 2000–1.
2. Disciplinary Matter, Docket No. D 2001–1.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 01–2983 Filed 1–31–01; 3:37 pm]

BILLING CODE 6735–01–M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* Final Rule, 10 CFR part 26, ''Changes to the Fitness for Duty Program''.
3. *The form number if applicable:* Not applicable.
4. *How often is the collection required:* Annually and on occasion.
5. *Who will be required or asked to report:* All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

6. *An estimate of the number of responses:* A reduction of 72 responses (semi-annual to annual report).

7. *The estimated number of annual respondents:* 72 licensees.

8. *An estimate of the number of hours annually needed to complete the requirement or request:* A reduction of approximately of 9,400 hours annually (131 hours per licensee) or a reduction of 2,450 reporting hours and 6,950 of recordkeeping hours.

9. *An indication of whether Section 3504(h), Public Law 96–511 applies:* Applicable.

10. *Abstract:* 10 CFR Part 26, ''Fitness-For-Duty Programs,'' requires licensees to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning the performance of the programs and certain significant events. Compliance with these requirements is mandatory for licensees subject to 10 CFR Part 26.

A revision to 10 CFR Part 26 modifies the information collection requirements to, among other less significant changes, (1) extend coverage to certain classes of fitness-for-duty programs; (2) require licensees to revise their written policy and procedure to incorporate minor administrative procedures, e.g., Medical Review Officer medical review procedures and changes to various technical guidelines contained in Appendix A of 10 CFR Part 26; (3) require all licensees to obtain information in addition to that currently provided in written form from individuals which would indicate whether the individual has a history of substance abuse; and (4) add fitness-for-duty personnel as a third class of people whose negative acts would be reported.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance packages are available at the NRC worldwide web site http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 5, 2001. Amy Farrell, Office of Information and Regulatory Affairs (3150–0146), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda J. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 25th day of January 2001.

For the Nuclear Regulatory Commission.

**Brenda J. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–2831 Filed 2–1–01; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–325 and 50–324]**

## Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations, Part 50, Section 36a(a)(2) (10 CFR 50.36a(a)(2)) for Facility Operating License Nos. DPR–71 and DPR–62, issued to Carolina Power & Light Company (CP&L, the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

### Environmental Assessment

*Identification of the Proposed*

The proposed action is a one-time exemption from the requirements of 10 CFR 50.36a(a)(2) to submit a Radioactive Effluent Release Report no later than 12 months from the date of the last report. Under the proposed exemption, the licensee would delay the next report by 2 months, for a total of 14 months from the previous report. This would be a one-time exemption.

The proposed action is in accordance with the licensee's application for exemption dated December 1, 2000.

*The Need for the Proposed*

In accordance with 10 CFR 50.36a(a)(2), each licensee is required to submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. CP&L has proposed an amendment to Technical Specification 5.6.3 to change the submittal date for the report to ''prior to May 1.'' The approval of the amendment necessitates the required submittal date for the year 2000 report be changed to ''prior to May 1, 2001.'' With this change, the licensee needs a one-time exemption to allow 14 months between reports.

In summary, the exemption does not affect the information required to be submitted or the time period the report covers, only the date the report is submitted.

*Environmental Impacts of the Proposed*

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a due date change for a required report) unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Brunswick Steam Electric Station.

*Agencies and Persons Consulted*

In accordance with its stated policy, on December 20, 2000, the staff consulted with Mr. Johnny James of the North Carolina Department of

Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 1, 2000. Documents 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. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http:\\www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of January 2001.

For the Nuclear Regulatory Commission.

**Donnie J. Ashley,**

*Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–2830 Filed 2–1–01; 8:45 am]

BILLING CODE 7590–01–U

## NUCLEAR REGULATORY COMMISSION

## Financial Assistance (Grants) To Support Agreement States in Closing Sites Formerly Licensed by the NRC

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of financial assistance to support Agreement States in closing outstanding sites formerly licensed by the NRC. The assistance is being made available through a grant program. Eligible Agreement States that desire funding assistance should submit a written grant proposal to NRC for review and approval.

Agreement State grant proposals for file reviews and/or for conduct of initial site surveys should be submitted within 60–90 days of the publication of this announcement. Proposals for site characterization, if needed, should be submitted as soon as possible after completion of file reviews and/or initial surveys. Similarly, proposals for site remediation, if needed, should be submitted as soon as possible after completion of site characterization. Proposals that are not submitted in time for consideration under FY 2001 funds will be considered for FY 2002 funding.

**ADDRESSES:** Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop T–7–I–2, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Yvette Brown, 301–415–6507.

**SUPPLEMENTARY INFORMATION:**

### Background

The NRC has been reviewing files for previously terminated licenses to determine whether there was appropriate documentation in the files that the sites were decommissioned prior to termination of the license and release of the site. A number of files have been identified for which there is insufficient documentation about site decommissioning or sealed source disposition.

Radioactive material remaining at a site located within an Agreement State, including material originally licensed by the NRC or its predecessor, is the regulatory responsibility of the Agreement State under its agreement with NRC. Therefore, an Agreement State has regulatory jurisdiction for conducting license file reviews and initial site surveys of formerly NRC licensed sites, including sites with insufficient documentation to account for sealed sources. An Agreement State also has regulatory jurisdiction for remediation of any sites identified as being contaminated.

Under section 274.i of the Atomic Energy Act of 1954, as amended, the NRC is supporting Agreement States through providing funds for the purpose of reviewing files, conducting surveys, characterizing, and remediating sites formerly licensed by the NRC.

On May 24, 1999 (64 FR 28014), the NRC published a notice in the **Federal Register** (FR) that requested stakeholders' comment on the proposed grant program for Agreement States for formerly NRC licensed sites. The basis for the FY 2001–2002 cost estimates for formerly NRC licensed sites is set out in a Commission Paper-SECY–99–193, entitled ''Cost Estimates for Completion of Formerly Terminated NRC Licensed Sites Program.'' In that paper, a total of 11 Agreement States were identified that could need funding assistance to close out formerly NRC licensed sites in their States. (SECY–99–193 is available on the NRC homepage at http://www.nrc.gov/NRC/COMMISSION/SECYS/secy1999–193/1999–193scy.html.)

During the past year, the NRC staff determined that three of the 11 Agreement States, identified in SECY–99–193, have taken action to close out the formerly NRC licensed sites in their States after file review/investigation. The following eight Agreement States with remaining formerly NRC licensed sites are eligible to submit grant proposals for funding assistance: Arizona, California, Colorado, Massachusetts, New Mexico, North Dakota, New York and Texas.

On October 2, 2000, during the annual Organization of Agreement State Meeting, the NRC staff presented information on the grant program to provide Agreement State staff an opportunity to discuss the process and procedure that will be used to administer the program. Copies of the draft grant proposal for file review and/or initial survey, and the draft procedure were distributed at that meeting.

The grant program will be administered to ensure a proper, fair, and equitable use of available funds to assist Agreement States with remaining formerly NRC licensed sites to complete necessary file reviews and surveys; site characterization; and remediation, if necessary. The program will include a risk-ranking of the sites to ensure that funds are available for the ''high-risk'' sites in the event that the appropriated funds are less than requested or prove to be insufficient to fully remediate remaining identified sites. The FY 2001 funding appropriation is $1,650,000.00. The FY 2002 proposed ceiling is $1,650,000.00 pending availability of the funds.

The grant program is organized into four different kinds of proposals for funding assistance:

(1) Proposal for file review and/or initial survey;

(2) Proposal for regulatory oversight for site characterization and/or remediation;

(3) Proposal for site characterization; and

(4) Proposal for site remediation.

Each State that desires funding assistance should submit a written grant proposal to the Attention of: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop T–7–I–2, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

An STP procedure (SA–1000), entitled ''Implementation of the Grant Program for Funding Assistance for

Formerly Licensed Sites in Agreement States'', with a sample proposal for file review and/or initial survey is available on the NRC homepage at http://www.hsrd.ornl.gov/nrc/procedures/sa1000.pdf.

Each proposal should contain basic information including project goals and objectives, project management, period of the project, project total cost, and anticipated results. In addition, the proposal should include the following information depending on the type of proposal being submitted:

(1) Proposal for File Review and/or Initial Survey (A sample proposal can be found in the STP Procedure SA–1000).

a. A brief description of each file to be reviewed;

b. The number of loose material and/or sealed source files to be reviewed;

c. Estimated work hours by major activity for each file (including review of records and documents, travel, interviews, survey and sampling, etc.);

d. Estimated hourly rate of the person(s) conducting the reviews and/or initial surveys;

e. Estimated cost for file review and/or initial survey (using data from items c and d);

f. Estimated worker benefit cost;

g. Estimated travel and Per Diem cost;

h. Estimated supplies and service cost;

i. Estimated total direct cost (using data from items e to h);

j. Estimated total indirect cost;

k. Estimated total cost (items i plus j);

l. Estimated laboratory analysis and service costs, if any;

m. Estimated grand total cost (items k plus l); and

n. Any supporting information that will strengthen the proposal.

(2) Proposal for Regulatory Oversight for Site Characterization and/or Remediation.

a. A brief description of each site that needs regulatory oversight for site characterization and/or remediation;

b. The number of sites that need regulatory oversight for site characterization and/or remediation;

c. Estimated work hours by major activity for each site (including review of records and documents, travel, administration record keeping and correspondence, etc.);

d. Estimated hourly rate of the person(s) conducting the oversight;

e. Estimated cost for sites that need regulatory oversight (using data from items c and d);

f. Estimated worker benefit cost;

g. Estimated travel and Per Diem cost;

h. Estimated supplies and service cost;

i. Estimated total direct cost (using data from items e to h);

j. Estimated total indirect cost;

k. Estimated total cost (items i plus j);

l. Estimated laboratory analysis and service costs, if any;

m. Estimated grand total cost (items k plus l); and

n. Any supporting information that will strengthen the proposal.

(3) Proposal for Site Characterization.

Note that Agreement States should complete all file reviews and/or initial surveys before submitting their site characterization proposal to NRC, and each proposal should deal with only one specific site.

a. A brief description of the site characterization plan;

b. Estimated work hours by major activity for the site including regulatory oversight and actual site characterization work;

c. Estimated hourly rate of the person(s) conducting the activity including regulatory oversight and actual site characterization work;

d. Estimated cost (using data from items b and c);

e. Estimated worker benefit cost;

f. Estimated travel and Per Diem cost;

g. Estimated supplies and service cost;

h. Estimated total direct cost (using data from d to g);

i. Estimated total indirect cost;

j. Estimated total cost (items h plus i);

k. Estimated laboratory analysis and service costs, if any;

l. Estimated grand total cost (items j plus k);

m. Documentation that none of the following three conditions exist:

(1) the current site owner is financially capable for site characterization;

(2) the original licensee is still in existence and financially capable; or

(3) the site qualifies for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) funding assistance; and

n. Any supporting information that will strengthen the proposal.

(4) Proposal for Site Remediation.

Note that each proposal deals with only one specific site.

a. A brief description of site cleanup plan;

b. Estimated work hours by major activity for the site including regulatory oversight and actual site remediation work;

c. Estimated hourly rate of the person(s) conducting the activity including regulatory oversight and actual site remediation work;

d. Estimated cost (using data from items b and c);

e. Estimated worker benefit cost;

f. Estimated travel and Per Diem cost;

g. Estimated supplies and service cost;

h. Estimated total direct cost (using data from items d to g);

i. Estimated total indirect cost;

j. Estimated total cost (items h plus i);

k. Estimated laboratory analysis and service costs, if any;

l. Estimated grand total cost (items j plus k) including regulatory oversight and actual remediation work;

m. An estimate of the residence or worker population, if any, within the contaminated area(s);

o. Accessibility of the contaminated site to the public;

p. Average gamma surface dose rate of the contaminated areas;

q. An estimate of the contaminated areas;

r. An estimate of the total volume of waste;

s. An estimate of the percentage of contaminated area where the level of removable contamination exceeds permissible regulatory limits;

t. Any economic impact of not cleaning up the site immediately;

u. The funding needed for each year and the amount of time needed to complete site cleanup activities;

v. Plans for disposal of waste and availability of the waste disposal site;

w. A statement or conclusion (and supporting basis) that the contaminated site could result in doses that exceed the 25 millirem/year public dose limit;

x. Documentation that none of the following three conditions exist:

(1) The current site owner is financially capable of conducting the site remediation;

(2) The original licensee is still in existence and financially capable; or

(3) The site qualifies for CERCLA funding assistance;

y. Any considerations that would warrant that this site needs to be remediated in a short period of time; and

z. Any supporting information that will strengthen the proposal.

**Evaluation Process**

All proposals received as a result of this announcement will be evaluated by NRC staff.

**Evaluation Criteria**

The common evaluation criteria for each proposal are as follows:

1. Clarity of statement of project objectives, management and anticipated results;

2. The completeness of the cost estimate;

3. The level of supporting detail presented; and

4. The reasonableness of the cost estimate (i.e., the accuracy and

magnitude of estimated costs) in relation to the work to be performed and anticipated results.

Additional evaluation criteria for site characterization proposal:

The funding will not be granted to a site if any of the following conditions exist:

a. The current site owner is financially capable for site characterization.

b. The original licensee is still in existence and financially capable.

c. The site qualifies for CERCLA funding assistance.

Additional evaluation criteria for site remediation proposal:

a. The funding will not be granted to a site if any of the following conditions exist:

i. The current site owner is financially capable for site remediation.

ii. The original licensee is still in existence and financially capable.

iii. The site qualifies for CERCLA funding assistance.

iv. Site remediation is proposed for compliance with a more conservative criterion than 25 millirem/year.

b. If necessary, the NRC staff will evaluate and approve the grants based on a risk-ranking for each site. Information on the approach for risk ranking contaminated formerly NRC licensed sites will be provided at a later date, if necessary.

Dated at Rockville, Maryland this 26th day of January, 2001.

For the Nuclear Regulatory Commission.

**Paul H. Lohaus,**

*Director, Office of State and Tribal Programs.*

[FR Doc. 01–2832 Filed 2–1–01; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 29; SEC File No. 270–169; OMB Control No. 3235–0149

Rule 83; SEC File No. 270–82; OMB Control No. 3235–0181

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rules 29, Filing of Reports to State Commissions, concerns reports to state commissions by registered holding companies and their subsidiaries. The rule requires that a copy of each annual report submitted by any registered holding company or any of its subsidiaries to a state commission covering operations not reported to the Federal Energy Regulatory Commission be filed with the Securities and Exchange Commission no later than ten days after such submission.

The information collected under Rule 29 permits the Commission to remain current on developments that are reported to state commissions, but that might not be reported to the Commission otherwise. This information is beneficial to the liaison the Commission maintains with state governments and also is useful in the preparation of annual reports to the U.S. Congress under Section 23 of the Public Utility Holding Company Act of 1935.

The title of Rule 83 is Exemption In the Case of Transactions with Foreign Associates. It authorizes exemption from the at cost standard of section 13(b) of the Public Utility Holding Company Act of 1935 for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from Section 13(b) to submit an application, in the form of a declaration, to the Commission. The Commission will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rules 29 and 83 do not create a recordkeeping or retention burden on respondents. These rules do, however, contain reporting and filing requirements. Rule 29 imposes a reporting burden of about .25 hours for each of sixty-two respondents, each of which makes one submission annually. The total annual burden is fifteen and one-half hours. Rule 29 imposes no cost burdens.

The filing requirement of Rule 29 is mandatory. Responses will not be kept confidential. The filing requirement of Rule 83 is necessary to obtain a benefit. Responses will not be kept confidential.

Since the Commission has received no applications under Rule 83 recently, it is estimated the burden of Rule 83 as zero.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 25049. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 8, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2811 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27340]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 26, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 20, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of

facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 20, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**National Grid USA, et al. (70–9089)**

National Grid USA (''Grid''), a registered public utility holding company, and its electric public utility subsidiary companies, Massachusetts Electric Company (''Mass Electric''), The Narragansett Electric Company (''Narragansett''), New England Electric Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., New England Hydro-Transmission Corporation, New England Power Company, New England Energy Incorporated, and National Grid USA Service Company, Inc. (''Service Company''), all located at 25 Research Drive, Westborough, Massachusetts 01582, and Granite State Electric Company, 407 Miracle Mile, Suite 1, Lebanon, New Hampshire 03766, Nantucket Electric Company (''Nantucket''), 25 Fairgrounds Road, Nantucket, Massachusetts 02554, and The Narragansett Electric Company, 280 Melrose Street, Providence, Rhode Island 02901 (collectively, ''Applicants'') have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 43, 45 and 54 under the Act.

By order dated October 29, 1997 (HCAR No. 26768) and supplemented June 2, 1998 (HCAR No. 26881), the Commission authorized, through October 31, 2001, among other things: (1) the issuance of short-term bank notes by Mass Electric, Nantucket, Narragansett, and Service Company; (2) the issuance and sale of commercial paper by Mass Electric and Narragansett; and (3) the establishment of an intrasystem money pool (''Money Pool'') for the New England Electric System (now Grid) [1] and participation in the Money Pool by Mass Electric, Nantucket, Narragansett, and Service Company.

In other orders dated April 15, 1997 (HCAR No. 26704) and supplemented March 20, 1998 (HCAR No. 26875) in SEC File No. 70–8966, Eastern Utilities Associates (''EUA'') and certain of its subsidiaries were authorized to enter into certain borrowing arrangements through July 31, 2002.[2]

Applicants now request that the Commission orders be amended to authorize commercial paper, bank borrowings, and Money Pool borrowings in the following increased amounts, through May 31, 2003.[3]

| Borrowing company | Borrowing authority | |
|---|---|---|
| | Old | Requested |
| Mass Electric | $150,000,000 | $275,000,000 |
| (Eastern Edison) | 75,000,000 | ..... |
| Nantucket | 5,000,000 | 6,000,000 |
| Narragansett | 100,000,000 | 145,000,000 |
| (Blacksone) | 20,000,000 | ..... |
| (Newport) | 25,000,000 | ..... |
| Service Company | 12,000,000 | 60,000,000 |
| (EUA Service) | 15,000,000 | ..... |

Applicants request proposed increases because the consolidation of the NEES and EUA subsidiaries into Grid subsidiaries as a result of the mergers have resulted in greater borrowing needs, and cash requirements for general corporate purposes. The commercial paper will be in the form of the unsecured promissory notes in denominations of not less than $50,000 and will mature within 270 days. The proposed borrowings from banks would not exceed 10.5% per year based on the current base lending rate of 9.5% and the federal funds rates. The terms of the Money Pool will remain unchanged.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2813 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

[1] National Grid Group plc acquired the New England Electric System and formed National Grid USA by Commission order dated March 15, 2000 (HCAR No. 27154).

[2] By Commission order dated April 14, 2000 (HCAR No. 27166), Grid was authorized to acquire all of the outstanding common shares of EUA, with Grid as the surviving entity. Several of EUA's subsidiaries merged into Grid's subsidiaries.

[3] By Commission order dated March 15, 2000 (HCAR No. 27154), Applicants' financing authority was extended to May 31, 2003. Companies listed in parentheses are former EUA entities which have merged into the Grid company whose name appears above it.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24845]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 26, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 20, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

**Morgan Keegan Southern Capital Fund, Inc. [File No. 811–4658]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an

investment company. On October 31, 2000, applicant transferred its assets to Morgan Keegan Select Capital Growth Fund, a series of Morgan Select Fund, Inc. based on net asset value. Expenses of $81,594 incurred in connection with the reorganization where shared equally between applicant and Morgan Asset Management, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on January 17, 2001.

*Applicant's Address:* 50 Front Street, Memphis, TN 38103.

**Merrill Lynch Consults International Portfolio [File No. 811–6725]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, applicant transferred its assets to Merrill Lynch International Equity Fund based on net asset value. Expenses of $18,594 incurred in connection with the reorganization were paid by the acquiring fund.

*Filing Date:* The application was filed on January 11, 2001.

*Applicant's Address:* 800 Scudders Mill Road, Plainsboro, NJ 08536.

**The Foreign & Colonial Emerging Middle East Fund, Inc. [File No. 811–8678]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 28, 2000, applicant made a final liquidating distribution to its shareholders based on the net asset value. Applicant has retained a reserve of $163,115 to cover current and anticipated liabilities, which will be held in trust for the benefit of applicant's creditors and shareholders. All assets remaining as of three years after the record date of June 26, 2000 will be distributed to shareholders or escheat to the State of Maryland. Expenses of $142,014 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on January 12, 2001.

*Applicant's Address:* c/o Mitchell Hutchins Asset Management, Inc., 51 West 52nd Street, New York, NY 10019.

**Pathfinder Trust [File No. 811–5020]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 30, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $28,979 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on January 10, 2001.

*Applicant's Address:* 4023 West 6th Street, Los Angeles, CA 90020.

**Schroder Capital Funds [File No. 811–9130]**

*Summary:* Applicant, a master fund in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On June 30, 2000, applicant made a liquidating distribution to its sole remaining shareholder based on net asset value. Expenses of approximately $2,500 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on December 26, 2000.

*Applicant's Address:* 787 Seventh Avenue, 34th Floor, New York, NY 10019.

**Independence Square Income Securities, Inc. [File No. 811–2233]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 17, 2000, applicant transferred its assets to BlackRock Funds (SM)—BlackRock High Yield Bond Portfolio, based on net asset value. BlackRock Institutional Management Corporation, applicant's investment adviser, bore all expenses incurred in connection with the reorganization.

*Filing Date:* The application was filed on January 4, 2001.

*Applicant's Address:* c/o Edward J. Roach, 400 Bellevue Park, Wilmington, DE 19809.

**Connecticut Limited Maturity Municipals Portfolio [File No. 811–7518]; Michigan Limited Maturity Municipals Portfolio [File No. 811–7522]**

*Summary:* Each applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On October 29, 1999, each applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $9,452 and $10,694, respectively, incurred in connection with the liquidations were paid by Eaton Vance Connecticut Limited Maturity Municipals Fund and Eaton Vance Michigan Limited Maturity Municipals Fund, respectively, each a feeder fund of the master fund.

*Filing Date:* The applications were filed on January 17, 2001.

*Applicants' Address:* The Eaton Vance Building, 255 State Street, Boston, MA 02109.

**Lord Abbett Equity Fund [File No. 811–6033]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 31, 2000, applicant transferred its assets to Lord Abbett Large-Cap Growth Fund based on net asset value. Expenses of $130,046 were incurred in connection with the reorganization, of which Lord, Abbett & Co., applicant's investment adviser, paid 50%. Applicant and the acquiring fund paid the remaining 50% based on their respective net assets.

*Filing Date:* The application was filed on January 2, 2001.

*Applicant's Address:* 90 Hudson Street, Jersey City, NJ 07302–3973.

**Nuveen Tax-Exempt Money Market Fund, Inc. [File No. 811–3134]; Nuveen California Tax-Free Fund, Inc. [File No. 811–4508]; Nuveen Tax-Free Money Market Fund, Inc. [File No. 811–4822]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 1999, each applicant transferred its assets to Nuveen Institutional Tax-Exempt Money Market Fund, Nuveen California Tax-Exempt Money Market Fund, and Nuveen New York Tax-Exempt Money Market Fund, respectively, each a series of Nuveen Money Market Trust, based on net asset value. Expenses of $135,314, $33,146 and $15,531, respectively, were incurred in connection with the reorganizations and were paid by each applicant.

*Filing Date:* The applications were filed on January 3, 2001.

*Applicants' Address:* 333 West Wacker Drive, Chicago, IL 60606–1286.

**Balanced Portfolio [File No. 811–8010]**

*Summary:* Applicant, a master fund, in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On February 29, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $4,489 incurred in connection with the liquidation were paid by Eaton Vance Balanced Fund, a ''feeder'' fund of applicant.

*Filing Dates:* The application was filed on November 7, 2000, and amended on January 17, 2001.

*Applicant's Address:* The Eaton Vance Building, 255 State Street, Boston, MA 02109.

**American Municipal Trust [File No. 811–3733]**

*Summary:* Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an

investment company. By December 29, 1998, applicant had distributed its assets to unit holders based on net asset value. Applicant has 59 outstanding unit holders, who have not been located. Chase Manhattan Bank, N.A., applicant's trustee, is holding the unclaimed funds, which will escheat to the State of New York after 10 years. Printing and postage expenses of approximately $10,000 were paid by applicant's trustee, out of a trustee's fee paid by applicant's unit holders on a pro rata basis, and legal expenses of approximately $1,000 were paid by American Municipal Securities, Inc., applicant's depositor.

*Filing Dates:* The application was filed on March 16, 2000, and amended on June 13, 2000 and December 19, 2000.

*Applicant's Address:* 770 Second Avenue South, St. Petersburg, FL 33701.

**Templeton Variable Products Series Fund [File No. 811–5479]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 1, 2000, applicant transferred its assets to Franklin Large Cap Growth Securities Fund, Franklin Small Cap Fund, Mutual Shares Securities Fund, Templeton Global Asset Allocation Fund, Templeton Global Income Securities Fund, Templeton Developing Markets Equity Fund, Templeton International Equity Fund, Templeton Global Growth Fund, Franklin S&P 500 Index Fund, and Franklin Strategic Income Securities Fund (the ''Acquiring Funds'') based on net asset value. Expenses of $1,275,910 incurred in connection with the reorganization were paid by Franklin Advisers, Inc., Templeton Investment Counsel, Inc., Templeton Asset Management Ltd., Templeton Global Advisors Limited, Franklin Mutual Advisers, LLC, Franklin Templeton Variable Insurance Products Trust, and Templeton Variable Products Series Fund.

*Filing Dates:* The application was filed on August 11, 2000 and amended on October 4, 2000.

*Applicant's Address:* 500 East Broward Boulevard, Suite 2100, Fort Lauderdale, FL 33394–3091.

**Bank Fiduciary Fund—Equity [File No. 811–667]; Bank Fiduciary Fund—Fixed Income [File No. 811–1996]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2000, each applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $27,000 and $20,000, respectively, were incurred in connection with the liquidations and were paid by each applicant.

*Filing Dates:* The applications were filed on July 6, 2000, and amended on January 24, 2001.

*Applicants' Address:* c/o New York Bankers Assn., 99 Park Avenue, New York, NY 10016–1502.

**The Govett Funds, Inc. [File No. 811–6229]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Between August 12, 2000 and September 11, 2000, four of applicant's series, Govett Emerging Markets Equity Fund, Govett International Equity Fund, Govett Global Income Fund and Govett Smaller Companies Fund, transferred their assets to corresponding series of ARK Funds, based on net asset value. On October 16, 2000, applicant's remaining series, Govett International Smaller Companies Fund, made a liquidating distribution to its shareholders based on net asset value. Expenses of $672,831 incurred in connection with the reorganizations and liquidation were paid by applicant's investment adviser, AIB Govett, Inc.

*Filing Date:* The application was filed on January 18, 2001.

*Applicant's Address:* c/o AIB Govett, Inc., 250 Montgomery Street, Suite 1200, San Francisco, CA 94104.

**PPM America Funds [File No. 811–9001]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On January 19, 2001, applicant made a final liquidating distribution to its sole shareholder based on net asset value. Expenses of $1,600 incurred in connection with the liquidation were paid by applicant's investment adviser, PPM America, Inc.

*Filing Date:* The application was filed on January 23, 2001.

*Applicant's Address:* 225 West Wacker Drive, Chicago, IL 60606.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2812 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43882; File No. SR–CHX–00–27]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Change by the Chicago Stock Exchange, Incorporated and Amendment No. 1 Relating to Participation in Crossing Transactions Effected on the Exchange Floor

January 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 therefunder,[2] notice is hereby given that on September 14, 2000, the Chicago Stock Exchange, Incorporated (''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 CHX. The CHX amended the proposal on January 18, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, rule 23 of the Exchange's rules relating to participation in crossing transactions effected on the Exchange floor. The text of the proposed rule change is available at the Commission and the CHX.

### 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter dated January 16, 2001, from Kathleen M. Boege, Associate General Counsel, CHX, to Alton S. Harvey, Office Head, Division of Market Regulation, Commission (''Amendment No. 1''). Amendment No. 1 requests pilot approval of the proposed rule change through July 9, 2001.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Article XX, rule 23 of the Exchange's rules relating to participation in crossing transactions in Nasdaq/National Market (''NM'') securities effected on the floor of the Exchange. This proposal is currently operating, on a pilot basis through February 28, 2001, for Dual Trading System issues traded on the Exchange.[4] This pilot was approved in connection with the securities industry's move to a decimal pricing environment. The proposed rule change would extend the pilot to cover crossing transactions in Nasdaq/NM securities.

Article XX, rule 23 of the Exchange's rules governs crossing transactions, which represent a significant component of Exchange volume.[5] under the current rule, if a floor broker presents a crossing transaction involving Nasdaq/NM issues, another member may participate, or ''break up,'' the transaction, by offering (after presentation of the proposed crossing transaction) to better one side of the transaction by the minimum price variation. The floor broker is then effectively prevented from consummating the transaction as a ''clean cross,'' which may be to the detriment of the floor broker's customer(s).[6] In instances where the minimum price variation is relatively small, it is very inexpensive for a member to break up crossing transactions in this manner. Floor brokers are currently experiencing difficulty, for example, cleanly crossing stock in Nasdaq/NM issues which trade in minimum price variations of 1/64.

Given the number of products that will begin trading in penny increments once the securities industry completes the transaction to a decimal pricing environment, the floor broker community, and other CHX members, are concerned that much of the crossing business (and corresponding Exchange volume) could evaporate if the current rules are not amended to preclude breaking up crossing transactions in the manner described above. Accordingly, the Decimalization Subcommittee and Floor Broker Tech Subcommittee have worked to achieve consensus on the proposed rule change, which would strike a balance of interests of those members who are impacted by crossing transactions.

Under the proposed pilot program, a floor broker will be permitted to consummate cross transactions in Nasdaq/NM issues, as well as Dual Trading System issues, involving 5,000 shares or more, without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security.[7] These requests will place the specialist and other market makers on notice that the floor broker is intending to ''cross'' within the bid-offer spread. This arrangement will ensure that a specialist or market maker retains the opportunity to better the cross price by updating its quote, but will preclude them from breaking up a cross transaction after the cross transaction is presented. The proposed rule change will operate on a pilot basis through July 9, 2001.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the CHX believes that the proposed rule change is consistent with section 6(b)(5)[8] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The CHX has requested accelerated approval of the proposed rule change. While the Commission is not prepared to grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CHX–00–27 and should be submitted by February 20, 2001.

[4] Dual Trading System issues are issues that are listed on either the New York Stock Exchange or the American Stock Exchange. *See* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (approving SR–CHX–00–13 on a pilot basis through February 28, 2001). The proposed rule change deletes the provisions of Article XX, Rule 23 that govern cross transactions in Nasdaq/NM issues and, thus, has the effect of also extending the pilot program in Dual Trading System issues until July 9, 2001.

[5] For example, in June, July and August of 2000, share volume from brokered cross trades was approximately 21% of total share volume traded on the Exchange.

[6] Some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the breakup of the cross transaction by another Exchange member. Of course, the floor broker will still retain the ability to present both sides of the order at the post if the customers so desire.

[7] These updated quotes will not be directed solely to the floor broker. Anyone at the post may respond to the updated quotes.

[8] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2818 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43885; File No. SR–MSRB–00–02]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rules G–8 and G–38 and Form G–37/G–38

January 25, 2001.

### I. Introduction

On January 27, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Rule G–38, on consultants, Rule G–8, on books and records, and Section IV of Form G–37/G–38 and the attachment page to the form. The Board filed Amendment No. 1 to the proposed rule change on November 15, 2000.[3] The proposed rule change was published for comment in the **Federal Register** on November 22, 2000.[4] The Commission received on the proposal. This order approves the proposal, as amended.

### II. Description of the Proposal

The Board believes that the current language of Rules G–38 and G–8 and the formats of Form G–37/G–38, the attachment page, and the Instructions, are not as clear as they could be about the information required for identifying a consultant. The Board states that it has received inquiries from dealers that have indicated that there is confusion about certain information required to be reported in Section IV of Form G–37/G–38 as well as the attachment page to the form. The proposed rule change would amend Rule G–38 to remove the separate references to the consultant's company name from the requirements regarding the consultant agreement, the disclosure to issuers, and the disclosure to the Board. In addition, the proposed rule change would remove the requirement in Rule G–8 for dealers to maintain a separate record of the consultant's company name. The proposed rule change would also amend Rules G–8(a)(xviii)(A) and G–38(d) and (e) to add the phrase ''pursuant to the Consultant Agreement'' after the consultant's name.[5] The proposed rule change would also revise the formats of Section IV of Form G–37/G–38 and the attachment page to state ''Name of Consultant (pursuant to Consultant Agreement)'' and delete the reference to the ''Consultant Company Name.'' Thus, a dealer would provide the name of an individual, if the consultant is an individual, or of a company, if the consultant is a company, depending upon whether the dealer has entered into a consultant agreement with an individual or a company.

Another area addressed by the proposed rule change concerns the role of the consultant. Pursuant to Rule G–38, a dealer is required to include within the consultant agreement the role of the consultant, to disclose this role to the issuer and to the Board and, pursuant to Rule G–8, to maintain a record of the role. The Instructions for Completing and Filing Form G–37/G–38 state that, in describing a consultant's role, a dealer should include the state or geographic area in which the consultant is working on behalf of the dealer. In addition, the Board issued a Question and Answer notice on Rule G–38 in which it stated that dealers must include the state or geographic area in which the consultant is working on behalf of the dealer.[6]

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)[8] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should assist brokers, dealers and municipal securities dealers with complying with their obligations under MSRB Rules G–37/38 and Form G–37/38. Specifically, the Commission believes that the proposed rule change should make clear whether the individual consultant's or the consultant company's name must be disclosed on Form G–37/38. Under the proposed rule change a dealer must review its consultant agreement to determine whether its consultant is an individual or a company. If the consultant agreement is with an individual, then only the individual's name need be reported on the form and not a company name. Conversely, if the consultant agreement is with a company, only the company's name need be reported and not an individual's name. The Commission believes that deleting from Rule G–38 and Form G–37/38 references to ''consultant company name'' will eliminate existing ambiguities resulting from the requirement that information regarding both an individual and a company be provided.

In addition, the Commission believes that amending Rules G–8(a)(xviii)(A) and G–38(d)(e) to add the phrase ''pursuant to the Consultant Agreement'' after the consultant's name will make clear that dealers are to look to their consultant agreement in determining whether the consultant is an individual or a company. Furthermore, the Commission believes that revising Rules G–38 and G–8 to explicitly require reporting of the state or georgraphic area in which a consultant is working on behalf of a dealer will ensure that the Board receive this information that is currently required by the Instructions to Form G–37/38.

Finally, the Commission notes that pursuant to recent amendments to Rules G–38, G–8, and G–37,[9] If an individual is a consultant, the individual will relay to the dealer his or her reportable political contributions, reportable political party payments, and the reportable contributions and reportable payments of any political action committee (''PAC'') controlled by the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Board submitted a new Form 19b–4, which replaced the original filing (''Amending No. 1''). Specifically, Amendment No. 1 amended MSRB Rules G–38 and G–8 to clarify that the name of the consultant is obtained from the consultant agreement. Amendment No. 1 also revised the filing to include the statutory basis for the proposed rule change.

[4] Securities Exchange Act Release No. 43568 (Nov. 15, 2000), 65 FR 70371.

[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Rule G–38 Question and Answer number 1 dated November 18, 1996, *MSRB Rule Book* (January 1, 2000) at 210. The Rule G–38 Questions and Answers are also posted on the Board's web site at www.msrb.org.

[7] In approving this proposal, the Commission has considered the proposal rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–4(b)(2)(C).

[9] *See* Securities Exchange Act Release No. 42205 (December 7, 1999), 64 FR 69808 (December 14, 1999).

individual. If the consultant is a company, the company will relay its reportable contributions and reportable payments to the dealer, as well as those made by any partner, director, officer or employee of the consultant who communicates with issuers to obtain municipal securities business on behalf of the dealer, and any PAC controlled by the consultant or any partner, director, officer or employee of the consultant who communicates with issuers to obtain municipal securities business or behalf of the dealer. Dealers will report this contribution and payment information to the Board on Form G–37/G–38 by contributor category (*i.e.,* company, individual, company controlled PAC, or individual controlled PAC).

## IV. Conclusion

*It is Therefore Ordered,* pursuant to Section 119(b)(2) [10] of the Act, that the proposed rule change, as amended (SR–MSRB–00–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2849 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–M**

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43894; File No. SR–NASD–01–04]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Dual Reporting of Transactions in Certain Fixed Income Securities

January 26, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change 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 NASD proposes to amend NASD Rule 6230(b) to require trade reports in transactions in eligible fixed income securities between two members to be filed with the NASD by each member. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**6200. TRADE REPORTING AND COMPARISON ENTRY SERVICE (TRACE)**

* * * * *

6230. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction

Trade data input obligations are as follows:

(1) In transactions between two members, *both members* [the member representing the sell-side] shall submit a trade report to TRACE;

(2) In transactions involving a member and a non-member, including a customer, the member shall submit a trade report to TRACE.

(c)–(f) No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In conjunction with the Commission's approval of rules governing the NASD's Trade Reporting and Comparison Entry Service (''TRACE Rules'' or ''Rule 6200 Series'') (SR–NASD–99–65),[3] NASD is proposing an amendment to NASD Rule 6230(b). The proposed amendment would require a member to submit a trade report to the NASD if the member is either the buy- or the sell-side of a transaction in an eligible fixed income security under the Rule 6200 Series. Rules 6230(b), as approved, currently requires only the member who represents the sell-side to submit a trade report to the NASD.

The Association is proposing the amendment to Rule 6230(b) to provide for reporting by both the buy- and sell-side of the transaction (''dual trade reporting'') in order to improve the quality of the transaction data for surveillance purposes. The amendment is proposed in lieu of previously proposed rule 6231, which the Association deleted from SR–NASD–99–65 when it filed Amendment No. 4 thereto.[4] Deleted rule 6231 would have required that both sides to a trade submit to the NASD duplicate copies of the transaction information they submitted to their registered clearing agency for purposes of clearance and settlement of their trades. The Association deleted proposed rule 6231 from the rule 6200 Series in response to industry comments. Although the Association deleted from SR–NASD–99–95 proposed rule 6231 based on industry comments that the proposed rule was overly burdensome, for regulatory purposes the NASD represents that it must receive reports from both sides of trades in eligible fixed income securities. As a result, the NASD is proposing to amend rules 6230(b) because the amended provision would provide the NASD with the information it believes is necessary to conduct market surveillance. In addition, the proposed revision to rule 6230(b) is believed to be less burdensome to the industry than previously proposed rule 6231 for the following reason. As previously structured, the TRACE rules would have required members to engage in two software development efforts—one to comply with the requirement to report sell-side information within one hour to the Association in rule 6230 and another to meet the requirements of Rule 5231 for the submission of clearing information at the close of business. The proposed amendment to rule 6230(b) will allow members to engage in one software development effort to comply with TRACE requirements.

Although the Association's proposal will require the dual real-time reporting of sell-side and buy-side trade

[3] On January 23, 2001, the Commission approved NASD rules 6210 through 6260 relating to reporting and dissemination of transaction information on eligible fixed income securities, and granted accelerated approval to Amendment No. 4 to those rules. Securities Exchange Act Release No. 43873 (January 23, 2001).

[4] The NASD filed Amendment No. 4 to SR–NASD–99–65 on January 5, 2001.

information, only the sell-side information will be disseminated, thus avoiding the dissemination of two trade reports for the same trade. The buy-side information that is collected will be used for regulatory purposes.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practice, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. the NASD's proposed rule change, if approved, will establish additional rules for the reporting of information on eligible fixed income transactions that will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the fixed income markets in order to prevent fraudulent and manipulative acts and practices. The proposed rule change, by requiring reporting of such transaction information, will protect investors and the public interest, by among other things, increasing transparency in the fixed income markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. *See* the amended statement on burden on competition contained in Amendment No. 4 to SR–NASD–99–65, which also fully applies to this current rule proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

While comments were neither solicited nor received concerning this rule proposal, several commenters on SR–NASD–99–65 indicated that a dual trade reporting approach for eligible fixed income securities is appropriate.[5] These comments confirmed that previously proposed rule 6231, contained in the original TRACEE Rules in SR–NASD–99–65, would have required member firms to engage in additional software development efforts and would have required member firms to duplicate the existing clearance data transmission and retention process by re-sending this data to the Association after having sent it to the clearing entities. In light of these comments, the Association is proposing this rule change to require dual trade reporting to the Association for transactions of eligible fixed income securities between two members as a less burdensome approach.

[5] *See* Letters from Noland Cheng, Chairman, Fixed Income Transparency Subcommittee of the Securities Industry Association's Operations Committee (December 20, 2000) and Messrs. William H. James, III, 1999 Chairman, Vincent Murray, 2000 Chairman, and Thomas Thees, 2001 Chairman, Corporate Bond Division, The Bond Market Association (December 20, 2000).

**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 Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

The Commission invites interested persons to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are file with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–01–04 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[b]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2817 Filed 2–1–01; 8:45 am]

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[b] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43893; File No. SR–NASD–01–09]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Implementation of Decimal Pricing in the Nasdaq Market

January 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to modify several NASD rules to support the implementation of decimal pricing in the Nasdaq market as outlined in the Decimals Implementation Plan For the Equities and Options Markets (''Implementation Plan'' or ''Plan'') submitted to the Commission on July 24, 2000. Nasdaq will implement these rule changes pursuant to the Plan starting on March 12, 2001 for each security converted to decimal pricing under the Plan. Securities not trading in decimal increments will continue to be governed by the current fractional versions of these rules. The text of the proposed rule change is below.

Proposed new language is in italics.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**IM–2110–2. Trading Ahead of Customer Limit Order**

(a) General Application.

To continue to ensure investor protection and enhance market quality, the Association's Board of Governors is issuing an interpretation to the Rules of the Association dealing with member firms' treatment of their customer limit orders in Nasdaq securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members acting as market makers to handle their customer limit orders with all due care so that market makers do not ''trade ahead'' of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the Association is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Rule 2110 of the Association's Rules states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

**Interpretation**

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order, and provided further, that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. Nothing in this interpretation, however, requires members to accept limits orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, the Association wishes to emphasize that members may not trade ahead of their customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit order. The Association believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market making capacity does not occur. For purposes of this interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

*As Outlined in NASD Notice to Members 97–57, the Minimum Amount of Price Improvement Necessary in Order for a Market Maker to Execute an Incoming Order on a Proprietary Basis When Holding an Unexecuted Limit Order for a Nasdaq Security Trading in Fractions, and Not Be Required To Execute the Held Limit Order, Is as Follows:*

- *If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments) the firm must price improve by at least 1/64.*
- *If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.*

*For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a market maker to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is $0.01.*

The Association also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The Association emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit order regarding the quality of the execution received.

(b) No Change.

IM–3350. Short Sale Rule.

(a)(1) through (a)(3) No Change.

(b)(1) Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid when the current best (inside) bid as displayed by The Nasdaq Stock Market is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of a least 1/16th point above the current inside bid when the current inside spread is 1/16th point or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least 1/16th point. If the current spread is less than 1/16th point, however, the short sale must be executed at a price equal to or greater than the current inside offer price.

(2) Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the bid when the current spread is 1/16th or greater and equal to or greater

than the offer when the current spread is less than 1/16th ensures that transactions are not effected at prices inconsistent with the underlying purpose of the Rule. It would be inconsistent with Rule 3350 for a member or customer to cause the inside spread for an issue to narrow when the current best is lower than the preceding best bid (e.g., lowering its offer to create an inside spread less than 1/16th) for the purpose of facilitating the execution of a short sale at a price less than 1/16th above the inside bid.

*(3) For Nasdaq National Market securities trading in decimals pursuant to the Decimals Implementation Plan for Equity and Options Markets, the Association has determined that in order to effect a ''legal'' short sale in such securities when the current bid is lower than the preceding bid the short sale must be executed at least $0.01 above the current inside bid. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.*

(c)(1) through (c)(3) No Change.

4632. Transaction Reporting.

(a) through (c) No Change.

(d) Procedures for Reporting Price and Volume.

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) No Change.

(2) No Change.

(3)(A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

Example:

BUY as principal 100 shares from a customer at 39 7/8 which includes a 1/8 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

*Example:*

*BUY as principal 100 shares from a customer at 39.90 which includes a $0.10 mark-down from prevailing market at 40;*

*REPORT 100 shares at 40.*

Example:

SELL as principal 100 shares to a customer at 40 1/8, which includes a 1/8 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

*Example:*

*SELL as principal 100 shares to a customer at 40.10, which includes a $0.10 mark-up from the prevailing market of 40;*

*REPORT 100 shares at 40.*

Example:

BUY as principal 10,000 shares from a customer at 39 3/4, which includes a 1/4 mark-down or service charge from the prevailing market at 40;

REPORT 10,000 shares at 40.

*Example:*

*BUY as principal 10,000 shares from a customer at 39.75, which includes a $0.75 mark-down or service charge from the prevailing market of 40;*

*REPORT 10,000 shares at 40.*

(B) No Change.

(e) through (f) No Change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 8, 2000, the Commission ordered the exchanges and the NASD to submit a decimal pricing phase-in plan no later than July 24, 2000. Under the Plan, the NASD is to fully convert the Nasdaq market to decimal pricing no later than April 9, 2001. Before full implementation, Nasdaq is also to commence a decimal pricing pilot program for 10–15 Nasdaq issues on or before March 12, 2001. Recently, Nasdaq also determined to add a second decimal phase-in of approximately 100+ additional Nasdaq securities on March 26, 2001.

In preparation for decimal pricing, the NASD proposes to amend certain of its rules that contain fractions through the addition of language and decimal-based values so as to govern trading activity in securities that transition from fractional to decimal pricing under the Plan. After Nasdaq's full implementation of decimal pricing, Nasdaq will automatically remove, where appropriate, any remaining fractional references in its rules.[3]

Specifically, Nasdaq is proposing to amend the following: IM–2110–2 (Trading Ahead of Customer Limit Order); IM–3350 (Short Sale Rule) and NASD Rule 4632 (Transaction Reporting). A summary of the proposed changes is provided below:

*IM–2210–2. Trading Ahead of Customer Limit Order*

NASD IM–2110–2 (''Manning Interpretation'' or ''Interpretation'') is amended to add language indicating that the minimum amount of price improvement that an NASD member holding an unexecuted limit order in a decimal-priced Nasdaq National Market (''NNM'') or SmallCap security must provide when executing an incoming order in that same security to avoid a violation of the Interpretation is $0.01. The Interpretation is also amended to incorporate the price improvement standard for NMS and SmallCap securities trading in fractions currently contained in NASD Notice to Members 97–57 (''NTM 97–57'').

The Manning Interpretation is designed to ensure that customer limit orders are executed in a fair manner and at similar prices at which a firm has indicated it is willing to trade for its own account. To provide customers with the greatest opportunity to have their orders executed, NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must

[3] Obviously, many NASD Rules and interpretations do not contain, and are not enforced based on, any particular fractional value. Nothing in Nasdaq's move to decimal pricing should be construed as relieving NASD members from their ongoing obligation to comply with all current NASD Rules.

execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation. Currently, the minimum price improvements necessary to avoid a Manning violation, as outlined in NTM 97–57, are:

• If actual spread is greater than 1/16 of a point = Firm must price improve incoming order by at least a 1/16. For stocks priced under $10, (which are quoted in 32nds) the firm must price improve by at least 1/64.

• If actual spread is the minimum quotation increment = Firm must price improve incoming order by one-half the minimum quotation increment.

In a decimal environment, Nasdaq is proposing the following Manning price improvement standards for NNM and SmallCap securities:

• A firm must always price improve an incoming order by at least $0.01.[4]

Please note that for securities quoting in decimals, there would no longer be any differentiation between the amount of price improvement required and the price of a particular security.

Nasdaq chose to propose the $0.01 price improvement standard for securities quoting in decimals, taking the view that the current 1/16 price improvement values contained in NTM 97–57 discussing the Interpretation generally approximate today's minimum quotation increment for most Nasdaq securities.[5] One exception to this approach is in the area of Manning price improvement when the spread equals the minimum quote increment. Recognizing that retaining Manning's current ''½ the spread'' price improvement alternative standard when the spread equals the minimum quote increment would result in a firm being able to price ahead of a customer order for ½ a penny ($0.005), Nasdaq has determined to strengthen that standard and propose a rule that would always require at least a penny price improvement before executing ahead of a held customer limit order. Nasdaq believes that given the size of the new decimal quotation increment, uniform price improvement of a penny, particularly for stocks that are already trading with a penny spread, is an appropriate price improvement standard for the initiation of decimal pricing.

As contemplated in the Plan, Nasdaq and NASD Regulation will closely monitor the protection of customer limit orders during the implementation of decimal pricing in the Nasdaq market and will analyze and evaluate trading activity to determine if future changes to the price improvement standard are warranted.

*IM–3350. Short Sale Rule*

The Interpretative Material is amended to add language indicating that when the current best bid in a decimalized NNM security is lower than the preceding best bid in that security, a ''legal'' short sale must be executed at a price at least $0.01 above the current bid.

NASD's Short Sale Rule requires that no member execute a short sale in an NNM security for a customer or proprietary account at or below the current best bid (unless operating pursuant to an exemption to the rule) when the current best bid is below the preceding best bid in the security. Under the current rule, a valid short sale in an NNM security must be executed at the following specified amounts above the current bid in a down market:

• Spread 1/16 or greater = Legal Short Sale must be executed at least 1/16 above current inside bid.

• Spread less than 1/16 = Legal Short Sale must be executed at price equal or greater than current inside *offer.*

In a decimal environment, Nasdaq proposes the following standard for ''legal'' short sales:

• A valid short sale on a down bid would have to be executed at least $0.01 above the current inside bid.

Nasdaq chose to propose the $0.01 price improvement standard for legal short sales in decimalized securities in a down market taking the view that the current 1/16th values contained in the short sale rule generally approximate today's minimum 1/16th quotation increment for most Nasdaq securities.

As contemplated in the Plan, Nasdaq and NASD Regulation will closely monitor the operation of the short sale rule in Nasdaq's decimal environment and will analyze and evaluate trading activity to determine if the short sale price improvement standard adopted here adequately advances the market quality goals of the rule.

*Rule 4632 Transaction Reporting*

The Rule is amended to provide alternative reporting examples for securities trading in decimals.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[6] in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

[4] Pursuant to the terms of the Implementation Plan, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq will only display priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard will be rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001) (SR–NASD–01–07).

[5] Originally, Nasdaq's Manning Interpretation required that firm price improve an incoming order by the then minimum trade reporting increment of 1/64th. *See* NASD NTM 94–43 (June 5, 1995). In response to changing market conditions, including a move to a 1/16 minimum quote increment, Nasdaq adopted the current 1/16 price improvement standard. *See* NASD NTM 97–57 (September 1997); Securities Exchange Act Release No. 39049 (September 10, 1997), 62 FR 48912 (September 17, 1997) (SR–NASD–97–66).

[6] 15 U.S.C. 78o–3(b)(6).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–01–09 and should be submitted by February 20, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2850 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43879; File No. SR–NYSE–00–32]**

## Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Stock Option Plans

January 24, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the proposed rule change[3] as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In this amendment, the Exchange proposes two modifications to the Notice. First, the Exchange proposes to extend the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which amendments were approved by the Commission on a pilot basis (''Pilot'') on June 4, 1999,[4] until September 30, 2001.[5] Second, the Exchange proposes to amend Section 312.04, which defines the term ''broadly based.'' Specifically, the Exchange proposes to amend the requirements regarding awards granted under broadly based plans. The text of the proposed rule change follows. Additions are *italicized;* deletions are [bracketed].

312.00 Shareholder Approval Policy

312.04 For the purpose of Para. 312.03:

* * * * *

(h) A Plan is ''broadly-based'' if, pursuant to the terms of the Plan:

at least a majority of the company's full-time employees in the United States, who are ''exempt employees,'' as defined under Fair Labor Standards Act of 1938, are eligible to receive stock or options under the Plan; and

at least a majority of the shares of stock or shares of stock underlying options awarded under the Plan[,] during *any three year period* [the shorter of the three-year period commencing on the date the Plan is adopted by the company or the term of the Plan,] must be awarded to employees who are not officers or directors of the company.

### 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

In the Notice, the Exchange requested a three-year extension of the Pilot to permit additional industry discussion of the issues, while at the same time enabling the Exchange to continue to study the experience of NYSE listed companies and their investors under the broadly-based plan rules contained in the Pilot. Following receipt of comments from interested persons and discussion with the SEC staff, the Exchange is amending its proposed to shorten the extension request so that the Pilot will expire on September 30, 2001.

Several commenters on the Pilot also expressed concern that the second part of the broadly definition, which focuses on actual grants made under a plan during either the first three years of a plan or the life of a plan if shorter than three years, does not protect against actions the company may take *after* the first three years. The Commission staff also noted this issue in its order approving the Pilot.[6]

In a letter to the Commission dated March 11, 1999,[7] the Exchange explained that the three-year formulation was primarily intended to avoid imposing a one-year test. The Exchange further stated that it anticipated that companies would not change their policies after the first three years of a plan. While the Exchange maintains this opinion, it also is willing to remove any lingering concern over this issue by amending the rule to specify that, in order to be ''broadly

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted the proposed rule change on July 13, 2000, which was published in the **Federal Register** on August 10, 2000. *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (''Notice'').

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999). The Pilot was originally scheduled to expire on September 30, 2000. On September 22, 2000, the Pilot was extended through November 30, 2000 to accommodate an extended comment period for the Notice. *See* Securities Exchange Act Release No. 43329, 65 FR 58833 (October 2, 2000). On November 30, 2000, the Pilot was further extended until February 28, 2000. *See* Securities Exchange Act Release No. 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000).

[5] The Exchange originally proposed a three-year extension. *See* Notice, note 3 *supra.*

[6] *See* note 4 *supra.*

[7] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated March 11, 1999 (Amendment No. 2 to File No. SR–NYSE–98–32, in which the NYSE proposed the pilot period for the proposed rule change and responded to the comment letters received from interested persons).

based,'' at least a majority of the shares of stock or shares of stock underlying options awarded under a plan during any three year period must be awarded to employees who are not officers or directors of the company. Naturally, this refers to periods of three consecutive years, and is a continuing requirement that should be applied on a rolling three-year basis by plans with terms longer than three years. In the event that a plan is implemented with a stated term shorter than three years, awards should be made in a way that would meet the rule criteria during such shorter period.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other thins, that an exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposal.

**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 designated 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.

In this regard, the Exchange consents to an extension of the time period for Commission action to February 28, 2001.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the requirements of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–06009. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–32 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2815 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–M**

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43880; File No. SR–NYSE–00–63]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Expansion of the Maximum Share Size Parameter for Single Orders Entered Into the SuperDot System

January 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 10, 2001, the Exchange amended its proposal.[3] Pursuant to rule 19b–4(f)(5),[4] the Exchange has designated this proposal as one effecting a change in an existing order-entry or trading system of a self-regulatory organization that does not: (1) Significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) significantly have the effect of limiting the access to or availability of the system. As such, the proposed rule change is immediately effective upon the Commission's receipt of this filing, as amended.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change expands to one million shares the maximum share size parameter for single orders entered into the SuperDot System (''SuperDot System'' or ''SuperDot'').[6]

**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 and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's SuperDot System provides automated order routing and reporting services to facilitate the timely and effective transmission, execution, and reporting of market and limit orders on the Exchange. Pursuant to Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, dated January 10, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange reduced the proposed maximum SuperDot System share size parameter from three million shares to one million shares.

[4] 17 CFR 240.19b–4(f)(5).

[5] For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date the Exchange filed Amendment No. 1, January 10, 2001.

[6] *See* Amendment No. 1 *supra* note 3.

Rule 123B(a), members and member organizations may utilize the SuperDot System to transmit orders of such size as the Exchange may specify from time to time.

The purpose of this filing is to amend the maximum share size parameter for single market and limit orders entered into the SuperDot System. Currently, single market orders up to 30,099 shares and single limit orders up to 99,999 shares may be entered into the SuperDot System. The Exchange proposes to increase the maximum order size for both market and limit orders to 1,000,000 shares.[7] The increase in maximum order size would become effective in two stages, with an initial increase to 500,000 shares, followed in six months by an increase to 1,000,000 shares.

The Exchange believes that the proposed increase will provide many benefits to users of the SuperDot System. Specifically, the NYSE believes that the proposal will facilitate openings and closings by increasing the number of shares that can be accommodated, especially in initial public offerings. In addition, the NYSE notes that the proposal will eliminate the need for firms and institutions to break up large orders to make them SuperDot eligible; streamline the cancel and replace process; and eliminate some of the paper from the floor, which will support the goal of having a ''paperless'' floor. According to the NYSE, the proposed increase will also be compatible with the maximum share size capabilities of the NYSE's Broker Booth Support System. In addition, the NYSE states that the proposal would help to facilitate the electronic capture of orders as required by Exchange Rule 123.[8]

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) of the Act[9] that an exchange has rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited not received written comments on the proposed rule change, not necessary or appropriate in furthering of the purposes of the Act.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (f)(5) of Rule 19b–4 thereunder because it institutes a change in an existing order-entry or trading system that (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of the system. Any any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to the File No. SR–NYSE–00–63 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2816 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Amendment No. 1, *supra* note 3.

[8] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (order approving File No. SR–NYSE–98–25).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43886; File No. SR–NYSE–00–60]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 416, Questionnaires and Reports

January 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change amends existing NYSE Rule 416 (''Questionnaires and Reports''). The amendment will give the Exchange general authority to require members and member organizations to submit, on an ongoing basis, certain data in a prescribed manner and form. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Questionnaires and Reports

Rule 416. (a) Each member and member organization shall submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest.

(b) Unless a specific temporary extension of time has been granted, there shall be imposed upon each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

member or member organization required to file reports pursuant to this Rule, a fee of $500 [3] for each day that such report is not filed in the prescribed time. Requests for such extension of time must be submitted to the Exchange at least three business days prior to the due date.

(c) Any report filed pursuant to this Rule containing material inaccuracies shall, for purposes of this Rule, be deemed not to have been filed until a corrected copy of the report has been resubmitted.

Supplementary Material:

.10 Member organizations may be required to provide financial and operational reports as required by paragraph (a) of this Rule for affiliated organizations, including but not limited to, persons referred to in Rules 321 and 322.

*.20 Each member and member organization shall, on an ongoing basis and in such format as the Exchange may require, submit to the Exchange, or its designated agent, prescribed data of the member or member organization, and of any broker-dealer that is a party to a carrying agreement with a member or member organization pursuant to NYSE Rule 382.*

*(See also Rule 382.)*

Carrying Agreements

Rule 382.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

(f) No change.

(See also Rules 342, [and] 401*, and 416)*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commisison, 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 palces 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

NYSE Rule 416 authorizes the Exchange to require members and member organizations to submit prescribed information that the Exchange believes to be essential for the protection of investors and the public interest. NYSE rule 416 has been used to require the periodic submittal of specific predefined financial, operational, and other information necessary for an effective evaluation of a member's or member organization's compliance with applicable rules and regulations. NYSE rule 416 has also been used to prepare the membership for specific initiatives such as participation in Year 2000 Testing and the conversion to Decimalization.

Under proposed rule 416.20, the Exchange may require members and member organizations to submit data, on an ongoing basis (e.g., daily, monthly, quarterly) and in such format as the Exchange may require.[4] Further, the proposed rule change provides that members and member organizations that clear and settle transactions may be required to provide data regarding both their own business as well as the business of firms that introduce to them pursuant to NYSE Rule 382 (''Carrying Agreements''). NYSE rules 382 and 416 would be cross-referenced to highlight their interaction in this regard.

The Exchange believes that the authority provided under proposed rule 416.20, while broad in nature, is necessary to facilitate the participation of members and member organizations in an industry-wide regulatory initiative with respect to clearing firms. This initiative will be coordinated by a committee that includes the Exchange, the Commission, National Association of Securities Dealers Regulation, Inc., Securities Industry Association, several member organizations, and other securities industry representatives. The committee has developed a broker-dealer reporting system intended to help identify potential sales practice violations, particularly those associated with low-priced microcap issues. Under the clearing firm initiative, data will be submitted to a processing center that will organize it according to exception parameters established by the Exchange and other self-regulatory organizations (''SROs'').

The required data will initially include, at minimum, various raw statistical data pertaining to cancelled trades. It is intended that additional data will be required at future dates. Once the reporting system is fully operational, it is expected that the trade information collected pursuant to this initiative will serve as an early warning system to ''red flag'' unusual trading patterns.

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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.

[3] *See* Securities Exchange Act Release No. 43847 (January 16, 2001) (SR–NYSE–00–59). (increasing from $100 to $500 the late filing fee charged to members and member organizations for the failure to submit information on a timely basis).

[4] On January 22, 2001, in a telephone conversation between Donald van Weezel, Managing Director, Regulatory Affairs, Exchange, and Heidi Pilpel, Special Counsel, Commission, the Exchange represented that it anticipates requesting members and member organizations to submit raw data electronically.

[5] 15 U.S.C. 78f(b)(5).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–60 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2819 Filed 2–1–01; 8:45 am]

**BILLING CODE 8010–01–M**

[6] 17 CFR 200.30–2(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43887; File Nos. SR–PCX–00–18 and SR–Amex–00–57]**

## Self-Regulatory Organizations; Pacific Exchange, Inc. and American Stock Exchange LLC; Order Approving Proposed Rule Changes Relating to Increasing to One Hundred Contracts the Maximum Size for Option Orders That May Be Executed Automatically

January 25, 2001.

## I. Introduction

On June 30, 2000, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to increase the maximum size of equity and index option contracts that may be designated for automatic execution to one hundred contracts. On November 15, 2000, the PCX rule proposal was published for public comment in the **Federal Register**.[3] On November 28, 2000, the American Stock Exchange LLC (''Amex'') also filed a similar proposed rule change to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system. On December 13, 2000, the Amex rule proposal was published for comment in the **Federal Register**.[4] The Commission received no comments on either the PCX or the Amex proposal. This order approves the PCX and the Amex proposed rule changes.

## II. Description of the Proposed Rule Changes

### *A. PCX Proposal*

The PCX's Automatic Execution System (''Auto-Ex'') automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee (''OFTC'') shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameters on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is seventy-five contracts for both equity and index options.[5] The PCX is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to one hundred contracts.[6]

The PCX believes that these changes will help it meet the changing needs of customers in the marketplace and give the PCX better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The PCX also believes that increasing to one hundred the number of option contracts executable through Auto-Ex will enable the PCX to more effectively and efficiently manage increased order flow in actively traded options issues consistent with its obligations under the Act. In addition, the PCX indicates that this increase should bring the speed an deficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.[7]

The PCX represents that it believes that the increase will not expose Auto-Ex to risk of failure or operational breakdown. The PCX further represents that it believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

### *B. Amex Proposal*

The Amex's Automatic Execution System (''AUTO–EX'') automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). Generally, public customer market and marketable limit orders for up to seventy-five options contracts may be automatically executed through the Amex's AUTO–EX system.[8] Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO–EX, was increased to allow for the entry of orders of up to 250 options contracts.[9] Because AUTO–EX is only allowed to execute equity option orders and index orders of up to seventy-five contracts, any market and marketable limit orders for between seventy-five and 250 option contracts are generally

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43519 (November 3, 2000), 65 FR 69112.

[4] *See* Securities Exchange Act Release No. 43660 (December 4, 2000), 65 FR 77942.

[5] *See* Securities Exchange Act Release No. 43518 (November 3, 2000), 65 FR 69111 (November 15, 2000) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed from fifty to seventy-five contracts).

[6] The PCX notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).

[7] *See* PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

[8] *See* Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). The Amex codified its rules under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO–EX system. While the maximum permissible number of contracts in an index option order executable through AUTO–EX is generally seventy-five contracts, there are three exceptions: the Institutional, Japan and S&P MidCap 400 Indices allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred contracts for the Institutional, Japan and S&P MidCap 400 Indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO–EX eligible orders for both equity and index options.

[9] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

routed by the AOF to the specialist's book.

The Amex proposes to amend Commentary .02 under Amex Rule 933 to increase the maximum AUTO–EX order size eligibility for equity and index option contracts orders from seventy-five to one hundred contracts. The proposed increase in permissible order size will be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such as increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. Generally, these parameters provide that displayed quotes are for twenty contracts for equity options and for thirty contracts for index options and are set on a class-by-class basis. However, pursuant to Amex Rule 958A, the order size for AUTO–EX will remain at ten contracts for equity and index options, or such larger size currently in effect and as indicated on the Amex's web page.[10]

The Amex represents that it has sufficient systems capacity to accommodate implementation of the proposed increase in permissible order size and that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other non-emergency situations for certain options classes. The Amex believes that permitting automatic executions of orders for up to one hundred contracts will enhance its overall operational efficiency and give the Amex better means of competing with other options exchanges for order flow.

## III. Discussion

After careful review, the Commission finds that the PCX and the Amex proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[11] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public.[12]

While increasing the maximum order size limit from seventy-five to one hundred contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX and the Amex, respectively, will need to monitor and address. Increasing the maximum order size for particular options classes will make a larger number of option orders eligible for the PCX and the Amex's automatic execution systems. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed onto the PCX's Auto-Ex and the Amex's AUTO–EX systems will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through each automatic execution system, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the PCX's OFTC determines to approve orders as large as one hundred contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring a ''fast'' market. Similarly, the Commission does not believe that, because Amex floor governors and senior floor officials determine to approve orders as large as one hundred contracts as eligible for AUTO–EX, those officials or any other Amex officials or Amex committee should disengage AUTO–EX more frequently, for example, by declaring a ''fast'' market. Disengaging the PCX's or the Amex's automatic execution system can negatively affect investors by making it slower and less efficient to execute their option orders. It is the Commission's view that the PCX and the Amex, when increasing the maximum size of orders that can be sent through their respective automatic execution systems, should not disadvantage all customers—the vast majority of whom enter orders for less than one hundred contracts—by making their automatic execution systems less reliable.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[13]

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[14] and the proposed rule changes (SR–PCX–00–18 and SR–Amex–00–57) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2814 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

[10] Amex Rule 958A, referred to as the ''Firm Quote Rule,'' requires Exchange specialists to sell/buy at least ten contracts at the offer/bid which is displayed when a buy/sell order reaches the trading post where the option class is located for trading.

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 14 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43898; File No. SR–PCX–01–02]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Electronic Mail Accounts

January 29, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2001, the Pacific Exchange, Inc. (''PCX'' 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. Amendment No. 1 to the proposed rule change was filed on January 5, 2001. Amendment No. 2 to the proposed rule change was filed on January 16, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment Nos. 1 and 2, the PCX changed the filing number by withdrawal and re-filing, and corrected numbering and captions in the text of the proposed rule change. *See* letters from Hasan Abedi, Attorney, PCX, to Andrew Shipe, Attorney, Division of Market Regulation, Commission, dated January 4, 2001 and January 12, 2001 (''Amendment Nos. 1 and 2'').

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to adopt new rules requiring all members and member organizations to establish with the Exchange an Internet electronic mail account. Below is the text of the proposed rule change. New text is in *italics.*

* * * * *

**Pacific Exchange, Inc.**

**Rules of the Board of Governors**

* * * * *

**Rule 1**

**Memberships**

**¶ 3083 Electronic Mail Address**

*Rule 1.13 Each member organization must maintain with the PCX an Internet electronic mail account for communication with the PCX. Each member organization must update its member firm contact information via the electronic mail account or such other means as prescribed by the PCX. The PCX will use the electronic mail account to provide member organizations with regulatory bulletins, rule adoption notices, and other official notices.*

* * * * *

**Rules of the Board of Directors of PCX Equities, Inc.**

* * * * *

**Rule 2**

**Equity Trading Permits and Equity ASAPS**

**¶ 7904Y Electronic Mail Address**

*Rule 2.26 Each ETP Holder, Equity ASAP Holder and ETP Firm must maintain with the PCX Equities, Inc. (''PCXE'') an Internet electronic mail account for communication with the PCXE. Each ETP Holder, Equity ASAP Holder and ETP Firm must update firm contact information via the electronic mail account or such other means as prescribed by the PCXE. The PCXE will use the electronic mail account to provide ETP Holders, Equity ASAP Holders and ETP Firms with regulatory bulletins, rule adoption notices, and other official notices.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 proposed rule promotes Internet use by the Exchange and its member organizations [4] as a communication tool. As proposed, the rule would require each member organization to acquire and maintain an Internet electronic mail address. The electronic mail account will be used to provide member organizations with regulatory bulletins, rule adoption notices, and other official notices. The proposed rule will allow for a more convenient and efficient manner of communication than the current mail system. Use of this electronic mail account will facilitate timely communication between the Exchange and its members, more rapid distribution of Exchange information, and reduction or elimination of printed publications. The Commission has approved a similar rule filing submitted by the National Association of Securities Dealers, Inc. (''NASD'').[5] In the order approving the NASD filing, the Commission stated that use of the Internet as a business tool is expanding rapidly.[6] The Commission also stated that the Internet is recognized as an efficient and cost-effective means of communication in the business world.[7]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by allowing for a more efficient and convenient manner of communication with member organizations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act,[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

[4] As used herein, the term ''member organization'' will be synonymous with Equity Trading Permit Holder (''ETP Holder''), Equity Automated Systems Access Privileges Holder (''Equity ASAP Holder'') and Equity Trading Permit Firm (''ETP Firm'') under the proposed new rule for PCX Equities, Inc. Telephone conservation between Hassan Abedi, Attorney, PCX, and Andrew Shipe, Attorney, Division of Market Regulation, SEC, January 12, 2001.

[5] *See* Securities Exchange Release Act No. 39958 (May 5, 1998), 63 FR 26240 (May 12, 1998).

[6] *Id.* at 26241.

[7] *Id.* at 26241.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–01–02 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–2848 Filed 2–1–01; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before March 5, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Personal History.

*No:* 1081.

*Frequency:* On Occasion.

*Description of Respondents:* Certified Development Companies.

*Annual Responses:* 300.

*Annual Burden:* 75.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 01–2871 Filed 2–1–01; 8:45 am]

BILLING CODE 8025–01–U

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 5, 2001, from 9 a.m. to 5 p.m. at the Crystal City Gateway Hotel, Crystal City, Virginia to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW., Fourth Floor, Washington, DC 20416. Telephone number (202) 205–6817.

**Nancyellen Gentile,**

*Committee Management Officer.*

[FR Doc. 01–2872 Filed 2–1–01; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Function Report—Adult—0960–0603. Form SSA–3373-TEST is used by the Social Security Administration (SSA) to record the claimant's description of his or her impairment-related limitations and ability to function. The respondents are Applicants for Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income) benefits.

*Number of Respondents:* 7,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30.

*Estimated Annual Burden:* 3,500.

1. Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment—0960–0431. The information collected on form SSA–4734 is needed by SSA to assist in the adjudication of disability claims involving physical and/or mental impairments. The form assists the State DDS to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

*Number of Responses:* 1,130,772.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 376,924 hours.

3. Modified Benefit Formula Questionnaire-Foreign Pension—960–0561. The information collected on form SSA–308 is used by SSA to determine exactly how much (if any) of the foreign pension may be used to reduce the amount of the Social Security retirement or disability benefit under the modified benefit formula. The respondents are applicants for Social security retirement/disability benefits.

*Number of Responses:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 8,333 hours.

II. The information collections listed below have been submitted to OMB for

[12] 17 CFR 200.30–3(a)(12).

clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application for Benefits Under The Federal Mine And Safety And Health Act Of 1977, as Amended (Widow's Claim, Child's Claim And Dependent's Claim)—0960–0118. Section 402(g) and Section 412(a) of the Federal Mine Safety and Health Act provide that those widows, surviving children and dependents (parents, and brothers or sisters) who are not currently receiving benefits on the deceased miner's account must file the appropriate application within 6 months of the deceased miner's death. Forms SSA–47–F4, SSA–48–F4, and SSA–49–F3 are used by the Social Security Administration (SSA) to determine eligibility. The respondents are widows, surviving children and dependents (parents, brothers or sisters) who are not currently receiving Black Lung benefits on the deceased miner's account.

| | SSA–47–F4 | SSA–48–F4 | SSA–49–F3 |
|---|---|---|---|
| Number of Respondents | 600 | 600 | 600 |
| Frequency of Response | 1 | 1 | 1 |
| Average Burden Per Response (minutes) | 11 | 11 | 11 |
| Estimated Annual Burden (hours) | 110 | 110 | 110 |

2. Representative Payee Report of Benefits and Dedicated Account—0960–0576. Form SSA–6233 is used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individuals and organizational representative payees required by law to establish a separate (''dedicated'') account in a financial institution for certain past-due SSI benefits.

*Number of Respondents:* 30,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 20 minutes.

*Estimated Annual Burden:* 10,000 hours.

3. Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—0960–0024. SSA uses the information collected on Form SSA–787 to determine an individual's capability, or lack thereof, to handle his or her own benefits. The information also provides SSA with leads to follow in selecting a representative payee, if needed. The respondents are physicians of these beneficiaries.

*Number of Respondents:* 120,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 20,000 hours.

4. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. SSA uses the information collected on form SSA–781 to decide if ''in care'' requirements are met by non-custodial parent(s), who is filing for benefits based on having a child in care. The respondents are non-custodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

*Number of Respondents:* 14,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 2,333 hours.

5. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information collected on form SSA–3881 is used by SSA to evaluate disability in children who apply for Supplemental Security Income (SSI) payments. The respondents are individuals who apply for SSI benefits for a disabled child.

*Number of Respondents:* 272,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 136,000 hours.

6. Application for a Social Security Card—0960–0066. The information collected is needed to assign a Social Security Number (SSN) and issue a card. The form SS–5 is one method of collecting the information and is available in paper and on the Internet. The applicant can print the SS–5 from the Internet but must still complete, sign and return it to SSA with the required documentation as is currently required for the paper SS–5. An individual can also provide the information through an in-person interview, or through the Enumeration at Birth (EAB) process. In the EAB process, the State Bureaus of Vital Statistics electronically transmit the birth data to SSA. The data is then uploaded to the SSA mainframe and the newborn is assigned an SSN.

SSA screens its records to make sure applicants for original SSN cards don't already have SSNs before assigning an original number. SSA also uses the information to ensure that replacement SSN cards are issued to the correct number holder. Use of SSNs enables SSA to keep an accurate record of each individual's earnings for the payment of benefits and for administrative purposes as an identifier for health-maintenance and income-maintenance programs, such as the Retirement, Survivors and Disability Insurance programs, the SSI program and other programs administered by the Federal government including Black Lung, Medicare and veterans compensation and pension programs. The Internal Revenue Service uses the SSN as a taxpayer identification number for the administration of tax benefits based on support or residence of children. The respondents are applicants for original, duplicate or corrected Social Security cards and State Bureaus of Vital Statistics.

*Public Reporting Burden for the SS–5*

*Number of Respondents:* 14,000,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 8½–9 minutes.

*Estimated Annual Burden:* 1,991,667 hours.

*Public Reporting Burden for the State Bureaus of Vital Statistics*

Please note that this notice corrects a previous notice (Vol. 65, No. 250, page 82442, 12/28/2000) that contained erroneous information on the public reporting burden for the EAB process. Following is the correct information: The respondent Bureaus of Vital Statistics are reimbursed by SSA at the imputed cost of approximately $1.83 per record for approximately 4,026,800 records. The total cost is $7,376,339.

Dated: January 29, 2001.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer.*

[FR Doc. 01–2797 Filed 2–1–01; 8:45 am]

BILLING CODE 4191–02–U

## SOCIAL SECURITY ADMINISTRATION

### The Ticket to Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice Correction.

**SUPPLEMENTARY INFORMATION:** The Social Security Administration published a document in the **Federal Register** of January 22, 2001, 66 FR 6730, concerning a meeting of the Ticket to Work and Work Incentives Advisory Panel. The document contained information that has changed for the meeting times and the agenda including times for the public comment period.

**FOR FURTHER INFORMATION CONTACT:** Kristen M. Breland, 410–966–7225.

**CORRECTIONS:**

In the **Federal Register** of January 22, 2001, in **Federal Register** Doc. 01–1952, on page 6730, in the second column, correct the meeting **DATES** to read.

**DATES:**

February 6, 2001, 9:00 a.m.–5:00 p.m.

February 7, 2001, 9:00 a.m.–5:00 p.m.

February 8, 2001, 9:00 a.m.–5:00 p.m.

In the **Federal Register** of January 22, 2001, in **Federal Register** Doc. 01–1952, on page 6730, in the third column, correct the ''AGENDA (Meeting)'' to read.

**AGENDA:** The Public Testimony Comment Period on Ticket to Work and Work Incentives Improvement Act (TWWIIA) NPRM and Implementation is now scheduled only on Tuesday, February 6, 2001 from 9:15 to 12:00 noon. The Panel will deliberate all day on Wednesday, February 7, 2001. At the end of this notice is the corrected meeting agenda for February 6 through 8, 2001.

Dated: January 29, 2001.

**Deborah M. Morrison,**

*Designated Federal Officer.*

Ticket to Work and Work Incentives Advisory Panel—Quarterly Meeting Agenda February 6 through 8, 2001

Bethesda Hyatt, One Bethesda Metro Center, Bethesda, MD 20814; Phone, (301) 657–1234; Fax (301) 657–6453. The hotel is located above the Bethesda Metro Station on the Red line.

*Tuesday, February 6, 2001, Day 1*

9:00 AM—Meeting Called to Order by Deborah Morrison, Designated Federal Officer
9:00 to 9:15 AM—Welcome and Introductions—Sarah Mitchell, Chair, Presiding
9:15 AM to 12:00 PM—Public Testimony Comment Period on TWWIIA NPRM and Implementation
12:00 to 1:30 PM–Lunch (On Your Own)
1:30 PM—Meeting Reconvenes, Sarah Mitchell, Presiding
1:30 to 5:00 PM—Briefings from SSA Officials
5:00 PM—Adjournment

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

*Wednesday, February 7, 2001, Day 2*

9:00 AM to 12:00 PM—Panel Deliberations on TWWIIA Implementation
12:00 to 1:30 PM—Lunch (On Your Own)
1:30 PM—Meeting Reconvenes, Sarah Mitchell, Presiding
1:30 to 5:00 PM—Panel Deliberations on TWWIIA Implementation
5:00 PM—Adjournment

*Thursday, February 8, 2001, Day 3*

9:00 AM to 12:00 PM—Briefings and Panel Deliberations on TWWIIA Implementation
12:00 to 1:30 PM—Lunch (On Your Own)
1:30 PM—Meeting Reconvenes, Sarah Mitchell, Presiding
1:30 to 3:00 PM—Briefings and deliberations on implementation of TWWIA
3:30 to 5:00 PM—Business Meeting
5:00 PM—Adjournment by Designated Federal Officer

[FR Doc. 01–2939 Filed 2–1–01; 8:45 am]

BILLING CODE 4191–02–U

## DEPARTMENT OF STATE

**[Public Notice 3564]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Vermeer and the Delft School''

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Vermeer and the Delft School,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art in New York, NY from on or about March 5, 2001 to on or about May 27, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 24, 2001.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 01–2859 Filed 2–1–01; 8:45 am]

BILLING CODE 4710–08–U

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

**[Public Notice 3562]**

### Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that: (1) Is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the country from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing requirement, certain competent authorities have agreed that their passports will be recognized by them as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport. In determining the application

of (INA) 212(a)(7)(B), the validity period of an unexpired passport shall be six months after the expiration date set forth in the passport. Although already on the list, bearers of Nicaraguan passports, until now, have been limited to diplomatic and official. This public notice adds Nicaragua to the list of competent authorities that have provided the necessary assurances to the Government of the United States. The updated list of competent authorities that have made the necessary assurances is shown below:

**Table of Foreign Passports Recognized for Extended Validity**

ALGERIA
ANTIGUA & BARBUDA
ARGENTINA
AUSTRALIA
AUSTRIA
BAHAMAS, THE
BANGLADESH
BARBADOS
BELGIUM
BRAZIL
CANADA
CHILE
COLOMBIA
COSTA RICA
COTE D'IVOIRE
CUBA
CYPRUS
CZECH REPUBLIC
DENMARK
DOMINICA
DOMINICAN REPUBLIC
ECUADOR
EGYPT
EL SALVADOR
ETHIOPIA
FINLAND
FRANCE
GERMANY
GREECE
GRENADA
GUINEA
HONG KONG (Certificates of identity & passports)
HUNGARY
ICELAND
INDIA
IRELAND
ISRAEL
ITALY
JAMAICA
JAPAN
JORDAN
KOREA
KUWAIT
LAOS
LEBANON
LIECHTENSTEIN
LUXEMBOURG
MADAGASCAR
MALAYSIA
MALTA
MAURITIUS
MEXICO
MONACO
NETHERLANDS
NEW ZEALAND
NICARAGUA
NIGERIA
NORWAY
OMAN
PAKISTAN
PANAMA
PARAGUAY
PERU
PHILIPPINES
POLAND
PORTUGAL
QATAR
RUSSIA
SENEGAL
SINGAPORE
SLOVAK REPUBLIC
SLOVENIA
SOUTH AFRICA
SPAIN
SRI LANKA
ST. KITTS & NEVIS
ST. LUCIA
ST. VINCENT & THE GRENADINES
SUDAN
SURINAME
SWEDEN
SWITZERLAND
SYRIA
TAIWAN
THAILAND
TOGO
TRINIDAD & TOBAGO
TUNISIA
TURKEY
UNITED ARAB EMIRATES
UNITED KINGDOM
URUGUAY
VENEZUELA

Public Notice 3015 of March 24, 1999 published at 64 FR 14300 is hereby superseded.

Dated: January 21, 2001.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs, Department of State.*

[FR Doc. 01–2878 Filed 2–1–01; 8:45 am]

BILLING CODE 4710–06–U

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## DEPARTMENT OF STATE

**[Public Notice No. 3524]**

## United States International Telecommunication Advisory Committee, Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R). The purpose of the Committee is to advise the Department on policy and positions with respect to the International Telecommunication Union and international radiocommunication matters.

The ITAC–R will meet from 9:30 to 12:30 on February 21, 2001, in Room 444 at 1200 Wilson Blvd, Arlington, VA, to prepare for the next meeting of radiocommunication activities within Joint Task Group 1–6–8–9 of the International Telecommunication Union (ITU). The JTG was established by the ITU Radiocommunication Sector's Chairmen and Vice-Chairmen's meeting held in Istanbul from 5 to 8 June 2000 in conjunction with the first meeting of CPM–02. The purposes of the JTG are to:

- Pursue ITU–R studies to facilitate the development of common, worldwide allocations or identification of spectrum suitable for new terrestrial wireless interactive multimedia technologies and applications;
- Review regulatory methods and appropriate means of worldwide spectrum identification in order to facilitate the harmonization of emerging terrestrial wireless interactive multimedia systems for the instant and flexible implementation of universal personal services;
- Review, if necessary, service definitions in the light of convergence of applications.

Members of the general public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the meeting room is controlled; people intending to attend should send an e-mail to Staci M. Georgatos (*staci.m.georgatos@boeing.com*) at least 48 hours before the meeting. The e-mail should include the name of the meeting (Joint Task Group 1–6–8–9), date of the meeting, your name, social security number, date of birth, and organization. A current photographic identification, such as one of the following, will be required for admission: U.S. driver's license, U.S. passport, or U.S. Government identification card.

Participants should bring the first JTG meeting report available at *http://www.itu.int/itudoc/itu-r/sg1/docs/1–6–8–9/2000–03/contrib/012e_ww9.doc.*

Information on JTG 1–6–8–9's origin can be found in the publicly available report of CPM02–1 available at *http://www.itu.int/itudoc/itu-r/ac/ca/083e.html.*

Dated: January 22, 2001.

**John T. Gilsenan,**

*Chairman, ITAC–R National Committee, Department of State.*

[FR Doc. 01–2877 Filed 2–1–01; 8:45 am]

BILLING CODE 4710–45–U

## DEPARTMENT OF STATE

**[Public Notice 3565]**

### Privacy Act of 1974 as Amended; Removal of a System of Records

Notice is hereby given that the Department of State is removing a system of records, ''Privacy Act Requests Records, STATE–40'' pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and in accordance with the record-keeping practices and the reorganization of the Bureau of Administration.

As reported in Public Notice 3487 dated November 27, 2000 (65 FR 75761, No. 233, December 4, 2000), the relevant records reflected in STATE–40 are now part of ''Information Access Programs Records STATE–35,'' and STATE–40 consequently has been removed.

Dated: January 29, 2001.

**Patrick F. Kennedy,**

*Assistant Secretary for the Bureau of Administration, Department of State.*

[FR Doc. 01–2879 Filed 2–1–01; 8:45 am]

**BILLING CODE 4710–24–U**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/D–160]**

### WTO Dispute Settlement Proceeding Regarding Section 110(5) of the U.S. Copyright Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice of the date by which the United States is to respond to the recommendations and rulings of the Dispute Settlement Body (''DSB'') of the World Trade Organization (''WTO'') in United States—Section 110(5) of the U.S. Copyright Act, a dispute brought by the European Communities (the ''EC''), to examine Section 110(5) of the U.S. Copywright Act. In this dispute, the EC alleged that Section 110(5) is inconsistent with obligations of the United States under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). After full briefing and hearings, the Panel determined that Section 110(5)(A)(the ''homestyle exemption'') did not violate the TRIPs Agreement, but that Section 110(5)(B) (the ''Fairness in Music Licensing Act of 1998'') was inconsistent with U.S. obligations. In September 2000, the United States confirmed to the DSB its commitment to implement the recommendations and rulings of the DSB in a manner which respects U.S. WTO obligations. As a result of arbitral proceedings the United States has a period of twelve months from the date of adoption of the panel report—i.e., until July 27, 2001—to implement the recommendations and rulings of the DSB. The USTR invites written comments from the public concerning the manner in which it should respond.

**DATES:** Comments should be submitted by February 26, 2001, to be assured of timely consideration by the USTR in developing a response to the DSB recommendations and rulings.

**ADDRESSES:** Comments are to be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: U.S.—Section 110(5) Dispute, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Melida N. Hodgson, Associate General Counsel, (202) 395–3582; Claude Burcky, Director of Intellectual Property, (202) 395–6864.

**SUPPLEMENTARY INFORMATION:** On April 15, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine Section 110(5) of the U.S. Copyright Act, which provides that, under certain conditions, the communications of musical works via a radio or television by certain establishment shall not constitute copyright infringement. The DSB established a panel for this purpose on May 26, 1999, and the panel was composed on August 6, 1999. In June 15, 2000, after full briefing and hearings, the panel issued recommendations and rulings. These were adopted by the DSB on July 27, 2000. In August and September 2000 the United States affirmed that it would implement the DSB's recommendations and rulings. On October 23, 2000 the EC requested arbitration on the reasonable period of time for the United States to implement the DSB's recommendations and rulings. The arbitrator issued a report on January 15, 2001, granting the United States a period of twelve months, or until July 27, 2001 to implement the DSB's recommendations and rulings.

#### Major Issues Raised and Legal Basis of the Complaint

The EC alleged that Section 110(5), as amended by the Fairness in Music Licensing Act of 1998, violates Article 9(1) of the TRIPS Agreement, which incorporates Articles 1 to 21 of the Berne Convention for the Protection of Literary and Artistic Works (the ''Berne Convention''). More specifically, the EC alleged that Section 110(5) is inconsistent with Articles 11(1) and 11bis(1) of the Berne Convention which grants authors of literary and artistic works, including musical works, certain exclusive rights. Section 110(5) provides under subparagraph (A) that the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes is not an infringement of copyright unless a direct charge is made to see or hear the transmission, or the transmission thus received is further transmitted to the public. Subparagraph (B) of Section 110(5) provides that, under certain conditions relating, inter alia, to the size of the establishment and the number of loudspeakers or audiovisual devices, the communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a licensed radio or television broadcast station, is not an infringement of copyright.

The Panel found that Section 110(5)(A) was consistent with the TRIPs Agreement, but that Section 110(5)(B) was too broad and therefore did not satisfy the requirements of an exception to TRIPs.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR maintains a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include all non-confidential comments received by the USTR from the public in response to this request. An appointment to review the public file (Docket WTO/D–160, United States—Section 110(5) of the U.S. Copy right Act) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant U.S. Trade Representative for Monitoring and Enforcement.*

[FR Doc. 01–2796 Filed 2–1–01; 8:45 am]

**BILLING CODE 3190–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Property at Monroe Municipal Airport, Monroe, LA

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

**ACTION:** Notice of request to release Airport property.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of land at Monroe Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before March 5, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Melvin L. Rambin, Mayor of Monroe, Louisiana, at the following address: City of Monroe, P.O. Box 2738, Monroe, Louisiana 71207–2738.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dougherty, Program Manager, Federal Aviation Administration, LA/NM ADO, ASW–640C, 2601 Meacham Blvd., Fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the Monroe Municipal Airport under the provisions of the AIR 21.

On December 19, 2000, the FAA determined that the request to release property at Monroe Municipal Airport submitted by the City met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than June 1, 2001.

The following is a brief overview of the request:

The City of Monroe requests the release of 15.861 acres of airport property. The release of property will allow for the expansion of an existing business with the Airport Industrial Park. The sale is estimated to provide $275,000 toward the construction of new toilets and elevators in the existing airport terminal facility. These improvements are required to meet the requirements of the Americans with Disability Act.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe Municipal Airport.

Issued in Fort Worth, Texas on January 23, 2001.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 01–2856 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2001–08]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**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 February 26, 2001.

**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 9:00 a.m. and 5:00 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:** Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 30, 2001.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* FAA–2000–8062.

*Petitioner:* The Boeing Company.
*Section of the 14 CFR Affected:* 14 CFR 25.961(a)(5).
*Description of Relief Sought/ Disposition:* To allow a maximum temperature limitation of 80 ° F for JP–4 and Jet B fuels for use on the Boeing Model 747–400/–400F equipped with Rolls Royce RB211–524G–T/H–T engines.

*Docket No.:* FAA–2000–8086.
*Petitioner:* Frontier Flying Service, Inc.
*Section of the 14 CFR Affected:* 14 CFR 119.67(a)(3)(i).
*Description of Relief Sought/ Disposition:* To permit Mr. Robert Hajdukovich, President of FFS, to serve as Director of Operations of FFS, without having at least 3 years experience, within the last 6 years, as pilot in command of a large airplane operated under part 121 or part 135. FFS seeks a reconsideration of its previous denial of Exemption No. 7304, issued August 7, 2000.

*Docket No.:* FAA–2000–8376.
*Petitioner:* General Electric Company.
*Section of the 14 CFR Affected:* 14 CFR 21.19(a).
*Description of Relief Sought/ Disposition:* To permit GE to amend Type Certificate No. E00049EN by adding its GE90 growth engines, aircraft engine models GE90–110B, GE90–113B, and GE90–115B, rather than making a new application for a type certificate for those engines.

*Docket No.:* FAA–2000–8471.
*Petitioner:* Termikas, USA.
*Section of the 14 CFR Affected:* 14 CFR 21.183(c).
*Description of Relief Sought/ Disposition:* To permit Termikas to obtain a standard airworthiness certificate for each of its LET L–13 Blanik sailplanes without a certifying statement from the country of manufacture relating to the sailplane's airworthiness.

*Docket No.:* FAA–2000–8492.
*Petitioner:* The Boeing Company.
*Section of the 14 CFR Affected:* 14 CFR 25.1435(b)(1).
*Description of Relief Sought:* To allow compliance for the proof pressure testing requirements of § 25.1435(b)(1) for the Boeing Model 777–200LR and 777–300ER airplanes by (1) similarity to the previously tested hydraulic system on the Model 777–200 for the unchanged parts, and (2) conducting proof pressure tests at the relief valve setting (3,400 psig) for the changed parts of the installations.

*Docket No.:* FAA–2000–8508.
*Petitioner:* Boeing Airplane Services.
*Section of the 14 CFR Affected:* 14 CFR 25.783(h), 25.807(d)(1) and (e)(1), 25.810(a)(1), 25.812(e), 25,812(h)(1), 25.813(b), 25.857(e), 25.1445(a)(2), and 25.1447(c)(1).
*Description of Relief Sought:* To permit certain actions to be accomplished on Boeing Airplane Services' Boeing Model 757–200 series airplanes that have been converted from passenger-only to special freighter configurations.

*Docket No.:* FAA–2000–8514.
*Petitioner:* Addison Aviation Services, Inc.
*Section of the 14 CFR Affected:* 14 CFR 25.857(e)(4).
*Description of Relief Sought:* To certify Learjet Model 25 series airplanes, to be modified for the carriage of cargo as Class E compartments (an STC project), without meeting the requirements to exclude hazardous quantities of smoke, flames or noxious gases from the flight crew compartment.

**Dispositions of Petitions**

*Docket No.:* FAA–2000–8153.
*Petitioner:* American Airlines, Inc.
*Section of 14 CFR Affected:* 14 CFR 25.791(a) and 121.317(a).
*Description of Relief Sought/ Disposition:* To permit American to operate its Boeing 737 and 777 aircraft with ''No Smoking'' signs that always are illuminated, provided American operates those aircraft in a manner that continues to prohibit smoking on board the affected aircraft at all times.
*GRANT, 01/19/2001, Exemption No. 6853A.*

*Docket No.:* FAA–2000–8473.
*Petitioner:* World Airways, Inc.
*Section of 14 CFR Affected:* 14 CFR 121.434(e).
*Description of Relief Sought/ Disposition:* To permit World to use flight attendants trained and qualified by Garuda to act as required flight attendants during Hadj-related flight operations without each of those flight attendants having received the required 5 hours of supervised in-flight operating experience.
*GRANT, 01/19/2001, Exemption No. 7421.*

*Docket No.:* FAA–2000–8435.
*Petitioner:* TEMSCO Helicopters, Inc.
*Section of 14 CFR Affected:* 14 CFR 145.45(f).
*Description of Relief Sought/ Disposition:* To permit TEMSCO to make available one copy of its Inspection Procedures Manual (IPM) to all of its supervisory and inspection personnel, rather than providing a copy of the IPM to each of those individuals.
*GRANT, 01/09/2001, Exemption No. 6623B.*

*Docket No.:* FAA–2000–8177
*Petitioner:* Experimental Aircraft Association and Confederate Air Force.
*Section of 14 CFR Affected:* 14 CFR 45.25 and 45.29.
*Description of Relief Sought/ Disposition:* To permit EAA and CAF members to operate their historic military aircraft with 2-inch high nationality and registration marks located beneath the aircraft's horizontal stabilizer.
*GRANT, 01/09/2001, Exemption No. 5019F.*

*Docket No.:* FAA–2000–8470.
*Petitioner:* Western Missouri Aviation Foundation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
*Description of Relief Sought/ Disposition:* To permit WMAF to conduct local sightseeing flights at (1) the Kansas City Downtown Airport, (2) the Johnson County Executive Airport, or (3) the Lee's Summit Airport, for its fundraising event benefiting the WMAF and the Child Abuse Prevention Association, from the date of issuance of this exemption through January 13, 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
*GRANT, 12/28/2000, Exemption No. 7412.*

*Docket No.:* FAA–2000–8500.
*Petitioner:* Atlantic Coast Airlines.
*Section of 14 CFR Affected:* 14 CFR 25.256(c)(5) and 25.785(a).
*Description of Relief Sought/ Disposition:* To permit ACA the extension of the compliance date regarding the Head Injury Criterion (HIC) for front row passenger seating on Jetstream Series 4100 Model 4101, Serial No. 41101.
*GRANT, 12/22/2000, Exemption No. 6776A.*

*Docket No.:* FAA–2000–8094.
*Petitioner:* Mr. Ronald V. Boch.
*Section of 14 CFR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought/ Disposition:* To permit Mr. Boch to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.
*Denial, 12/18/2000, Exemption No. 7414.*

**Petition For Exemption**

*Docket No.:* FAA–2000–8062.
*Petitioner:* The Boeing Company.
*Regulations Affected:* 14 CFR 25.961(a)(5).
*Description of Petition:* To exempt The Boeing Company, from the requirements of 14 CFR 25.961(a)(5) to

allow a maximum temperature limitation of 80 °F for JP–4 and Jet B fuels for use on the Boeing Model 747–400/–400F equipped with Rolls Royce RB211–524G–T/H–T engines.

**Petition For Exemption**

*Docket No.:* FAA–2000–8086.
*Petitioner:* Frontier Flying Service, Inc.
*Regulations Affected:* § 119.67(a)(3)(i).
*Description of Petition:* To permit Mr. Robert Hajdukovich, President of FFS, to serve as Director of Operations of FFS, without having at least 3 years experience, within the last 6 years, as pilot in command of a large airplane operated under part 121 or part 135. FFS seeks a reconsideration of its previous denial of Exemption No. 7304, issued August 7, 2000.

[FR Doc. 01–2875 Filed 2–2–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2001–09]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**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 February 26, 2001.

**ADDRESSES:** Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 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:** Forest Rawls (202)267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 30, 2001.

**Donald P. Byrne,**
*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA–2000–8492.
*Petitioner:* The Boeing Company.
*Section of 14 CFR Affected:* 14 CFR 25.1435(b)(1).
*Description of Relief Sought:* To allow compliance for the proof pressure testing requirements of § 25.1435(b)(1) for the Boeing Model 777–200LR and 777–300ER airplanes by (1) similarity to the previously tested hydraulic system on the Model 777–200 for the unchanged parts, and (2) conducting proof pressure tests at the relief valve setting (3,400 psig) for the changed parts of the installations.

*Docket No.:* FAA–2000–8514.
*Petitioner:* Addison Aviation Services, Inc.
*Section of 14 CFR Affected:* 14 CFR 25.857(e)(4).
*Description of Relief Sought:* To certify Learjet Model 25 series airplanes, to be modified for the carriage of cargo as Class E compartments (an STC project), without meeting the requirements to exclude hazardous quantities of smoke, flames or noxious gases from the flight crew compartment.

**Dispositions of Petitions**

*Docket No.:* FAA–2000–8340.
*Petitioner:* Crossville Flying Service, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought:* To permit CFS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7395.*

*Docket No.:* FAA–2000–8499.
*Petitioner:* Bishop Aviation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.134(c)(2).
*Description of Relief Sought:* To permit Bishop to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7394.*

*Docket No.:* FAA–2000–7992.
*Petitioner:* Hartley, Inc. dba Branch River Air Service.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought:* To permit Branch River to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7396.*

*Docket No.:* FAA–2000–8010.
*Petitioner:* Fostaire Helicopters.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit Fostaire to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7397.*

*Docket No:* FAA–2000–8141.
*Petitioner:* Mulchatna Air.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit Mulchatna to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7398.*

*Docket No.:* FAA–2000–8338.
*Petitioner:* Air Cargo Express.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/Disposition:* To permit ACE to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
*Grant, 12/08/2000, Exemption No. 7403.*

*Docket No.:* FAA–2000–8143.
*Petitioner:* Peninsula Airways dba PenAir.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit PenAir to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 12/08/2000, Exemption No. 7402.*

*Docket No.:* FAA–2000–8144.

*Petitioner:* Indianaero, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Indianaero to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 12/08/2000, Exemption No. 7401.*

*Docket No.:* FAA–2000–8181.

*Petitioner:* Tundra Ltd.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Tundra to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 12/08/2000, Exemption No. 7400.*

**Petition for Exemption**

*Docket No.:* FAA–2000–8492.

*Petitioner:* The Boeing Company.

*Regulations Affected:* 25.1435(b)(1).

*Description of Petition:* To allow compliance for the proof pressure testing requirements of § 25.1435(b)(1) for the Boeing Model 777–200LR and 777–300ER airplanes by (1) similarity to the previously tested hydraulic system on the Model 777–200 for the unchanged parts, and (2) conducting proof pressure tests at the relief valve setting (3,400 psig) for the changed parts of the installations.

**Petition for Exemption**

*Docket No.:* FAA–2000–8514.

*Petitioner:* Addison Aviation Services, Inc.

*Regulations Affected:* 14 CFR 25.857(e)(4).

*Description of Petition:* To certify Learjet Model 25 series airplanes, to be modified for the carriage of cargo as Class E compartments (an STC project), without meeting the requirements to exclude hazardous quantities of smoke, flames or noxious gases from the flight crew compartment.

[FR Doc. 01–2876 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aging Transport Systems Rulemaking Advisory Committee; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

**DATES:** The meeting will be held February 8–9, 2001, beginning at 8 a.m. on February 8.

**ADDRESSES:** The meeting will be at the United States Coast Guard Headquarters, Room 6301, 2100 2nd Street, SW., Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** Gerri Robinson, Office of Rulemaking, ARM–24, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9078, FAX (202) 267–5075, or e-mail at gerri.robinson@faa.gov.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee to be held at the United States Coast Guard Headquarters, Room 6201, 2100 2nd Street, SW., Washington, DC 20593–0001.

The agenda will include consideration of new taskings to ATSRAC and discussion on appropriate membership needed to review and make recommendations to the FAA, if the tasks are accepted.

Attendance is open to the interested public, but will be limited to the availability of meeting room space. The FAA will arrange teleconference capability for individuals wishing to participate by teleconference if we receive notification before February 5. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT:** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 26, 2001.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 01–2791 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

**DATES:** The meeting will be held on February 14, 2001, 8:30 a.m. PST.

**ADDRESSES:** The meeting will be held at the Anaheim Marriott, Salons A&B, Anaheim, CA 92802, telephone (714) 750–8000.

**FOR FURTHER INFORMATION CONTACT:** Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9681.

**SUPPLEMENTARY INFORMATION:** The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

a. Performance and Handling Qualities Requirements status report.

b. Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure Working Group status report and presentation of Concept Paper.

c. Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure Working Group status report and presentation of Concept Paper.

d. Briefing from FAA economist on information needed to complete economic analyses of rules.

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting.

Written statements may be presented to the committee at any time by providing 16 copies of the Assistant Chair or by providing the copies at the meeting. Copies of the Concept Papers that will be presented may be obtained by contacting Mary Ann Phillips at (817) 222–5124 or by emailing her at: mary.ann.phillips@faa.gov. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed

under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 19, 2001.

**Anthony F. Fazio,**

*Assistant Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 01–2858 Filed 1–30–01; 3:39 pm]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and To Use the Revenue at Chicago O'Hare International Airport, Chicago, IL, and Gary/Chicago Airport, Gary, IN

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before March 5, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas E. Salaman, Chicago Metropolitan Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, IL 60018, telephone (847) 294–7436. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 4, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 6, 2001.

The following is a brief overview of the application.

*PFC application number:* 01–12–C–00–ORD.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* April 1, 2001.

*Revised proposed charge expiration date:* July 1, 2014.

*Total estimated PFC revenue:* $880,183,000.00,

*Brief description of proposed projects at the $4.50 level:*

*Impose Only at ORD:* Airport Transit System (ATS) North Extension; ATS Maintenance Relocation; Zemke Road Extension; Concourse K Extension; Taxiway A/B Extension/Oil Water Separator Relocation; Hardstand Apron; Terminal Six Development; Terminals 1 and 2 Connection Expansion; Touhy Avenue Reservoir.

*Impose and Use at ORD:* World Gateway Program Formulation; Terminals 1, 2, and 3 Facade and Circulation Enhancement Improvements; Aircraft Rescue and Firefighting (ARFF)/Simulator Training Facility; Automatic Vehicle Identification—Ground Transportation; Terminal Five Upper Level Roadway Rehabilitation; Global Positioning System Antenna; Runway Deicing Fluid Facility Improvements; Runway Weather Sensors Upgrade; Service Road to General Aviation Apron; Land and Hold Short Operations Improvements; 360 Degree Silicon Graphics Incorporated Based Tower Simulator; Snow/Security/Fire Equipment; School Insulation—1999–2001; Residential Insulation—2000; Residential Insulation—2001; Perimeter Intrusion Detection System—Phase II.

*Use at ORD:* Snow Dump Improvement; Runway 14L/32R Rehabilitation; High Temp Water Piping: Eliminate Ball Joints; National Pollutant Discharge Eliminations System Permit Compliance.

Brief description of proposed project at the $3.00 level:

Use at Gary/Chicago: Acquisition of 1500-Gallon ARFF Vehicle; Terminal Renovation—Phase III.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on January 23, 2001.

**Benito De Leon,**

*Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 01–2854 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dallas-Fort Worth International Airport, DFW Airport, TX

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Fort Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before March 5, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jeffrey P. Fegan, Manager of Dallas-Fort Worth International Airport at the following address: Mr. Jeffrey P. Fegan, Airport Manager, P.O. Drawer 619428, Dallas-Fort Worth International Airport, DFW Airport, TX 75261–9428.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Forth Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 19, 2001 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 14, 2001.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* June 1, 2001.

*Proposed charge expiration date:* October 1, 2011.

*Total estimated PFC revenue:* $2,079,095.

*PFC application number:* 01–05–C–00–DFW.

*Brief description of proposed project(s):*

**PROJECTS TO IMPOSE AND USE PFC'S**

1. Construct Automated People Mover.
2. Elevate Service Roads Between Terminals C and D.
3. Install 12 PAPIs.
4. Upgrade Airport-Wide Fueling System.
5. Upgrade 5W Cargo Roads and Cross Under.
6. Construct 5W Deicing GSE Facility.
7. Widen 35L/35C ARFF Road.
8. Expand Terminal B (International Area).
9. Construct DPS Service Center.
10. Upgrade Airport Directional Signage (Landside and Terminal).
11. Construct Environmental Material Handling Center.
12. Upgrade Terminal Circulation Roads.
13. Acquire CNG Busses.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at DFW Administration Building, 3200 East Airfield Drive, Dallas-Fort Worth International Airport.

Issued in Fort Worth, Texas on January 19, 2001.

**William J. Flanagan,**

*Acting Manager, Airports Division.*

[FR Doc. 01–2855 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 187; Mode Select Beacon and Data Link System

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 Special Committee (SC)—187 meeting to be held March 1, 2001, starting at 9:00 a.m. The meeting will held RTCA Inc., 1140 Connecticut Ave., NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Review Meeting Agenda; (3) Review and Approve proposed changes to RTCA/DO–181B, RTCA Paper No. 020–01/SC187–036; (4) Review and Approve Changes to RTCA/DO–218A, RTCA Paper No. 021–01/SC187–037; (5) Other Business; (6) Date and Location of Next Meeting; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 26, 2001.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 01–2792 Filed 2–1–01; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 195; Flight Information Services Communications (FISC)

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 Special Committee (SC)–195 meeting to be held March 6–7, 2001, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Ave., NW, Suite 1020 Washington, DC 20036.

The agenda will include: March 6: Plenary convenes: (1) Welcome and Introductory Remarks; (2) Review Meeting Agenda; (3) Working Group (WG)–1, Aircraft Cockpit Weather Display; Plenary reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG–1 on Activities; (6) Review Flight Information Service-Broadcast (FIS–B) Minimum Aviation System Performance Standards (MASPS) status; (7) Consideration for Application of Provisions of ISO/IEC TR 9577 IPI/SPI Specifications FIS–B Subnetwork; March 7: (8) Develop guidelines for inclusion of FIS Products in Appendix E; (9) Review SC–195 Work Plan; (10) Other Business; (11) Date and place of Next Meeting; (12) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 26, 2001.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 01–2793 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–00–8026 (PDA–26(R))]**

### Application by Boston & Maine Corporation for a Preemption Determination as to Massachusetts' Definitions of Hazardous Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice extending period for public comment.

**SUMMARY:** RSPA is further extending the period for interested parties to submit comments on an application by Boston & Maine Corporation for an administrative determination whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of ''hazardous materials'' as applied to hazardous materials transportation.

**DATES:** Comments received on or before April 13, 2001, and rebuttal comments received on or before May 29, 2001, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''http://dms.dot.gov.''

Comments must refer to Docket No. RSPA–00–8026 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on ''Help & Information'' to obtain instructions.

A copy of each comment must also be sent to (1) Robert B. Culliford, Esq., Corporate Counsel, Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862, and (2) Ginny Sinkel, Esq., Assistant Attorney General, Commonwealth of Massachusetts, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108–1698. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mr. Culliford and Ms. Sinkel at the addresses specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at ''http://rspa-atty.dot.gov.'' A paper copy of this list and index will be provided at no cost upon request to Ms. Christian, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

**FOR FURTHER INFORMATION CONTACT:** Karin V. Christian, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), Room 8407, U.S. Department of Transportation, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** On November 16, 2000, RSPA published a notice in the **Federal Register** inviting interested parties to submit comments on an application by Boston & Maine Corporation for an administrative determination of whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of ''hazardous materials'' as applied to hazardous materials transportation. See 65 FR 69365.

After receiving a request from the Commonwealth of Massachusetts to extend the comment period, RSPA published a Notice on December 19, 2000 extending the comment period to February 2, 2001 with a rebuttal period until March 19, 2001. Boston & Maine Corporation assented to that request.

On January 19, 2001, the Commonwealth of Massachusetts (the Commonwealth) sent RSPA a letter requesting a further extension of time to April 13, 2001 to comment on the preemption application. The Commonwealth states that Boston & Maine Corporation has assented to the request for an extension of time. Accordingly, RSPA is extending the comment period to April 13, 2001 and the rebuttal comment period to May 29, 2001.

Comments should address whether Massachusetts' definitions of ''hazardous material'' differ from the definition of that term in the Federal Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, and whether and how these State definitions are applied and enforced by the State with respect to transportation that is subject to the HMR.

Issued in Washington, D.C. on January 30, 2001.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 01–2874 Filed 2–1–01; 8:45 am]

BILLING CODE 4910–60–U

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service; Electronic Authentication Policy; Correction

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of publication of policies and practices for the use of electronic transactions and authentication techniques in Federal payments and collections; correction.

**SUMMARY:** Financial Management Service published a document in the **Federal Register** of January 3, 2001 concerning Treasury's Electronic Authentication Policy. The document is being corrected to insert a sentence.

**FOR FURTHER INFORMATION CONTACT:** Gary Grippo, Director, Electronic Commerce, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Washington, DC 20227. (202) 874–6816, gary.grippo@fms.treas.gov.

**Correction**

In the **Federal Register** of January 3, 2001, in FR Doc. 01–79, on page 394, under the ''Scope'' caption, in the third column, first full paragraph, correct the paragraph to read:

Focus is also placed on the use of public key cryptographic techniques, which can provide for robust electronic authentication, and on the manner in which Federal agencies must go about obtaining public key digital certificates for payment, collection, and collateral transactions. (It should be noted that in establishing such guidance, our intent is not necessarily to dictate that a particular certification authority provider be used, but rather to try to follow a general principal that offers agencies some choice, particularly where commercial certification authorities must be relied upon. Specifically, it is our intent to foster a competitive environment that would allow agencies to have some choice when obtaining cryptographic credentials for collections as covered by this policy.) In addition to public key cryptography, the policy covers other forms of remote electronic authentication and electronic signatures, including but not limited to knowledge-based authentication (Personal Identification Numbers (PINs) and passwords) and biometrics.

Dated: January 26, 2001.

**Richard L. Gregg,**

*Commissioner.*

[FR Doc. 01–2857 Filed 2–1–01; 8:45 am]

**BILLING CODE 4810–35–M**

# Corrections

Federal Register
Vol. 66, No. 23
Friday, February 2, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

*Correction*

In notice document 01–2451 appearing on page 8102 in the issue of January 29, 2001, make the following correction:

On page 8102, in the first column, in the **DATES** section the effective date ''March 30, 2001'' should read ''February 28, 2001''.

[FR Doc. C1–2451 Filed 2–1–01; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

Friday,
February 2, 2001

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alaska-Breeding Population of Steller's Eider; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF95**

## Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alaska-Breeding Population of the Steller's Eider

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*), a threatened species listed pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat for the Alaska-breeding population of the Steller's eider includes breeding habitat on the Yukon-Kuskokwim Delta (Y–K Delta) and 4 units in the marine waters of southwest Alaska, including the Kuskokwim Shoals in northern Kuskokwim Bay, and Seal Islands, Nelson Lagoon, and Izembek Lagoon on the north side of the Alaska Peninsula. These areas total approximately 7,333 square kilometers (approximately 2,830 square miles ($mi^2$); 733,300 hectares; 1,811,984 acres) and 1,363 km (852 miles (mi)) of shoreline.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

**DATES:** The effective date of this rule is March 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ted Swem, Northern Alaska Ecological Services, U.S. Fish and Wildlife Service, 101 12th Ave., Rm 110, Fairbanks, AK 99701 (telephone 907/456–0203; facsimile 907/456–0208).

**SUPPLEMENTARY INFORMATION:**

### Background

The Steller's eider was first described by Peter Simon Pallas in 1769, and given the scientific name *Anas stelleri* Pallas. After seven name changes, it was grouped with other eiders as *Somateria stelleri.* It is now considered distinct from the other eiders, and is the only species in the genus *Polysticta* (American Ornithologists' Union 1983). This genus is grouped with the other sea ducks under the Tribe Mergini (eiders, scoters, mergansers, and allies), Subfamily Anatinae (ducks), and the Family Anatidae (swans, geese, and ducks).

The Steller's eider is the smallest of four eider species; both sexes are approximately 45 centimeters (17–18 inches) long (Bellrose 1980). The plumage of the breeding adult male is white, black, and chestnut. The head is white with black eye patches and light green tinging on the forehead, lores (space between bill and eye), and below the eye. The chin and throat are black, separated from a broad black collar around the lower neck by a white ring. The shoulders and back are also black and each tertial (inner wing) feather is bicolored longitudinally, with the inner half being white and the outer half being bluish-black, giving the back a striped appearance when the wing is folded. The speculum (patch of colored feathers on the wing) is dark blue and the breast and belly are chestnut shading to black posteriorly. A black spot is present on each side of the breast. The flanks, rump, and under-tail feathers are black, and the wedge-shaped tail is dark brown. Males in eclipse plumage (dull plumage assumed prior to molt) during late summer and fall are entirely mottled brown except the wings are like the adult breeding male's and the upper wing-coverts are white. Females and juveniles are mottled brown year-round, and the female adult has a blue speculum bordered in white.

*Geographic Range*

Three breeding populations of Steller's eiders are recognized, two in Arctic Russia and one in Alaska. The majority of Steller's eiders breed in Russia and are identified by separate breeding and wintering distributions (Nygard *et al.* 1995). The Russian Atlantic population nests west of the Khatanga River and winters in the Barents and Baltic seas. The Russian Pacific population nests east from the mouth of the Khatanga River and winters in the southern Bering Sea and northern Pacific Ocean, where it presumably intermixes with the Alaska-breeding population. Neither Russia-breeding population is listed as threatened or endangered; only Steller's eiders that nest in Alaska are listed as threatened under the Act.

This rule for critical habitat addresses the Alaska-breeding population of Steller's eiders, the only population listed under the Act, but individuals from the Alaska-breeding population are visually indistinguishable from unlisted Russia-breeding Steller's eiders. During the autumn molt, winter, and spring migration staging periods, the listed Alaska-breeding population intermixes with the more numerous and unlisted Russian Pacific population in marine waters of southwest Alaska. During these times, it is unknown whether the Alaska-breeding population concentrates in distinct areas or disperses throughout the species' marine range.

The historical breeding range of the Alaska-breeding population of Steller's eiders is not clear. The historical breeding range may have extended discontinuously from the eastern Aleutian Islands to the western and northern Alaska coasts, possibly as far east as the Canadian border. In more recent times, breeding occurred in two general areas, the Arctic Coastal Plain on the North Slope, and western Alaska, primarily on the Y–K Delta. Currently, Steller's eiders breed on the western Arctic Coastal Plain in northern Alaska, from approximately Point Lay east to Prudhoe Bay, and in extremely low numbers on the Y–K Delta.

On the North Slope, anecdotal historical records indicate that the species occurred from Wainwright east, nearly to the Alaska-Canada border (Anderson 1913; Brooks 1915). There are very few nesting records from the eastern North Slope, however, so it is unknown if the species commonly nested there or not. Currently, the species predominantly breeds on the western North Slope, in the northern half of the National Petroleum Reserve—Alaska (NPR–A). The majority of sightings in the last decade have occurred east of the mouth of the Utukok River, west of the Colville River, and within 90 km (56 mi) of the coast. Within this extensive area, Steller's eiders generally breed at very low densities.

The Steller's eider was considered a locally ''common'' breeder in the intertidal, central Y–K Delta by naturalists early in the 1900s (Murie 1924; Conover 1926; Gillham 1941; Brandt 1943), but the bird was reported to breed in only a few locations. By the 1960s or 70s, the species had become extremely rare on the Y–K Delta, and only six nests have been found in the 1990s (Flint and Herzog 1999). Given the paucity of early recorded observations, only subjective estimates can be made of the Steller's eider's historical abundance or distribution on the Y–K Delta.

A few Steller's eiders were reportedly found nesting in other locations in western Alaska, including the Aleutian Islands in the 1870s and 80s (Gabrielson and Lincoln 1959), Alaska Peninsula in

the 1880s or 90s (Murie and Scheffer 1959), Seward Peninsula in the 1870s (Portenko 1989), and on Saint Lawrence Island as recently as the 1950s (Fay and Cade 1959). It is unknown how regularly these areas were used or whether the species ever nested in intervening areas.

After breeding, Steller's eiders move to marine waters where they undergo a flightless molt for about 3 weeks. The majority are thought to molt in four areas along the Alaska Peninsula: Izembek Lagoon (Metzner 1993; Dau 1999a; Laubhan and Metzner 1999), Nelson Lagoon, Herendeen Bay, and Port Moller (Gill *et al.* 1981; Petersen 1981; Dau 1999a). Additionally, smaller numbers are known or thought to molt in a number of other locations along the western Alaska coast, around islands in the Bering Sea, along the coast of Bristol Bay, and in smaller lagoons along the Alaska Peninsula (Swarth 1934; Dick and Dick 1971; Petersen and Sigman 1977; Wilk *et al.* 1986; Dau 1987; Petersen *et al.* 1991; Day *et al.* 1995; Dau 1999a). Others molt in the Russian Far-East, primarily near Kamchatka, but where these individuals nest is undetermined.

Only rudimentary information on the marine distribution of Alaska-breeding Steller's eiders is available. Recoveries of banded Steller's eiders suggest that the Alaska-breeding population intermixes with Russian-Pacific breeders in southwest Alaska during molt. Steller's eiders banded during molt at Izembek and Nelson lagoons have been found during the breeding season near Barrow (Jones 1965; Service, U.S. Geological Survey, and North Slope Borough, unpub. data) as well as in a number of locations in Russia (Jones 1965). More recently, satellite telemetry tracked post-breeding movements of three individuals that bred at Barrow in 2000. Two of the three apparently molted near the Kuskokwim Shoals and the third is believed to have molted at Seal Islands on the north side of the Alaska Peninsula (Service unpub. data.).

In general, wintering Steller's eiders occupy shallow, near-shore marine waters in much of southwest and south coastal Alaska. They are found around islands and along the coast of the Bering Sea and north Pacific Ocean from the Aleutian Islands, along the Alaska Peninsula and Kodiak Archipelago, east to lower Cook Inlet. Along open coastline, Steller's eiders usually remain within about 400 meters (m) (400 yards (yd)) of shore normally in water less than 10 m (30 feet (ft)) deep (C. Dau, Service, pers. comm. 1999) but can be found well offshore in shallow bays and lagoons or near reefs (C. Dau, pers. comm. 1999; D. Zwiefelhofer, Service, pers. comm. 1999). An unknown number of Steller's eiders winter along the Russian and Japanese coasts. They have been reported from the Anadyr Gulf (Konyukhov 1990), Komandor (Commander) and Kuril islands in Russia (Kistchinski 1973; Palmer 1976), and near Hokkaido Island in northern Japan (Brazil 1991).

Prior to spring migration, thousands to tens of thousands of Steller's eiders stage at a series of locations along the north side of the Alaska Peninsula, including several areas used during molt and winter such as Port Heiden, Port Moller, Nelson Lagoon, and Izembek Lagoon (Larned *et al.* 1994; Larned 1998). From there, they cross Bristol Bay, and it is thought that virtually the entire Alaska-wintering adult population spends days or weeks feeding and resting in northern Kuskokwim Bay and in smaller bays along its perimeter (W. Larned, Service, pers. comm. 1999). The number seen there varies among years, presumably due to variation in sea ice conditions that may slow northward migration in some years. An estimated 42,000 have concentrated in early May in Kuskokwim Bay when lingering sea ice has delayed northward migration (Larned *et al.* 1994). Steller's eiders also concentrate along the southwest coast of the Y–K Delta and southern coast of Nunivak Island during spring migration (Larned *et al.* 1994).

Steller's eiders move north through the Bering Strait between mid-May and early June (Bailey 1943; Kessel 1989). Subadults may remain in wintering areas or along the migration route during the summer breeding season, as they have been noted in Nelson Lagoon in July (M. Petersen, U.S. Geological Survey, pers. comm. 1999), around Nunivak Island from July to October (B. McCaffery, Service, pers. comm. 1999) and offshore and along the lagoons of St. Lawrence Island in summer (Fay 1961). Steller's eiders have been seen in lagoons along the northwest coast of Alaska in late July, and these also may be subadults (Day *et al.* 1995).

Fall migration is protracted, with Steller's eiders moving south through the Bering Strait from late July through October (Kessel 1989), depending on age and sex of individuals and whether migration takes place before or after wing molt (Jones 1965). Fall migration routes are poorly understood, but groups have been seen passing near shore at Nunivak Island (Dau 1987) and Cape Romanzof (McCaffery and Harwood 1997).

*Population Status*

Determining population trends for Steller's eiders is difficult; however, the Steller's eider's breeding range in Alaska appears to have contracted, with the species disappearing from much of its historical range in western Alaska (Kertell 1991) and possibly a portion of its range on the North Slope. In areas where the species still occurs in Alaska, the frequency of occurrence (the proportion of years in which the species is present) and the frequency of breeding (the proportion of years in which the species attempts to nest) have both apparently declined in recent decades (Quakenbush *et al.* 1999).

We do not know whether the species' breeding population on the North Slope is currently declining, stable, or improving. Although Steller's eiders are counted there during extensive aerial waterfowl and eider surveys, few are seen in most years because the species occurs at very low density and the surveys sample only a small proportion of the suitable breeding habitat. Based on observations at Barrow, we have found that breeding population size and breeding effort vary considerably among years, therefore, detecting statistically significant population trends and accurately estimating population size is difficult.

Despite the difficulty in detecting statistically significant trends with North Slope aerial survey data, these data can be used to estimate breeding population size. Several dozen Steller's eiders are usually detected during aerial breeding-pair waterfowl surveys on the North Slope each year (Service unpub. data (a)). These surveys sample 2–3 percent of the suitable waterfowl breeding habitat annually. When extrapolated to the entire study area, the number of sightings suggests that hundreds or low thousands (point estimates ranged from 534 to 2,543 in 1989–1999) of Steller's eiders would be detected if the entire region were surveyed each year. Actual population size is probably higher, however, because these estimates are made with the assumption that all Steller's eiders within the sample area are detected. Based on knowledge of other waterfowl species, this is almost certainly not the case, but information is inadequate to estimate a species-specific visibility correction factor. Based on these observations, it seems reasonable to estimate that hundreds or thousands of Steller's eiders occur on the North Slope. Similar aerial surveys are conducted on the Y–K Delta, but no Steller's eiders have been detected in these surveys so population size and

trends cannot be estimated. Nonetheless, comparison of historical and recent observations indicate that a reduction in the species' abundance has occurred on the Y–K Delta (Kertell 1991).

**Previous Federal Action**

In December 1990, James G. King of Juneau, Alaska, petitioned us to list the Steller's eider under the Act. In May 1992, we determined that listing was warranted but precluded by higher listing priorities elsewhere. In 1992, a status review of the species concluded that listing the Alaska-breeding population as threatened was warranted, although the available information did not support listing the species worldwide (57 FR 19852). A proposed rule to list the Alaska-breeding population of Steller's eiders as threatened was published in the **Federal Register** on July 14, 1994 (59 FR 35896). Appropriate Federal and State agencies; borough, city, and village governments; scientific and environmental organizations; and other interested parties were contacted and encouraged to comment. Shortly thereafter, a new Service policy (July 1, 1994; 59 FR 34270) was implemented requiring that listing proposals be reviewed by at least three independent specialists. The comment period was reopened in June 1995 to seek peer review, and appropriate parties were again contacted and encouraged to comment. A final determination on whether listing was warranted was further delayed by a national moratorium on listing (Public Law 104–6) implemented in April 1995, which prevented final determination on listing actions for the remainder of the fiscal year; that moratorium was later extended until April 1996.

We received comments on listing Steller's eiders from a total of nine parties during the two comment periods. Of the comments, four supported listing, four were neutral, and one, the Alaska Department of Fish and Game, opposed listing. We also received peer review from five recognized experts on eider or sea duck population monitoring, modeling, or management; all five supported listing the Alaska-breeding population of Steller's eiders as threatened or endangered. Two environmental organizations (The Wilderness Society and Greenpeace) recommended designating critical habitat in current and historical breeding habitat, wintering habitat along the Alaska Peninsula, and other marine areas. The North Slope Borough supported listing but, although not specifically mentioning ''critical habitat,'' recommended against additional special protection near the village of Barrow. Of the five independent experts who provided peer review, four commented on critical habitat designation. One suggested studies of breeding ecology to identify critical habitat requirements, one recommended designating critical habitat near Barrow, one suggested ''absolute protection'' for Steller's eiders nesting anywhere in Alaska, and one mentioned that protecting ''coastal molting and wintering range'' was perhaps more important than breeding habitat.

On June 11, 1997, we listed the Alaska-breeding population of Steller's eiders (62 FR 31748) as threatened. That decision included a determination that designation of critical habitat was not prudent at that time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent if designation would not be beneficial to the species. Section 7(a)(2) of the Act requires Federal agencies to ensure, in consultation with the Service, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species. At the time of our determination, we stated that critical habitat designation would provide no additional benefit to Steller's eiders because protection of the species' habitat would be ensured through section 7 consultations, the recovery process, and, as appropriate, through the section 10 habitat conservation planning process.

We initiated recovery planning for the Steller's eider in 1997. The Steller's Eider Recovery Team was formed, consisting of eleven members with a variety of expertise in Steller's eider biology, conservation biology, population biology, marine ecology, Native Alaskan culture, and wildlife management. The Recovery Team is developing a draft Steller's Eider Recovery Plan, and we expect the draft Recovery Plan to be available for review in 2001.

In October 1998, The Wilderness Society and seven other national and regional environmental organization filed a lawsuit in Federal District Court objecting to the Department of the Interior decision to undertake oil and gas leasing in the National Petroleum Reserve-Alaska, *Wilderness Society, et al.* v. *Babbitt,* Civ. No. 98–02395 (D.D.C.). One of the Plaintiffs claims in this litigation is that the Service's failure to designated critical habitat (i.e., the ''not prudent'' determination) for spectacled and Steller's eiders was arbitrary and capricious and in violation of the Act. This claim is currently being litigated.

In March 1999, the Southwest Center for Biological Diversity, Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helmintholglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of new information concerning the species' habitat needs, we recognized the value in reexamining the question of whether critical habitat for Steller's eider would be prudent. Accordingly, the Federal Government entered into a settlement agreement whereby we agreed to readdress the prudency of designating critical habitat for Steller's eider.

After reviewing the best scientific and commercial data available, we proposed to withdraw the previous finding that the designation of critical habitat for the Steller's eider was not prudent. On March 13, 1999 (65 FR 13262), we proposed to designate nine areas in northern, western, and southwestern Alaska as critical habitat for the Steller's eider. On April 19, 2000 (65 FR 20938) we extended the comment period until June 30, 2000. On July 5, 2000 (65 FR 41404) we extended the comment period until August 31, 2000. On July 31, 2000 (65 FR 46684) we published the notice to hold a public hearing. On August 24, 2000 (65 FR 51577) we announced the availability of the draft economic analysis and extended the public comment period until September 24, 2000.

We have made this final critical habitat determination based upon the best scientific and commercial information available. However, we

recognize that we do not have complete information on the distribution of this species at all times of the year. If information becomes available indicating that additional or fewer areas are essential for the conservation of the species, or may need special management considerations and protections, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

**State of Knowledge of the Steller's Eider**

The Alaska-breeding population of the Steller's eider was listed as threatened in June, 1997 (62 FR 31748). At that time, we noted that there was considerable uncertainty about the historical distribution and abundance of Steller's eiders in Alaska. Although qualitative information suggested that the range of the species had contracted over the last century, there was inadequate quantitative information available to assess population size or trends. Thus, the decision to list the Alaska-breeding population was based primarily upon the near disappearance of Steller's eiders from the Y–K Delta and the indication that they may have abandoned the eastern North Slope.

At the time of listing, the available information was also inadequate to identify the factor or factors causing the species' decline in Alaska. However, we concluded that destruction or modification of habitat did not appear to have played a major role in the decline in the Steller's eider as a nesting species in Alaska because—(1) only a very small proportion of the species' vast and remote habitat in Alaska had been modified by humans; (2) other waterfowl species continue to occur or nest in large numbers in the limited areas with human presence and impact; and (3) the only place where the Steller's eider is currently known to regularly nest in Alaska is near Barrow, where they nest near gas pipelines, roads, airports, and other forms of human disturbance and habitat modification. Possible factors that may have contributed to the species' decline were mentioned in the final listing rule (62 FR 31748), including changes in the numbers or diet of predators, hunting (directly through shooting and/or indirectly through the ingestion of spent lead shot pellets in wetlands), and changes in the marine environment that could affect Steller's eider food or other resources. Although we speculated on possible factors causing decline, there was little or no information demonstrating that any had actually caused the species' decline or would limit recovery.

In the three years since listing, research and survey efforts have begun to provide additional information on the species' ecology. Most recent information on the distribution of Steller's eiders on the North Slope is derived from two extensive, standardized aerial surveys that sample for waterfowl breeding pairs and eiders across much of the Arctic Coastal Plain. Although these surveys include a vast area, the sampling intensity is low (the waterfowl breeding pair and eider surveys sample approximately 2 and 4 percent of the Arctic Coastal Plain each year, respectively). Low sampling intensity, combined with a low density of Steller's eiders, results in very few Steller's eiders being detected by these surveys. In 1999 and 2000, intensive aerial surveys specifically targeting Steller's eiders with a sampling intensity of 50 percent were conducted in a block near Barrow, and in additional blocks near Admiralty Bay and Atqasuk in 1999 and 2000, respectively (Martin 2000a). These Steller's eider surveys provided considerable new information, including an indication that 200–500 pairs of Steller's eiders may have occupied an area south of Barrow comprising approximately 2,700 $km^2$ (1,055 $mi^2$) in both 1999 and 2000 (Martin 2000a). This finding contrasts with the waterfowl breeding pair and eider surveys, which provided inadequate information to estimate population size (and failed to detect any Steller's eiders in the survey overlap area in 2000). This important finding indicates that the population size and density of Steller's eiders may be considerably higher than that indicated by waterfowl breeding pair and eider surveys. No Steller's eiders were seen in the Admiralty Bay or Atqasuk blocks during the intensive Steller's eider surveys, although the species has been observed in these blocks during low-intensity waterfowl and eider surveys in other years. Given the tremendous annual variation in breeding population size and performance that is characteristic of the Steller's eider, it is premature to draw conclusions about the absence of Steller's eider observations in these blocks during a single survey year. However, the apparent striking difference in density between these survey blocks indicates the uneven distribution of the species and highlights the need for additional intensive surveys throughout other portions of the species' range on the North Slope.

Another information gap that was noted at the time the Alaska-breeding population of Steller's eiders was listed pertains to non-breeding season distribution. There is considerable information on the use of Izembek and Nelson lagoons, and to a lesser extent other nearby areas on the Alaska Peninsula, during molt and winter. In these areas, repeated surveys have quantified the variation in use within and among years. In contrast, there is much less information from the majority of the species' vast marine range in Alaska. In some areas, surveys have only been conducted during fall and/or spring, have only been conducted a very few times, or have never been conducted (such as large portions of the Kodiak Archipelago). Thus, our understanding of distribution and how it varies within and among years is very inadequate for large portions of the species' non-breeding range. In February and March, 2000, aerial shoreline surveys were conducted along thousands of kilometers of coastal southwestern Alaska in order to document the distribution of Steller's eiders (Larned 2000b). In general, these surveys found Steller's eiders occurring over a wide area in groups of dozens or hundreds, rather than larger concentrations of thousands. Exceptions were Izembek and Nelson lagoons, where 17,571 and 10,391 Steller's eiders were found in March 2000, respectively (Larned 2000b). Further surveys are needed in marine areas in the future to better understand distribution and how it varies within and among years.

Another aspect of non-breeding season distribution that is poorly understood pertains to the Alaska-breeding population. In general, our knowledge of the marine distribution and ecology of Steller's eiders pertains to the species as a whole, which is comprised of both the unlisted Russia-breeding population and the listed Alaska-breeding population. If the Alaska-breeding population selectively uses portions of the species' broader range, those areas are disproportionately essential for the listed population's recovery. However, the available information has been inadequate to evaluate whether the populations mix freely or are somewhat segregated in the marine environment. During 2000, three adult Steller's eiders that bred near Barrow had satellite transmitters attached to follow movements after the breeding season. Two spent the molt period at the Kuskokwim Shoals in northern Kuskokwim Bay while the other spent this period at Seal Islands, a lagoon on the north side of the Alaska

Peninsula (Martin 2000b). Although the sample size is very small, these observations may suggest selective use of molting areas by members of the Alaska-breeding population because all three individuals molted in areas thought to support comparatively small molting populations (limited survey data showed that about 5,000 may molt near the Kuskokwim Shoals and 5,000–10,000 may molt at Seal Islands). Additional satellite telemetry is planned to acquire greater sample size and to follow birds through the winter; this will provide additional information on the specific areas used during molt and winter by the Alaska-breeding population.

In summary, since listing we have initiated satellite telemetry efforts to delineate the marine distribution of the Alaska-breeding population of Steller's eiders. Additionally, because Steller's eiders are infrequently observed during standard aerial waterfowl surveys, we have increased intensive aerial survey efforts on the North Slope to better elucidate distribution and abundance. However, both of these efforts are preliminary and will require continued efforts to produce adequate information. Significant data gaps remain in our understanding of abundance and distribution on the North Slope, marine distribution during the non-breeding season (and how the distribution of the Alaska-breeding population compares to that of the Russia-breeding population), factors causing decline and constraining recovery, and how the current status of the species compares to historical status. Each of these data gaps complicates the evaluation of critical habitat and determining which areas are essential for the species' recovery. We anticipate that development and completion of a Steller's Eider Recovery Plan will enhance our efforts to understand the roles of environmental, physiological, and behavioral factors in achieving recovery of this species.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not afford any additional protections under the Act against such activities.

Section 4 of the Act requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Within the geographic range occupied by the species critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)) and may require special management considerations or protection.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential and that may require special management considerations or protection. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. It should be noted; however, that not all areas within the occupied geographic range of the species that contain the features and habitats that supports the species are essential and they may or may not require special management or protection. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements , as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

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 decisions made by us 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, and biological assessments or other unpublished materials (i.e., gray literature). Our peer review policy requires that we seek input from at least three scientists who are knowledgeable in subject matter relevant to each rule.

Critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), set aside areas as preserves, or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in section 7 consultations for specific projects, or through recovery planning.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, which contain or could contain the habitat features (primary constituent elements described below) that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Our decision to not designate critical habitat throughout all of our proposed critical habitat units does not imply that these non-designated areas are unimportant to Steller's eiders. Projects with a Federal nexus that occur in these areas, or anywhere within the range of Steller's eiders, which may affect Steller's eiders must still undergo section 7 consultation. Our decision to not designate critical habitat in these areas does not reduce the consultation requirement for Federal agencies participating in, funding, permitting, or carrying out activities in these areas.

**Methods**

In determining which areas are essential to the conservation of Steller's eiders and may require special management considerations or protection, we used the best scientific and commercial information available. Our information sources included data from banding, satellite telemetry, aerial surveys, ground plot surveys, ground-based biological investigations, maps, Geographic Information System data, traditional ecological knowledge, and site-specific species information and observations. We discussed our critical habitat proposal at 19 public meetings and one public hearing. We convened a meeting of experts in the field of eider biology to provide us with information useful in setting criteria and boundaries for habitats essential to the conservation of the Steller's eider. Experts from whom we sought information included representatives of State and Federal agencies, the University of Alaska, a private consulting firm, and local government. We also sought peer review of the proposed rule from six recognized experts in eider or sea duck ecology; two submitted comments. Additionally, we considered 334 comments received during the open comment period, including written comments, oral comments received during meetings and one public hearing, and comments received by E-mail, regular mail, facsimile, and telephone.

We made a concerted effort to solicit traditional ecological knowledge regarding habitats that are important to Steller's eiders. We contacted representatives of regional governmental and non-profit Native organizations and asked them to recommend individuals who may have traditional ecological knowledge of eiders and their habitats and who may be willing to review the Steller's eider critical habitat proposal. We attempted to contact all individuals identified by the regional representatives, and provided those individuals who agreed to review the proposal with copies of the proposed rule and additional informational materials. Comments submitted by these and other individuals with traditional ecological knowledge, transmitted either in written form or orally during the course of public meetings, have been considered during the development of the final rule.

We reviewed available information that pertains to the habitat requirements and preferences of this species. Comments received through the public review process provided us with valuable additional information to use in decision making, and in assessing the potential economic impact of designating critical habitat for the species.

**Criteria Used To Identify Critical Habitat**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. Primary constituent elements for each critical habitat unit are described below (see Determination).

We considered qualitative criteria in the selection of specific areas or units for Steller's eider critical habitat. Such criteria focused on (1) identifying areas where Steller's eiders consistently occur at relatively high densities; (2) identifying areas where Steller's eiders are especially vulnerable to disturbance and contamination due to flightlessness; and (3) identifying areas essential to survival and recovery given our best available data.

In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, which do not contain the primary constituent elements of Steller's eider critical habitat. Existing man-made features and structures within the

boundaries of the mapped units, such as buildings, roads, pipelines, utility corridors, airports, other paved areas, and other developed areas do not contain one or more of the primary constituent elements and are therefore not critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat. Additionally, some areas within the boundaries of the critical habitat units may not contain the primary constituent elements and therefore are not critical habitat. For example, waters greater than 9 m (30 ft) deep are not believed to be used by Steller's eiders and are not described as primary constituent elements. Regardless of the boundaries of the critical habitat units, all waters greater than 9 m (30 ft) deep are not critical habitat.

**Critical Habitat Designation**

The designated critical habitat described below constitutes our best assessment of areas essential for the conservation of Steller's eiders and is based on the best scientific and commercial information available. The essential features found on the designated areas may require special management consideration or protection to ensure their contribution to the species' recovery. Our critical habitat designation of selected areas does not imply that areas not designated may not require special management considerations or protections.

Area of designated critical habitat by land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE CRITICAL HABITAT AREA (HA [1]) BY UNIT AND OWNERSHIP

| Unit | Federal | State | Native | Total |
|---|---|---|---|---|
| Yukon-Kuskokwim Delta | 190,800 | 0 | 65,300 | 256,100 |
| Kuskokwim Shoals | 287,600 | 93,700 | 0 | 381,300 |
| Seal Islands | 0 | 6,300 | 0 | 6,300 |
| Nelson Lagoon (incl. Port Moller and Herendeen Bay) | 0 | 53,300 | 0 | 53,300 |
| Izembek Lagoon | 0 | 36,300 | 0 | 36,300 |
| Total | 478,400 | 189,600 | 65,300 | 733,300 |

[1] Units are hectares. To convert to km$^2$, multiply hectares by 0.01; to convert to acres, multiply hectares by 2.471; to convert to mi$^2$, multiply hectares by 0.00386.

*Unit 1: Yukon-Kuskokwim Delta*

The Yukon-Kuskokwim Delta critical habitat unit includes the vegetated intertidal zone of the central delta from the Askinuk Mountains to northern Nelson Island. This unit is comprised of 15 entire townships and 564 sections within 27 additional townships and encompasses 2,561 km$^2$ (256,100 ha) (980 mi$^2$). This unit is one of only two known breeding sites for the Alaska-breeding populations. The boundaries have been modified from those proposed to eliminate upland habitat not likely to be used by Steller's eiders, resulting in an 18 percent reduction in area for this unit. Primary constituent elements of Steller's eider critical habitat in this unit include all land within the vegetated intertidal zone, along with all open-water inclusions within that zone. The vegetated intertidal zone includes all lands inundated by tidally influenced water often enough to affect plant growth, habit, or community composition. Waters within this zone are usually brackish. Vegetative communities within this zone include, but are not limited to, low wet sedge tundra, grass marsh, dwarf shrub/graminoid (consisting of grasses and sedges) meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh habitats. Within the indicated border, existing human development and areas not within the vegetated intertidal zone (e.g., barren mudflats and lands above the highest high tide line) are not considered critical habitat.

Approximately 75 percent of the Yukon-Kuskokwim Delta Nesting Unit is located within the Yukon Delta National Wildlife Refuge, although a portion (up to 10 percent) is subject to selection by Native Village or Regional Corporations, under the terms of the Alaska Native Claims Settlement Act of 1971. The remainder of the proposed unit (approximately 25 percent) has been conveyed to Native Village or Regional Corporations.

*Unit 2: Kuskokwim Shoals*

The Kuskokwim Shoals critical habitat unit is a subset of the proposed Kuskokwim Bay critical habitat unit. The final designated unit differs from the proposed unit in two ways: (1) the southern portion (one of two discontinuous portions of the proposed unit) has been eliminated; and (2) the boundaries of the northern portion of Kuskokwim Bay have been modified to reflect comments we received on the proposal and further analysis of eider distributional data (see Summary of Changes from Proposed Rule section, below). The Kuskokwim Shoals critical habitat unit includes a portion of northern Kuskokwim Bay from the mouth of the Kolavinarak River to near the village of Kwigillingok, extending 17–38 km (approximately 11–24 mi) offshore. This unit encompasses approximately 3,813 km$^2$ (1,472 mi$^2$) of marine waters and about 184 km (115 mi) of shoreline (including the shoreline of barrier islands). This area is used by more than 5,000 Steller's eiders during molt, including individuals known to be from the listed, Alaska-breeding population, and is thought to be extremely important during spring staging, when tens of thousands of Steller's eiders congregate there prior to moving northward as the sea ice breaks up and recedes. The primary constituent elements for the Kuskokwim Shoals Unit are marine waters up to 9 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column, and the underlying marine benthic community.

*Unit 3: Seal Islands*

The Seal Islands lagoon was originally proposed as a subunit of the North Side of the Alaska Peninsula unit but is now identified separately. It includes all waters enclosed within the Seal Islands lagoon and marine waters 400 m (¼ mile) offshore of the islands and adjacent mainland between 159° 12′ W and 159° 36′ W. It encompasses 63 km$^2$ (24 mi$^2$) and 104 km (65 mi) of shoreline. Thousands of Steller's eiders molt in the Seal Islands, including at least one individual known to be from the listed, Alaska-breeding population, and significant numbers congregate there again in spring prior to migration. The primary constituent elements in the

Seal Islands include waters up to 9 m (30 ft) deep, the associated invertebrate fauna in the water column, the underlying marine benthic community, and where present, eelgrass beds and associated flora and fauna.

*Unit 4: Nelson Lagoon*

The Nelson Lagoon critical habitat unit includes all of Nelson Lagoon (and a 400 m (¼ mile) buffer offshore of the Kudobin Islands and the mainland west to 161° 24′ W) and portions of Port Moller and Herendeen Bay. This complex was originally proposed as a subunit of the North Side of the Alaska Peninsula unit but is now identified separately. The boundary has been changed where it crosses Port Moller and Herendeen Bay to reflect further data analysis and comments on the proposed units (see Rationale for the Final Designation section, below). This unit encompasses 533 km$^2$ (205 mi$^2$) and 238 km (149 mi) of shoreline. This lagoon system is used by tens of thousands of Steller's eiders during molt, including individuals known to be from the listed, Alaska-breeding population. Tens of thousands also winter in this area during many winters, and numbers build again during spring, as up to 36,000 stage in the area prior to or early in spring migration. The primary constituent elements in Nelson Lagoon include waters up to 9 m (30 ft) deep, the associated invertebrate fauna in the water column, the underlying marine benthic community, and where present, eelgrass beds and associated flora and fauna.

*Unit 5: Izembek Lagoon*

Izembek Lagoon was originally proposed as a subunit of the North Side of the Alaska Peninsula unit but is now identified separately. It includes all waters of Izembek Lagoon, Moffett Lagoon, Applegate Cove, and Norma Bay, and waters 400 m (¼ mile) offshore of the Kudiakof Islands and adjacent mainland between 162° 30′ W and 163° 15′ W. It encompasses 363 km$^2$ (140 mi$^2$) of marine waters and 297 km (186 mi) of shoreline. Like the Nelson Lagoon complex, this lagoon system is extremely important to Steller's eiders, being occupied during molt, winter, and spring staging by tens of thousands of individuals, including some known to be from the listed, Alaska-breeding population. The primary constituent elements in Izembek Lagoon include waters up to 9 m (30 ft) deep, the associated invertebrate fauna in the water column, the underlying marine benthic community, and where present, eelgrass beds and associated flora and fauna.

**Rationale for the Final Designation**

We stated in our proposed rule: ''In the absence of clearly defined recovery objectives or criteria, determining which physical and biological features are essential for recovery is difficult. After considering these complicating factors, we believe it is essential to the recovery of the species to maintain the existing population on the North Slope and allow for recovery of the greatly depressed population on the Y–K Delta. Therefore, we believe that the following three components are essential for the conservation of the Alaska-breeding population of Steller's eiders:

(1) The North Slope breeding subpopulation and its habitat must be maintained sufficiently to sustain healthy reproduction and allow for potential population growth;

(2) The Y–K Delta subpopulation must be increased in abundance to decrease the Alaska-breeding population's vulnerability to extirpation; and

(3) Molting, wintering, and spring staging habitat in the marine environment must be maintained to ensure adequate survival during the nonbreeding season.''

We believe that those general statements about the conservation needs of the Steller's eider are accurate. However, in this final designation we have made a concerted effort to refine and translate those general statements into a critical habitat designation that will provide the greatest conservation benefit to the species possible. Therefore, this final rulemaking reflects significant changes to critical habitat areas from the proposed rulemaking. We have substantially reduced the area of some critical habitat units and completely eliminated others. We have not added area to existing critical habitat units or added new critical habitat units. The proposed rule was based on the best scientific and commercial information available when the proposed rule was developed. The settlement agreement mandated a short time line for our evaluation of critical habitat. Consequently, when we developed the proposed rule we included all areas that we thought might be essential to the conservation of the species, based on the best available commercial and scientific information.

Following publication of the proposed rule we thoroughly evaluated all available information to more precisely identify those areas essential to the conservation of the species (see methods). Specific rationale for retention, modification, or exclusion of the proposed critical habitat in this final rulemaking is explained in detail below.

*Proposed North Slope Unit*

The proposed North Slope Unit encompassed approximately 40,884 km$^2$ (15,785 mi$^2$) on the Arctic Coastal Plain. The boundaries of the proposed unit were drawn to include about 96 percent of the breeding-season observations of Steller's eiders made during aerial surveys and all intervening suitable wetland habitat. None of this proposed unit is designated as critical habitat at this time.

We recognize the importance of breeding habitat to support recovery of the Alaska breeding population of the Steller's eider. In the proposed rule, we stated: ''The North Slope breeding subpopulation and its habitat must be maintained sufficiently to sustain healthy reproduction and allow for population growth.'' This need is exacerbated by the near extirpation of the species from the Y–K Delta, which likely has significantly reduced the species' distribution and abundance in Alaska. When we published our proposal to designate critical habitat we believed that the critical habitat designation should broadly identify those areas that we believe are essential to the conservation of the species. The comments we received in response to the proposal suggested that we should define critical habitat in a more specific and precise manner. Further, some of the commenters believed that our proposed designation was not consistent with the Act's definition of critical habitat (see Summary of Comments and Recommendations section). Therefore, we carefully reviewed the best available information to ensure that our approach and the designation itself provided the greatest benefit to the eider and met the requirements of the Act.

It is very difficult to determine what area, or areas, of the North Slope is essential for the conservation for the species. Ideally, to define what is essential for recovery of the Alaska-breeding population of Steller's eider we would have information on the historical abundance and distribution. The lack of recovery objectives for the species also complicates making a determination as to what areas are essential for recovery. More importantly, we lack reliable scientific data about the habitat preferences of nesting females and females with broods. Therefore, we are currently unable to ascertain why females nest in some areas, but not in another that appear to be similar. However, we can use the actual distribution of a species as evidence of which areas have the

habitat features essential to the conservation of the species, even if we do not have sufficient information to describe precisely what discriminates those areas from other similar areas that lack the essential feature.

For example, the regularity of use, combined with the density, number, or proportion of the population that occupies an area, may be indicative of an area's importance. Thus, we evaluated all available information on distribution to identify areas of concentration under the assumption that areas regularly used by dense aggregations, large numbers, or a high proportion of the population are likely to be more important to the species. In order to correctly interpret these data, we requested that eider experts review the available distributional information and provide their individual expert opinions on what is essential for recovery. Finally, we scrutinized all comments received during the public comment period for relevant information or opinion on this topic (we specifically invited comment on what areas are essential for recovery; see 65 FR 13273).

Our best understanding of the bird's range on the North Slope comes from annual aerial waterfowl surveys that sample the Arctic Coastal Plain. These data show that observations of the species, although scant in number, are very widely distributed across the Arctic Coastal Plain west of the Colville River (Quakenbush *et al.* 1999; Martin 2000a). With the exception of near the village of Barrow, at the northernmost point of Alaska, there are no concentration areas where the number or density of Steller's eiders is notable on a regional scale. Similarly, with the exception of Barrow, there are no areas where Steller's eiders have been detected regularly, suggesting the species occurs intermittently over most of its North Slope range. A gradient in density of observations is detectable, however, with the highest density occurring near Barrow. Approximately 10 percent of the total observations occurred within a few miles of Barrow, an area that comprises <1 percent of the species' range on the North Slope. Density declines with distance from Barrow, with approximately 20 percent of the observations occurring within 5 percent of the range, 50 percent occurring within about 30 percent of the area, and 70 percent of the observations occurring within 57 percent of the species' current range. Thus, although Steller's eiders occur over a vast area on the North Slope, the available data suggest that the Barrow area is the core of the species' North Slope breeding distribution, with density generally decreasing as distance from Barrow to the south, east and west, increases.

This conclusion, however, does not clearly identify what specific area or areas are essential for the species' conservation. Assuming that density correlates with importance for conservation, the area near Barrow is likely most important to the species, and the importance decreases with distance from this core area. We believe that this core area near Barrow, where density and regularity of breeding appear to be notably higher than elsewhere, is essential for the Steller's eider's conservation. However, this area encompasses only a small proportion of the species' range (about 1 percent) and numbers (about 10 percent) on the North Slope. Thus, it is likely that this area alone is inadequate to support recovery, and the area considered to be essential must include additional area. However, adding additional area results in including incrementally more locations where the species has been observed but those locations are separated by increasingly more intervening area where no Steller's eiders have ever been observed. During aerial surveys that sample the Arctic Coastal Plain, only 136 records of Steller's eiders have been obtained over the entire 11-year aerial survey record, an average of about 12 observations per year. The combined area sampled over 11 years totaled about 933,000 $km^2$, so on average, one Steller's eider was detected per 6,860 $km^2$ surveyed. This average is lower further from Barrow; outside of the 30 percent of the species' range nearest to Barrow where about half of the observations have occurred, detections have averaged about one per 10,000 $km^2$ surveyed.

The specificity with which we can designate critical habitat is constrained by the limited information currently available (see *State of Knowledge of the Steller's Eider* section). Nine Steller's eider experts provided six different opinions on what area is required to conserve the species, ranging from all of the species' currently known range to none (based on inadequate data), with four intermediate variations intended to capture different proportions of the recent sightings. Although we specifically invited comment on where boundaries delimiting this area should be drawn, few commenters provided information or opinion on this topic. Two commenters suggested that the species' entire range, as defined by all known historical and recent observations, is essential for recovery, while numerous others contended that our proposed critical habitat boundaries were inappropriate and went well beyond the Act's definition of critical habitat. Others suggested that the lack of recovery criteria and paucity of hard data preclude a science-based determination of what area is essential. Unfortunately, none of the information presented helped us in determining which specific areas were essential to the conservation of the Steller's eider because each was based on assumptions of eider biology that may or may not be confirmed in future scientific studies.

Nonetheless, the Act requires us to identify areas to be designated as critical habitat based upon the best available information. However, the relative benefits to the species of such a designation must also be weighed in our decision as to where to designate critical habitat. Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

The benefits of including lands in critical habitat are often relatively small. The principal benefit of any designated critical habitat is that activities that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, it is important to note that, as a result of the Alaska-breeding population of Steller's eider being listed as a threatened species, we already consult on activities on the North Slope that may affect the species. While these consultations do not specifically consider the issue of adverse modification of critical habitat, they address the very similar concept of jeopardy to the species. Under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical

habitat by reducing the value of the habitat so designated. Thus, actions that result in an adverse modification determination are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Since the Alaska-breeding population of the Steller's eider was listed in 1997, we have consulted with Federal agencies on a variety of actions to evaluate impacts to the species on the North Slope. In most cases, the consultations have determined that the actions would not adversely affect Alaska-breeding population of the Steller's eiders because the projects occurred during seasons when the eiders are absent and no permanent impact to habitat would result or because only a minimal amount of habitat would be affected or would occur in areas where the species occurs at low densities. In only a few cases have we determined that a proposed project included habitat alterations that might adversely affect Alaska-breeding population of Steller's eiders. Our biological opinions on these consultations provided reasonable and prudent measures designed to minimize the incidental take of the proposed projects on Alaska-breeding population of Steller's eiders. When applicable, the reasonable and prudent measures included provisions to minimize the proposed project's impact to habitat. Therefore, because of the species' abundant habitat on the North Slope and the protections provided though the current consultation process, we can envision no benefit that critical habitat designation would have imparted in the consultations conducted to date. Furthermore, we have considered the Steller's eider's conservation needs, and we believe that future section 7 consultations on any proposed action on the North Slope that would result in an adverse modification conclusion would also result in a jeopardy conclusion. Thus, the principal regulatory benefit from a critical designation for the listed population of Steller's eider on the North Slope is expected to be small.

There are also educational benefits associated with designation as critical habitat, such as informing the public which areas are important for the long-term survival and conservation of the species. Critical habitat could also potentially foster a sense of ownership for the resource, encouraging concerned individuals to act as caretakers of important habitat. However, such benefits are largely negated by our inability to identify specific areas (other than the area around Barrow) on the North Slope that are essential to conservation of the species (*i.e.,* providing meaningful educational information is dependent upon the ability to provide meaningful information on the conservation needs of the species). Furthermore, we have been working closely with North Slope residents for years in order to engender support for eider conservation. We have worked with the North Slope Borough on cooperative research, survey, and educational efforts for Steller's eiders since 1991, six years prior to the species' listing under the Act. We are currently engaged in several cooperative efforts to alleviate threats and develop a long-term conservation strategy to protect Steller's eider habitat. Because these efforts were under way before critical habitat designation was proposed (and before the species was listed, in some cases), we are certain that North Slope residents and their local governments are well aware of the species' plight and the need to address threats and protect important habitat. Likewise, most Federal projects on the North Slope are conducted, funded, or permitted by relatively few Federal agencies. As a result, the Federal agencies involved with activities on the North Slope are aware of the Alaska-breeding population of the Steller's eider's threatened status and the need to consult, and additional educational benefits would be very limited. For all these reasons, then, we believe that designation of critical habitat has little educational benefit on the North Slope.

In contrast, the benefits of excluding the North Slope from critical habitat designation appear to be greater than the benefits of including it. We acknowledge that some portion of the proposed North Slope unit is essential to the recovery of the species. Moreover, we believe that these lands may require special management considerations and protections given the extent of oil and gas exploration and development has occurred in the area and may reasonably be anticipated in the future. However, to designate an area at this time, without a more reliable biological basis, would likely convey an inaccurate message about the size and location of the area needed for recovery. We believe that to designate a small area, such as that near Barrow, would exclude considerable habitat that will likely ultimately prove to be important to the species. Conversely, to designate a significantly larger area would undoubtedly result in the designation of considerable area where the species has never been observed and that may not contain essential habitat features. We believe there are strong implications regarding habitat importance that are associated with critical habitat designation. Delineating critical habitat on the North Slope at this time may mislead Federal agencies and others wishing to carry out activities on the North Slope about the areas that are truly essential to the recovery of the species. Although we have adequate information to delineate other areas as being essential for Steller's eiders at this time, we do not believe that we currently have adequate information to do so on the North Slope.

One potential benefit of excluding an area from a critical habitat designation is that doing so can foster unique conservation efforts. The North Slope Borough (Borough) has taken a leadership role in such an effort for conserving Steller's eiders. The Borough invited the Service to join them in eider studies in 1991, six years before listing, and subsequently commented in support of listing at the time the species was proposed to be classified as threatened. The Borough has provided funds, logistic support (particularly housing and laboratory space) and personnel for studies at Barrow, without which most of the work accomplished to date would have been impossible. The Borough has served as an essential liaison to the local community, facilitating access to private lands otherwise closed to investigation, and involving local citizens in research and educational programs. The Borough has consistently believed that conservation within their jurisdiction could best be accomplished in the absence of a critical habitat designation, and refraining from designation in the Barrow area would be the best way to encourage the continuation and expansion of our mutual conservation efforts. The local-Federal partnership approach has resulted in considerable progress on conservation of Steller's eiders and their habitat, and provides substantial incentive for all parties to avoid altering the existing cooperative relationship.

Compared with all other portions of the breeding range, the greatest potential for future take (from all sources) occurs in the immediate vicinity of Barrow, because of the relatively high density of Steller's eiders and intensity of human activity. With the support of the Borough, the Service has initiated a conservation planning effort for Barrow with the goal of maintaining or increasing the number of Steller's eider breeding pairs and their productivity. The plan is envisioned as a

comprehensive package that will combine elements of habitat preservation on private lands held by the village corporation, community-wide education and outreach, and research/monitoring. The success of this effort depends on the continued cooperation of the Borough and local landowners. We believe that not designating critical habitat in the Barrow region will foster unique conservation partnerships that are essential to the conservation of the species.

In summary, at this time the benefits of including the North Slope in critical habitat for the Steller's eider include minor, if any, additional protection for the eider and would serve little or no educational functions. The benefits of excluding the North Slope from being designated as critical habitat for the Steller's eider include the preservation of a unique local-Federal partnership that we believe is essential to future conservation actions, and elimination of the negative effects that we believe would result from a designation based on the limited biological information currently available to us. We have determined that the benefits of exclusion of the North Slope from critical habitat designation outweigh the benefits of delineating critical habitat on the North Slope. Our conclusion with respect to this balancing is made in the context of designating other areas as critical habitat for the Steller's eider. Not only are we designating marine areas, in which Steller's eider populations are more concentrated and hence more vulnerable to a single adverse action, but we are also designating breeding habitat in the Y–K Delta. The differing facts relating to those areas lead to different results under the balancing required by section 4(b)(2). Furthermore, we have determined that excluding the North Slope will not result in the extinction of the species. Consequently, in accordance with subsection 4(b)(2) of the Act, these lands have not been designated as critical habitat for the Steller's eider.

We will continue to protect occupied breeding habitat on the North Slope as appropriate through section 7 consultations, the section 9 prohibition on unauthorized take, and other mechanisms. We will expand our conservation efforts with the Native community, industry, local governments, and other agencies and organizations on the North Slope to address the recovery needs of the eider. Additionally, we will soon complete the development of a Steller's eider recovery plan which will include the identification and implementation of recovery actions. We will continue our efforts to document the distribution and abundance of Steller's eiders on the North Slope and research into the factors causing decline. We will continue our efforts to develop a visibility correction factor for the species, which will be integral to developing abundance estimates. Further, we will continue to investigate the breeding habitat needs of the Steller's eider on the North Slope and to improve our ability to delineate any areas essential to the conservation of the species. Our FY 2001 budget included $600,000 earmarked by Congress to fund work by the Alaska Sea Life Center (ASLC) and the Service on recovery actions for the spectacled and Steller's eiders, including the development of better information upon which to base critical habitat delineations. We will work closely with the ASLC to identify the studies that would be most helpful. In particular, we will seek studies that would provide information that will help us to identify the habitat needs of both eider species, and we will seek the assistance of our partners in carrying out such studies.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this final designation accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

*Unit 1: Yukon-Kuskokwim Delta Nesting Unit (Proposed Unit 2)*

The proposed Yukon-Kuskokwim Delta Nesting Unit encompassed approximately 3,114 km$^2$ (1,202 mi$^2$) on the outer coastal zone of the central Y–K. The boundaries of the proposed unit were drawn to encompass historical (pre-1970s) and recent nest sites and intervening areas. The boundaries of the Yukon-Kuskokwim unit have been modified from those proposed to reflect further analysis of topography information from large scale (1:63,360 scale) maps, information from biologists with extensive field experience in the area, and the advice of eider experts. We excluded land that appeared to be over 7.6 m (25.0 ft) in elevation, and areas that field biologists described as not suitable for eiders (e.g., an area outside of the vegetated intertidal zone). Field reconnaissance indicates that the plant communities found on areas above 7.6 m in elevation do not provide the habitat thought to be used by Steller's eiders in the Y–K Delta. Further, no known historical or recent nest sites occur in the proposed critical habitat that has been excluded from this final rule. Therefore, we believe that the excluded area is not essential to the conservation of the species. The proposed area not included in this final rule is 55,359 ha (136,792 ac), a 17.7 percent reduction in total area.

Definitive population trend information was lacking at the time this species was listed (62 FR 31748), but population decline was inferred from an apparent contraction of range, particularly in western Alaska. The recovery plan, including recovery goals, is still in preparation. It is reasonable, however, to predict that re-establishment of a viable breeding population on the Y–K Delta will be an element of the plan, given that the decision to list the species was based, to a large extent, on its near-disappearance from the Y–K Delta. Increasing the abundance of the Y–K Delta subpopulation will likely decrease the listed, Alaska-breeding population's vulnerability to extirpation; therefore we consider the habitat contained within this unit essential to the conservation of the species.

We believe that special management considerations and protections may be needed for the essential features (constituent elements) found within Unit 1, because lead shot present in the environment is affecting the quality of the species habitat and poses a continuing threat to the species.

*Proposed Units 3–9: Marine Units*

The following units in Alaskan marine waters were proposed as critical habitat:

| Unit | Area (km$^2$) | Shore-line (km) |
|---|---|---|
| Nunivak Island | 205 | 612 |
| Kuskokwim Bay | 12,848 | 730 |
| Alaska Peninsula—North Side | 2,008 | 1,029 |
| Eastern Aleutians | 892 | 2,397 |
| Alaska Peninsula—South Side | 3,420 | 5,344 |
| Kodiak Archipelago | 1,344 | 3,902 |
| Kachemak Bay/Ninilchik | 1,142 | 444 |

The majority of the proposed marine units were eliminated from this final rule. The four units that are designated as critical habitat are subsets of the proposed Kuskokwim Bay and North Side of the Alaska Peninsula units. The designated units and their areas are:

| Unit | Area ($km^2$) | Shoreline (km) |
|---|---|---|
| Kuskokwim Shoals ..... | 3,813 | 184 |
| Seal Islands ..... | 63 | 104 |
| Nelson Lagoon (including portions of Port Moller and Herendeen Bay) ..... | 533 | 238 |
| Izembek Lagoon ..... | 363 | 297 |

As noted previously, we will designate as critical habitat only those specific areas that are essential for the conservation of the species. As with the North Slope and Y–K Delta, lack of information on Steller's eiders greatly complicates designation in marine areas as well. One eider expert noted that the uncertainty surrounding Steller's eider marine ecology and distribution is at least an order of magnitude greater than that concerning breeding areas. In general, the best information on Steller's eider marine ecology comes from areas where the species aggregates in large numbers, such as Izembek and Nelson lagoons, and where repeated surveys have been conducted for many years. There is little or no information from other areas within the species' extensive marine range, where surveys have been sporadically or never conducted. Furthermore, Alaska-breeding Steller's eiders, which this critical habitat designation is intended to protect, are indistinguishable from the much more-numerous Russia-breeding Steller's eiders during the non-breeding season. Therefore, our understanding of distribution may be incorrect if the listed Alaska-breeding population tends to concentrate in one or more specific portions of the species' broader marine range.

Despite the uncertainty surrounding Steller's eider marine distribution and ecology, there is one striking difference between breeding and non-breeding season distribution. During the breeding season, Steller's eiders occur at very low and relatively even densities whereas there is a tremendous density gradient in marine areas during the non-breeding season. Although the species occupies a huge range during the non-breeding season, most Steller's eider concentrate in a few areas, with tens of thousands occupying a few square miles in some cases. Thus, despite the difficulty in determining exactly what specific areas are essential for recovery, the gradient in density provides information useful in evaluating relative importance of various areas. Clearly, those areas where large concentrations occur are more important, and the birds more vulnerable because small-scale habitat impacts could potentially affect a significant proportion of the population. Therefore, we used the number of birds occurring in each area as an indicator of how important that area is to the species. This approach was recommended by the eider experts, who identified the density or number of birds occupying an area as a useful index of importance. Additionally, many commenters, including the Alaska Department of Fish and Game, National Audubon Society, and a number of local governments, suggested that those areas such as Izembek and Nelson lagoons used by large concentrations are clearly essential for the species' recovery, whereas there is insufficient information to reach conclusions about whether areas with small concentrations are essential. As a result, we established a numerical criterion to be used in rating relative importance, such that areas regularly used by >5,000 Steller's eiders and occasionally used by >10,000 are considered to be essential for the species' recovery. Although this criterion excludes a number of areas used by hundreds or thousands of Steller's eiders, given the relative abundance of the Alaska- and Russia-breeding populations, it is likely that the vast majority of Steller's eiders throughout their marine range are not members of the listed population.

There is also considerable uncertainty over whether the Alaska-breeding population uses all portions of the species' broad range in Alaskan marine waters or concentrates in one or a few portions of that range. Until last year, 2000, the only available information on the Alaska-breeding population's marine distribution consisted of a few band recoveries showing that some individuals that nested near Barrow molted in Izembek or Nelson lagoons. These observations were not surprising given that surveys show that the vast majority of Steller's eiders molting in Alaskan waters do so in these lagoons (Jones 1965, Petersen 1981). Satellite telemetry provided new information last year when three individuals that bred on the North Slope were tracked during the molt period; two are believed to have molted near the Kuskokwim Shoals and one molted near the Seal Islands (Martin 2000b). Although the sample size is very small, these observations were somewhat surprising in that all three individuals molted in areas thought to support comparatively small molting populations (limited survey data showed that about 5,000 may molt near the Kuskokwim Shoals and 5,000–10,000 may molt at Seal Islands). Thus, these observations suggest that the listed Alaska-breeding population may not mix randomly with the Russia-breeding population during the non-breeding season. As a result, we established a second criterion to be used such that only those areas known to be used by the listed Alaska-breeding population would be considered essential.

Therefore, recognizing the limitations of our understanding of the listed population's use of marine waters in Alaska, we have designated as critical habitat those areas clearly demonstrated to be of importance to Alaska-breeding Steller's eiders by the currently available information. To this end, we designate as critical habitat those areas that meet the following two criteria: (1) They are regularly used by a significant concentration of Steller's eiders, defined as ~5,000 birds in most years and >10,000 in ≥1 year; and (2) they are known to be used by individuals from the listed, Alaska-breeding population. Additionally, because these areas are used by significant numbers of Steller's eiders, we believe that special management considerations or protection may be needed to conserve the essential habitat features (constituent elements) found there. As a result of the dense aggregations occurring in these areas, a relatively small amount of habitat perturbation as might be caused by even a small oil spill could affect a significant number of Steller's eiders and possibly a significant proportion of the listed population. Therefore, we believe these areas meet the definition of critical habitat. The following four areas meet these criteria:

*Unit 2: Kuskokwim Shoals*

The Kuskokwim Shoals Unit is a modified subunit of the proposed Kuskokwim Bay Unit (Unit 4). The proposed unit contained two disjunct sections, the north side of Kuskokwim Bay and south side of Kuskokwim Bay. The designated unit differs from the proposed unit in that the south side of Kuskokwim Bay portion has been deleted and the boundaries of the north side of Kuskokwim Bay have been refined.

The Kuskokwim Shoals is known to be of importance to Steller's eiders during molt and for staging during spring migration. Use during molt is indicated by two surveys in 1996 and 2000 which found 5,439 and 5,101 Steller's eiders in this area, respectively (although there were differences in methodologies and flight paths between the two surveys) (McCaffery 2000). Additionally, satellite telemetry showed that two of three breeding Steller's eiders outfitted with transmitters at

Barrow in 2000 molted in this area, suggesting that the listed population may selectively use this area, making its importance disproportionately greater than what is indicated by the number of birds molting there.

A series of surveys has shown that large numbers of Steller's eiders stage near the Kuskokwim Shoals during spring migration, apparently foraging along the edge of the extensive shorefast ice that lingers into late April in this region. The maximum number of Steller's eiders detected in this area during aerial surveys conducted during six years between 1992 and 2000 varied from approximately 5,000 to 42,000 (Larned *et al.* 1994; Larned 1994, 1997, 1998, 2000).

The boundaries of the Kuskokwim Shoals unit have been modified from those for the northern portion of the proposed Kuskokwim Bay Unit to reflect additional analysis of aerial survey data, bathymetry information, and a comment from the Groundfish Forum, a commercial fishing association, which suggested that the proposed unit included waters deeper than those believed to be used by Steller's eiders. The Groundfish Forum pointed out that although we identified as suitable habitat waters ≤10 m (30 feet deep), much of the western edge of the proposed unit exceeded this depth. Unfortunately, bathymetry data from this region are scant, making fine-scaled analysis of water depth impossible, so we more closely examined the available aerial survey data to evaluate whether the boundaries should be adjusted to more closely fit the area known to be used by Steller's eiders. As a result of this analysis, we modified the boundaries, eliminating considerable area on the offshore side of the proposed unit where no flocks of Steller's have been detected during aerial surveys.

None of the southern portion of the proposed Kuskokwim Bay Unit is designated as critical habitat. Although between 4,126 and 6,271 Steller's eiders have been counted there during spring staging surveys, the birds were widely separated in disjunct bays and shoreline segments, with no individual segment being used by >5,000 birds. Additionally, the second part of this criterion was not met in that in no years were >10,000 detected. Finally, the second criterion, documented use by the listed population, was not met. Therefore, we determine that the available information does not support designating this area as essential for the recovery of Alaska-breeding Steller's eiders at this time.

*Unit 3: Seal Islands*

The Seal Islands Unit is one of several disjunct bays, lagoons, and nearshore areas included in the proposed North Side of the Alaska Peninsula Unit. The boundaries of the Seal Islands Unit are left unchanged from those described in the proposed rule.

Steller's eiders concentrate in the Seal Islands lagoon in both spring and fall. Although the area has been inadequately surveyed for Steller's eiders, ''thousands'' are believed to molt in this lagoon (Dau 1999a). Emperor goose surveys, although designed and timed to optimally inventory other species, have detected an average of 5,661 and maximum of 16,200 Steller's eiders in the lagoon during autumn (late September/early October) and an average of 1,349 and maximum of 10,444 during spring (late April/early May). Additionally, between 2,015 and 7,180 were counted in late April during Steller's eider spring migration surveys, further indicating the area's importance to a large number of Steller's eiders. Finally, satellite telemetry data showed that one of three Steller's eiders that bred near Barrow in 2000 and were tracked with satellite telemetry molted in the Seal Islands lagoon. Thus, we conclude that the Seal Islands lagoon meets both criteria and should be considered essential for the conservation of Steller's eiders.

*Unit 4: Nelson Lagoon Unit*

The Nelson Lagoon complex, which includes Nelson Lagoon, Herendeen Bay, and Port Moller is another subunit contained within the proposed North Side of the Alaska Peninsula Unit. The boundaries of the unit were modified from those proposed to eliminate portions of Herendeen Bay and Port Moller where Steller's eiders have not been detected in significant numbers during aerial surveys.

Use of the Nelson Lagoon complex by huge numbers of Steller's eiders is well documented (Jones 1965, Petersen 1981). Repeated surveys during molt have counted an average of 39,567 (n=10 surveys) and a range of 29,690 to 57,988 (Dau 1999a). Dense aggregations also winter in the Nelson Lagoon complex, although ice cover may force them elsewhere during variable portions of colder winters. Numbers during winter averaged 20,487 with a range of 9,616 to 51,050 (n=17; Dau 1999b). Large numbers can remain (or possibly rebuild) in late spring as well, as 12,000–27,000 have been counted there during Steller's eider spring migration surveys. In addition to the very large numbers using this lagoon complex annually, banding data have demonstrated that Steller's eiders molting in Nelson Lagoon include members of the Alaska-breeding population. Therefore, we determine that this area is essential for the conservation of Alaska-breeding Steller's eiders.

Subsequent to publication of the proposed rule, we re-evaluated the available survey data to determine if modifying the proposed boundaries was warranted. We paid particular attention to the upper reaches of Herendeen Bay and Nelson Lagoon because our initial analysis conducted in preparation of the proposed rule raised questions about the use of these areas that we were unable to answer prior to publishing the proposal. Additionally, the Aleutians East Borough, in comments submitted during the public comment period, requested that we exclude from designation waters with 5 mi (8 km) of the community of Nelson Lagoon and the fish processing facility at Port Moller to minimize economic impacts to affected communities.

Data collected during three aerial surveys in 1997–2000 contain GPS locational data that allow fine-resolution spatial analysis (previous surveys conducted in this area do not). These observations show that Steller's eiders occur in dense clusters throughout most of Nelson Lagoon, including the area surrounding the community of Nelson Lagoon. In these three surveys, 46 flocks with a total of 5,297 Steller's eiders were seen within 8 km (5 mi) of the community of Nelson Lagoon, and nine flocks with a total of 1,163 Steller's eiders (including one flock with 500) were observed within 1.6 km (1 mile) of the community. These observations indicate that the waters near the community are used by significant numbers of Steller's eiders, and we cannot conclude that this area does not contribute significantly to the overall importance of the lagoon complex to the species. As a result, we believe that the waters near the community of Nelson Lagoon are essential for the species' recovery. Furthermore, as explained in the Economic Analysis and Summary of Comments and Recommendations sections below, we do not believe that designation of critical habitat will have significant economic impacts or constrain community development at Nelson Lagoon or other communities. Therefore, there is no demonstrated basis for excluding these waters from critical habitat designation as a result of economic impacts.

In contrast, further examination of Steller's eider survey data shows that

there are few observations of Steller's eiders in the northeast portion of Port Moller near the fish processing facility. Because our intent is to designate as critical habitat those areas where the species regularly occurs in significant numbers, we have modified the southern boundaries of the critical habitat unit in both Herendeen Bay and Port Moller to exclude portions of those lagoons where Steller's eiders are not regularly seen. Likewise, we have modified the boundary of the critical habitat unit to exclude the waters in northeast Port Moller where significant aggregations have not been documented. The new boundary runs from the eastern tip of Wolf Point on Walrus Island to the shoreline 5.5 km (3.4 mi) north of Harbor Point (at the tip of Moller Spit). Thus, the designated critical habitat includes the waters adjacent to Moller Spit, where aggregations have regularly been encountered, but excludes the northeast portion of the lagoon of Port Moller, including the fish processing facility at Port Moller (the processing facility is approximately 2 km (1.25 mi) outside the boundary of the critical habitat unit). An appropriately scaled map showing the boundaries of designated critical habitat in this area can be acquired by contacting the U.S. Fish and Wildlife Service, Anchorage Field Office, 605 West 4th Avenue, Room G–61, Anchorage, AK 99501 (telephone 907/271–2787 or toll-free 800/272–4174; facsimile 907/271–2786).

*Unit 5: Izembek Lagoon*

As with the previous two units, the Izembek Lagoon Unit is a subunit of the proposed North Side of the Alaska Peninsula Unit. The boundaries of the Izembek Lagoon Unit are left unchanged from those described in the proposed rule.

Izembek Lagoon is used by dense aggregations of Steller's eiders during molt, winter, and spring. Tens of thousands molt there each year, with 27 censuses between 1975–1996 averaging 23,300 birds (range 6,570–79,970; Dau 1999a). Tens of thousands also remain through winter in most years, although distribution and numbers are affected by ice cover and vary from year to year (Dau 1999). Numbers may build again during spring, as up to 79,000 have been counted during goose surveys in late April/early May (Dau 1999b). In addition to dense aggregations of Steller's eiders regularly occurring at Izembek, band recoveries show that the birds molting there include members of the Alaska-breeding population. Therefore, we determine that Izembek Lagoon meets both criteria and is considered essential for the conservation of the Steller's eider.

The remaining units that we proposed as critical habitat, which include Nunivak Island, the Eastern Aleutians, South Side of the Alaska Peninsula, Kachemak Bay/Ninilchik, and Kodiak Archipelago, do not meet the definition of critical habitat based on the criteria that we believe best identify the areas essential for the conservation of Alaska-breeding Steller's eiders. Although in some cases thousands of Steller's eiders have been counted in these areas, none of the areas regularly contain >5,000 individuals. The single exception, Port Heiden, is apparently used by thousands of Steller's eiders (an average cannot be calculated with the currently available data), but use by individuals from the Alaska-breeding population has not been documented. Therefore, we determine that the available information does not demonstrate that any of these areas are essential for the recovery of the Alaska-breeding population of the Steller's eider.

*Summary of Critical Habitat Designation*

We have designated critical habitat for Steller's eiders in one terrestrial and four marine areas: Y–K Delta, Kuskokwim Shoals, Seal Islands, Nelson Lagoon (including Nelson Lagoon and portions of Port Moller and Herendeen Bay), and Izembek Lagoon. We believe all of these areas meet the definition of critical habitat in that they contain physical or biological elements essential for the conservation of the species and may require special management considerations or protection. Designation of these areas will highlight the conservation needs of the species, and perhaps increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act.

In accordance with the regulations implementing the listing provisions of the Act (50 CFR 424.12(h)), we have not proposed any areas outside the jurisdiction of the United States (*e.g.,* within Russian waters).

In addition to the areas that we have designated as critical habitat, other areas currently used by Steller's eiders include the North Slope and marine waters in western, southwestern, and southcoastal Alaska. In addition, there may be other areas used by this species that are unknown to us. The best available information did not suggest that there is any currently unoccupied habitat that is essential to the conservation of the species; therefore, no unoccupied critical habitat was designated.

The areas we have designated as critical habitat are those areas that the best available commercial and scientific information indicates are essential to the conservation of Steller's eiders. Should additional information on the value of any area to Steller's eiders become available, we will consider that information in future decisions to designate critical habitat.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. After a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse

modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, which are consistent with the scope of the Federal agency's legal authority and jurisdiction, which are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on ongoing actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Steller's eider or its critical habitat will require section 7 consultation. Activities on private or state lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Steller's eider is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Draining, filling, or contaminating wetlands and associated surface waters;

(2) Filling, dredging, or pipeline construction in marine waters;

(3) Commercial fisheries that harvest or damage the benthic or planktonic flora or fauna in marine waters;

(4) Spilling or discharging petroleum or other hazardous substances; or

(5) Discharge of sediment or toxic substances into freshwater systems that drain into adjacent nearshore marine waters.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit from critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of commercial fisheries by the National Marine Fisheries Service;

(4) Law enforcement in United States Coastal Waters by the U.S. Coast Guard;

(5) Road construction and maintenance by the Federal Highway Administration;

(6) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(7) Military training and maneuvers on applicable DOD lands;

(8) Regulation of subsistence harvest activities on Federal lands by the U.S. Fish and Wildlife Service;

(9) Regulation of mining and oil development activities by the Minerals Management Service;

(10) Regulation of home construction and alteration by the Federal Housing Authority;

(11) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(12) Construction of communication sites licensed by the Federal Communications Commission;

(13) Wastewater discharge from communities and oil development facilities permitted by the Environmental Protection Agency; and

(14) Other activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

All areas designated as critical habitat are within the geographical area occupied by the species and contain physical and biological features that are likely to be used by Steller's eiders during portions of the year. Thus, we consider all critical habitat to be occupied by the species. 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 additional regulatory protection will result from critical habitat designation.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that

critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

**Summary of Comments and Recommendations**

Our critical habitat proposal was published in the **Federal Register** on March 13, 2000 (65 FR 13262). The proposal requested all interested parties to submit comments on the specifics of the proposal including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. In particular, we sought comments on: (1) the reasons why an area should or should not be designated as critical habitat; (2) information on the abundance and distribution of Steller's eiders and their habitat; (3) what areas are essential for the conservation of the species and which areas may require special management protection or consideration; (4) current or planned activities in proposed critical habitat and their possible impacts on proposed critical habitat; and (5) any foreseeable economic or other impacts resulting from the proposed designation of critical habitat. The comment period was initially open from March 13, 2000, until May 12, 2000. The comment period was extended on April 19, 2000 (65 FR 20938), July 5, 2000 (65 FR 41404), and August 24, 2000 (65 FR 51577), finally closing on September 25, 2000. We extended the comment period on these three occasions to accommodate Alaska Natives, who spend considerable time away from their homes engaged in subsistence activities. Additionally, we requested comment on the Economic Analysis after notifying the public of its availability on August 24, 2000 (65 FR 51577). This comment period ran concurrently with the last 30 days of the comment period on the proposed rule, also closing on September 25, 2000. The resulting comment period lasted from March 13, 2000, to September 25, 2000 (197 days).

We solicited comments from all interested parties, and we particularly sought comments concerning Steller's eider distribution and range, whether critical habitat should be designated, and activities that might impact Steller's eiders. Notice of the proposed rule was sent to appropriate State agencies, borough and local governments, Federal agencies, Alaska Native corporations and organizations, scientific and environmental organizations, commercial fishing and oil industry representatives, and other interested parties. In addition, we invited public comment through the publication of notices in the following newspapers: Juneau Empire (March 24–27, 2000), Fairbanks Daily News-Miner (March 24–26, 2000), Anchorage Daily News (March 24–26, 2000), Arctic Sounder (March 23, 2000), Bristol Bay Times (March 23, 2000), Dutch Harbor Fisherman (March 23, 2000), and Tundra Drums (March 23, 2000).

We also conducted a series of public meetings to discuss the proposal to designate critical habitat for Steller's eiders, and one public hearing at which public testimony was accepted (65 FR 46684). Meetings to discuss critical habitat designation were held with agency, industry, Native and environmental organization representatives at our Region 7 Regional Office, Anchorage, AK, on February 1 and 2, 2000; with the Association of Village Council Presidents staff in Bethel on February 7, 2000; the public and local government representatives in Barrow on February 16, 2000; Waterfowl Conservation Committee in Bethel AK from February 22–24, 2000; the public in Toksook Bay on February 25, 2000; the public in Chevak on March 1, 2000; and at the Alaska Forum on the Environment in Anchorage on February 9, 2000. Although these meetings were conducted prior to publication of the proposal to designate critical habitat, the concept of critical habitat, the likelihood of proposed critical habitat for Steller's eiders, and the process for designation was discussed to encourage public involvement and comment after the opening of the comment period. After the proposal was published, meetings were held with the Nome Eskimo Community IRA Council in Nome on May 5, 2000; the public in Sand Point on September 18, 2000; and the local tribal council in Sand Point on September 19, 2000. A series of public informational meetings was held in North Slope villages: Nuiqsut on August 21, 2000; Wainwright on August 23, 2000; Point Lay on August 24, 2000; and Atqasuk on August 25, 2000. A public hearing, at which public testimony was recorded, was held at Barrow on August 28, 2000 (65 FR 46684). Notices announcing these North Slope meetings and the public hearing were published in advance in the Fairbanks Daily News-Miner (July 30, August 2 and 4, 2000), Anchorage Daily News (July 30, August 1 and 2, 2000), and Arctic Sounder (August 3, 10, and 17, 2000). Additionally, the Service met with eider experts at the Campbell Creek Science Center in Anchorage, AK on September 21–22, 2000. After the close of the comment period, public interest continued and further informational meetings (at which public comment was not sought or accepted) were held with the Kodiak/Aleutians Regional Advisory Council on September 27, 2000; and the Bristol Bay Regional Advisory Council at Naknek, Alaska on October 13, 2000.

We also requested six experts on eider biology to peer review the proposed critical habitat designation; two submitted comments, which have been taken into consideration in developing this final rule.

We received a total of 334 oral and written comments on the proposed critical habitat designation. Fifteen individuals or parties submitted oral testimony at the public hearing at Barrow; seven of these submitted a written record of their comments. We also recorded issues raised by participants at public meetings; these issues were recorded but we did not record the number of individuals raising the same issue. Comments were received from: representatives of ten Federal agencies and one Federally elected official, the State of Alaska and three elected state officials or bodies; five Borough governments; 13 local governments; 25 Native organizations; and 276 individuals, private companies, or non-Native organizations. Forty commenters expressed support for designating critical habitat; 277 opposed designation; and 17 provided information but no position on designation. We reviewed all comments received for substantive issues and new information on Steller's eiders and critical habitat.

Comments pertaining to the designation of critical habitat were grouped into 4 general issues with 56 specific comments relating to critical habitat designation and the economic analysis. The issues, comments, and our

responses are presented in the following summary.

*Issue 1: Biological Justification and Methodology*

*Comment 1:* Many respondents had comments concerning habitat as a factor in the species conservation. These included comments that habitat is not limiting the species' population size; habitat loss is not a threat to the species; loss of breeding habitat did not cause the species' decline and is not limiting recovery; and critical habitat is not needed for survival and recovery.

*Our response:* The information available when Steller's eiders were listed in 1997 did not show that habitat loss or degradation was a threat to the species. However, it has not yet been proven that habitat deterioration has *not* contributed to the decline of the Steller's eider in Alaska. Recent research has shown that ingestion of spent lead shot is affecting adult survival in another threatened species, the spectacled eider (Somateria fischeri), on the Y–K Delta. Although it has not been demonstrated that this has contributed to decline of the Steller's eider on the Y–K Delta, there is insufficient information to discount the role of this form of habitat degradation in the species' decline at this time. Moreover, we do not know to what extent other contaminants, predation, and increased human disturbance are degrading the quality of eider habitats.

An examination of threats that are limiting a species survival and recovery and to what degree those threats are limiting, are key components of our decision of whether a species warrants listing as threatened or endangered. For the Steller's eider, that determination was made in 1997 when the species was listed. After we decide that a species warrants listing, the Act directs us to identify and designate critical habitat. For those areas within the current range of the species, critical habitat can be any area that contains physical or biological features that are essential to the conservation of the species and that may require special management consideration or protection. For areas outside the current range of the species, critical habitat can be any area that is considered essential for the conservation of the species; we need not consider whether special management consideration or protection is needed. Our evaluation of the available information shows that the areas we have designated are essential to the species and may require special management consideration or protection.

As for whether critical habitat is needed for survival and recovery, the Act obligates us to designate, to the maximum extent prudent, those areas that meet the definition of critical habitat. It does not require us to determine that the act of designating land as critical habitat is a necessary step in ensuring the survival or achieving recovery of the species.

*Comment 2:* Many respondents stated that no new data are available to justify a reversal of the original determination that designating critical habitat was not prudent, or to support designation of critical habitat as proposed; the reasons for the species' decline are unknown.

*Our response:* As discussed above (see ''State of Knowledge of the Steller's Eider), we have gathered additional information since the listing of this species in 1997. As a result of this new information, we now have a better idea of which habitats are essential to Steller's eider conservation. Additionally, several of our past determinations that critical habitat designation would not be prudent have been overturned by courts in recent years (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F.3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2nd 1280 (D. Hawaii 1998)). Although this information is not biological in nature, we reassessed the potential benefits of critical habitat designation in light of these decisions.

We believe that new biological information and recent court rulings support our conclusion that the designation of critical habitat is prudent. Should credible, new information suggest that our designation of critical habitat should be modified, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. In reaching our current decision, we have considered the best scientific and commercial information available to us at this time, as required by the Act.

We agree that the reasons for the species' decline are largely unknown (see Proposed Designation of Critical Habitat for the Steller's Eider; 65 FR 13268) However, nothing in the Act or its implementing regulations limit critical habitat designation to species or situations where the factors causing decline are fully understood. This form of uncertainty, therefore, does not constitute adequate justification for not designating critical habitat.

*Comment 3:* Several respondents stated that we need to base our decisions on objective studies based on science.

*Our response:* We believe that all of the studies that we used as a basis for our decisions were scientifically sound and objective. One of the challenges that faced us was that the biology, historical usage patterns, distribution, and population trend information is not complete for Steller's eider, thus we attempted to use the best available scientific and commercial information and reasoned professional judgment to make our critical habitat determinations. As a result of the extended public comment period and extensive number of comments received in both written and oral form, we also attempted to integrate information provided by the public into this final rule. The respondents were not specific in saying which documents or studies they felt were non-objective or unscientific. All of the studies that we used in our decision-making process are part of our administrative record and available for public review.

*Comment 4:* A few respondents stated that there were insufficient data to describe primary constituent elements.

*Our response:* We disagree. In accordance with the regulations, primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geologic formation, vegetation type, tide, and specific soil types (50 CFR 424.12). In addition, the regulations state that we are to make our determinations based upon the best scientific data available (50 CFR 424.12). We believe that we have described the primary constituent elements of the different habitats used by this species using the best scientific data available. Additional data may have allowed us to describe primary constituent elements in more detail, but the lack of this additional data does not preclude us from describing the primary constituent elements using the information that we have.

*Comment 5:* Several commenters noted that critical habitat designation could hamper recovery by suggesting that threats to the bird are located in one place when they are actually located elsewhere.

*Our response:* As we have previously stated, 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. Therefore, it is very important to understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not

be required for recovery. However, even given that limitation, we do not believe that our final critical habitat designation will hamper the recovery of the Steller's eider.

*Comment 6:* One respondent stated that our proposals did not encompass enough of the species' range to ensure recovery, and that areas proposed may actually be population sinks.

*Our response:* The proposed rule included nearly the entire current range of the Steller's eider (excluding migratory corridors). We do not believe that areas outside of the proposed borders would have contributed markedly to the species' survival and recovery. Our final rule excludes large portions of the proposal. However, this is not meant to imply that habitat outside the designation is unimportant or may not be required for recovery.

With the exception of near Barrow, we have very little information on Steller's eider productivity with which to evaluate whether areas are population sinks (areas where mortality exceeds production, but where populations are maintained through immigration from other areas). Even at Barrow, where the species occurs at a comparatively higher density than elsewhere on the North Slope and a road network and other facilities make them easier to study, the data are inadequate to evaluate reproductive performance and survival at this time. Unquestionably, this will be one area of interest and research as a recovery plan for the species is developed and implemented.

*Comment 7:* One commenter suggested that critical habitat should include additional areas beyond those proposed, including the North Slope east of the Colville River, portions of Saint Lawrence Island, Nelson Island, Nunivak Island, the Alaska Peninsula, inland Y–K Delta, St. Michael, and the Seward Peninsula. Marine areas that should be designated include waters near the Pribilof Islands, south side of the Kenai Peninsula, and Prince William Sound.

*Our response:* Although there are records of Steller's eiders occurring and/or nesting in each of the areas mentioned in this comment, records are widely separated spatially and temporally. On the North Slope, there are a combined total of three nest records from east of the Colville River; there is one nest record from Saint Lawrence Island; one account from 1924 saying the ''species nests'' on Nelson Island; no nest records from Nunivak Island; one from the Alaska Peninsula (in 1872); none from inland Y–K Delta; none from St Michael; and one from the Seward Peninsula (in 1879) (Quakenbush *et al.* 1999). The species also occurs irregularly or in very low numbers in the marine areas mentioned: Steller's eiders are not detected during most sea duck surveys near the Pribilof Islands (A. Sowls, Service, pers. comm. 1999); 0–11 per year have been seen on the south side of the Kenai Peninsula (with none seen in 9 of 12 years); and 0–68 per year have been seen (with none in 10 of 20 years) in Prince William Sound (Service 1998). Although we acknowledge that the species may occur (or may have historically occurred) in each of these areas, the patterns of low and irregular use are inadequate to conclude that these areas are essential for the conservation of the Alaska-breeding population of the Steller's eider.

*Comment 8:* One respondent stated that commercial fishing operations were not responsible for the decline in eider populations, and therefore critical habitat should not restrict commercial fishing.

*Our response:* We are not aware of data indicating that commercial fisheries are or are not responsible for declines in eider populations. We note that, with respect to commercial fisheries, possible ways in which eiders or their habitat may be affected now or in the future include: (1) large numbers of small fuel and oil spills, including the practice of discharging oily bilge water; (2) fundamental changes in the marine ecosystem brought about by harvest or overharvest of fish and shellfish; (3) vessel strikes in which eiders collide with fishing vessels using bright lights during inclement weather; (4) the alteration of the benthic environment by trawling gear. Again, we do not mean to imply that the commercial fishing industry is currently affecting the species in these ways. We currently lack the information we need to determine whether fisheries are affecting Steller's eiders. Further analysis of potential effects of the fishing industry on Steller's eiders will be considered in future section 7 consultations with the National Marine Fisheries Service on fisheries management issues.

*Comment 9:* A few respondents note that eiders are tolerant of development, implying that designation of critical habitat in these areas is unnecessary.

*Our response:* We agree that Steller's eiders occur in developed areas. Steller's eiders regularly nest on the outskirts of the village of the Barrow. Additionally, large numbers occur in or near marine harbors in southwestern Alaska during the non-nesting season. However, the presence of a species near developed areas is not proof that development does not adversely affect that species. Development may affect species in a number of ways, such as altering distribution or decreasing productivity or survival rates. At this time, the effects of development on Steller's eiders are unknown.

*Comment 10:* Four local governments stated that the ''broad brush'' proposed designation of critical habitat goes well beyond the limited criteria set forth for identifying critical habitat. For example, the Service proposed to define critical habitat in marine units as waters up to 30 feet in depth with a substrate that supports either eel grass beds or invertebrate fauna to allow feeding by the birds, yet the proposed critical habitat included significant waters that far exceed that definition.

*Our response:* The proposed marine critical habitat units do contain considerable marine waters that exceed 30 feet in depth or that provide substrate unsuitable to support benthic forage for Steller's eiders. The scale at which the critical habitat determinations are made limit our ability to finely map only those areas that are 30 feet in depth or less. Moreover, information available on water depth is not wholly comprehensive in its coverage, and the seafloor is not uniform in contour. However, within the boundaries of described critical habitat units, only that area that contains the primary constituent elements (waters ≤ 30 feet in depth) is critical habitat. Therefore, all waters > 30 ft (9m) in depth *are not* critical habitat, even though they may be within the broader boundaries of a critical habitat unit. We note, however, that because the area designated as critical habitat is greatly reduced from that proposed, the vast majority of marine waters of concern to these commenters have been deleted from this final rule.

*Comment 11:* The Kodiak Island Borough commented that the entire coastline of the Kodiak Archipelago was included in the proposed critical habitat despite considerable variation in habitat type and quality.

*Our response:* The proposed Kodiak/Afognak Island Unit was removed from this final rule. It is likely that the habitat heterogeneity referred to by the Kodiak Island Borough in part explains the lack of identified large aggregations of Steller's eiders near the archipelago.

*Comment 12:* Two respondents (the Aleutians East Borough and City of Unalaska) expressed concern that the amount of marine waters proposed as critical habitat is overly broad. To designate such a large area must be based upon the assumption that the

Alaska-breeding population occurs separately from the Russia-breeding population, in one as yet undefined location. To designate the entire range of the species in Alaska because the Alaska-breeding population may concentrate in a subset of this range is overly protective.

*Our response:* The threatened Alaska-breeding population is thought to occur during the non-breeding season in southwestern Alaskan marine waters, as does the unlisted Russia-breeding population. Because individuals from the two populations are visually indistinguishable, it is largely unknown whether the less-numerous Alaska-breeding population disperses throughout the range of the more-numerous Russia-breeding population or concentrates in one or more distinct areas within this broad region. This greatly complicates identifying which areas are essential for the conservation of the listed, Alaska-breeding population.

The uncertainty over the distribution of the Alaska-breeding population is the primary factor causing us to greatly reduce the area designated as critical habitat from that proposed. As explained in the Rationale for the Final Designation section, we restricted our designation to areas where very large aggregations of Steller's eiders regularly occur. We note that in these areas banding or telemetry data show that the individuals from the listed population occur. We believe the criteria we established for evaluating the significance of habitat utilized by the species are appropriate and helped to identify those areas known to be essential to the listed population.

*Comment 13:* Several local governments in southwest Alaska asked that the Service not designate critical habitat within 5 miles of established communities in order to alleviate economic impacts and to allow community development to proceed unaffected by critical habitat.

*Our response:* Because many of the areas proposed as critical habitat for Steller's eiders have not been designated as such in this final rule, only two communities or developed sites are within or proximal to critical habitat. The community of Nelson Lagoon and a seasonally operated fish processing facility at Port Moller were within the boundaries of the proposed Nelson Lagoon Critical Habitat Unit. The boundaries of the Nelson Lagoon Critical Habitat Unit were modified to reflect more detailed spatial analysis of Steller's eider observation data conducted subsequent to publication of the proposed rule. Because few Steller's eiders have been observed in northeast Port Moller, the boundary has been modified and the fish processing facility is now approximately 2 km (1.25 mi) outside the northeastern boundary. However, the waters near the community of Nelson Lagoon are used by significant numbers of Steller's eiders, and we conclude that they contribute significantly to the overall importance of the lagoon complex to the species. As a result, we believe that the waters near the community of Nelson Lagoon are essential for the species' recovery. Furthermore, we do not believe that the designation of critical habitat will have significant economic impacts or constrain community development at Nelson Lagoon or other communities (see more detailed explanation in Summary of Comments and Recommendations, Issue 3: Economic Issues, below, and in the Economic Analysis section, below). Therefore, there is no demonstrated basis for excluding the area within 5 mi (or any other distance) of the community of Nelson Lagoon.

*Issue 2. Policy and Regulations*

*Comment 14:* Three commenters (including the House Resource Committee of the Alaska State Legislature, the Aleutians East Borough, and the City of Unalaska) stated that critical habitat designation is not needed for much of the area proposed because it is contained within National Wildlife Refuges, State Game Refuges, or State Critical Habitat Areas.

*Our response:* We appreciate that there are many areas in the State of Alaska and across the country that have been established as Federal or State conservation areas and that these areas play a critical role in conserving our Nation's wildlife legacy. Additionally, we value the relationship that exists between the Service and the State of Alaska that benefits the rich wildlife heritage of Alaska. The designation of critical habitat on Federal or State conservation units does not suggest that these areas and their managing agencies are not protecting wildlife and their habitats. The designation of critical habitat reinforces that these areas are essential to the conservation of the listed species and highlights to the public the importance of these areas. If such an area contains habitat known to be essential to the conservation of the species and may require special management consideration, we will designate the area as critical habitat.

*Comment 15:* A few commenters contended that critical habitat should not be designated until a recovery plan for the species is developed and/or recovery goals are established. Others argued that critical habitat should be designated only if called for by a recovery plan.

*Our response:* Section 4(a)(3) of the Act requires that critical habitat be designated when species are listed, which occurs before, and in fact initiates, recovery plan development. While having a recovery plan in place would be extremely helpful in identifying areas that are essential for the conservation of Steller's eiders, it is not required under the Act. As recovery planning for the Steller's eider proceeds, if new information suggests that designated critical habitat units be modified or eliminated, we will initiate appropriate actions. Likewise, if additional areas are found to be essential to the conservation of the species we will consider designating them as critical habitat.

*Comment 16:* Many respondents stated that they thought critical habitat would create a need for section 7 consultations on projects with a federal nexus, and that consultation would be costly, cause permitting delays, potentially preclude some development, or cause widespread unemployment.

*Our response:* The designation of critical habitat for the Steller's eider does not impose any additional requirements or conditions on property owners or the public beyond those imposed by the listing of the eider in 1997 as a threatened species. All landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as ''harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct.'' Take is further defined by regulation to include ''significant habitat modification or degradation that actually kills or injures wildlife,'' which was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt,* 515 U.S. 687 (1995).

Furthermore, all Federal agencies are responsible for ensuring that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. ''Jeopardize the continued existence of'' means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR

402.02). Because we designated only areas within the geographic range occupied by the Steller's eider, any activity that would result in an adverse modification of the eider's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the eider taking place both within and outside designated critical habitat.

The consultation process for Steller's eiders will be affected by critical habitat designation only to the extent that Environmental Impact Statements, Environmental Assessments, Biological Assessments, and other National Environmental Policy Act documents must consider the effect of the project on critical habitat. However, these documents already must address the effects of the project on habitat (in the absence of critical habitat designation). Therefore, we anticipate that the additional workload burden created by critical habitat will amount to changes in terminology and organization of these documents. Any marginal increase in consultation costs will ultimately be borne by the lead Federal agency in the consultation process or its designated representative.

We disagree with those commenters who believe that the consultation workload that is due to critical habitat is 30 percent, 50 percent, or 90 percent of the total consultation workload. Since our consultation process, regardless of the designation of critical habitat, would include an evaluation of the proposed action in terms of the habitat effects on the species, we do not anticipate that our portion of the section 7 consultation process will take any longer to complete due to the presence of critical habitat. Therefore, we do not believe that any permitting delays will result from this designation. Similarly, we do not believe that critical habitat designation will, by itself, preclude development. The Act authorizes us to require only minor changes to projects that are likely to adversely affect listed species. Only when a project will jeopardize the continued existence of a listed species, or will destroy or adversely modify critical habitat can we require more than minor changes (called ''reasonable and prudent alternatives''). We believe that the threshold for reaching ''adverse modification'' is equal to that of ''jeopardy.'' Consequently, we cannot envision how an action could cause adverse modification of occupied eider critical habitat without also jeopardizing the species. As a result, any reasonable and prudent alternatives that we may require would have come about due to the listing of the species, with or without critical habitat. Therefore, we believe that the existence of critical habitat alone will not preclude development.

Finally, we stand by the determination in our economic analysis that critical habitat will not have a notable economic impact. Consequently, we do not believe that it will create jobs or cause jobs to be lost.

*Comment 17:* Many respondents stated that they thought critical habitat afforded no additional benefits beyond those already provided by listing.

*Our response:* It has long been our position that the benefits afforded by critical habitat were small relative to the benefits provided by listing. As such, we chose to focus scarce resources towards the listing of additional species. Our position should not be misinterpreted to mean that we believe critical habitat affords no additional benefits. To the contrary, we believe critical habitat may enhance management on Federal lands, and may help prevent adverse impacts on private lands resulting from Federal actions. The courts have repeatedly asserted that we have an obligation to designate critical habitat under the Act, and any decision not to do so should be the exception rather than the rule. We believe that the designation of critical habitat serves to educate and inform agencies, organizations, and the public that conservation of species requires cooperative maintenance of intact, functional habitat.

*Comment 18:* Many respondents pointed out that the Act prohibits designating a species' entire range as critical habitat.

*Our response:* Section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by an endangered or threatened species. Unfortunately, in the case of the Steller's eider, the information on historical distribution is so limited that accurately defining the species' entire range (which would include both areas currently occupied and unoccupied areas that could be occupied) is impossible. Thus, we cannot evaluate what proportion of the species' entire potential range was proposed for designation as critical habitat. However, at this time we are designating only a small proportion of the area originally proposed as critical habitat. Thus, we believe that we are designating as critical habitat only a very small proportion of the species' total range.

*Comment 19:* Several respondents stated that we need to balance protection and development.

*Our response:* There are provisions for balancing protection and development in sections 6, 7, and 10 of the Act. In addition, we balance protection and development in the critical habitat designation process by conducting an economic analysis. Our analysis concluded that the economic effects on development would be minimal or non-existent. Therefore, we believe that we have considered both protection and development in our deliberations.

*Comment 20:* Several commenters expressed concern that designation of critical habitat will result in restrictions on development, subsistence hunting and fishing, commercial fishing, and transportation.

*Our response:* We are unaware of any information indicating any new State or local laws, restrictions, or procedures will result from critical habitat designation. Should any State or local regulation be promulgated as a result of this rule, this would be outside our authority under the Act. Projects funded, authorized, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the Act on the effects of the action on critical habitat. However, as discussed in the Critical Habitat section above, we do not expect consultations to result in restrictions that would not already be required to avoid or minimize take of the species, which is required regardless of the designation of critical habitat.

*Comment 21:* One commenter stated that village residents believe that they will be adversely affected by the designation of critical habitat.

*Our response:* We understand the commenter's reservations, however, we continue to maintain that the designation of critical habitat does not impose any additional requirements or conditions on the public beyond those resulting from the listing of the Steller's eider in 1997 as a threatened species.

*Comment 22:* Two respondents stated that we should have consulted the recovery team in our decision-making process.

*Our response:* We did not request the Recovery Team to make recommendations or provide formal comments on the critical habitat proposal. That is not the role of the Recovery Team provided for in the Act. However, we did consider comments from individual members of the recovery team as part of the public review and comment process. On September 21–22, 2000, in Anchorage, AK, we convened a meeting of experts

in the field of Steller's eider biology. We invited all local eider experts and all members of the Steller's eider recovery team. At this meeting, we sought input from the experts on what habitats they believed to be essential to the recovery of the species. A transcript of this meeting is part of our administrative record, and it was considered in our decision-making process, as were comments received by mail, fax, phone, e-mail, and in public meetings and our public hearing in Barrow, AK.

*Comment 23:* One respondent said that designating such a huge area as critical habitat may trivialize the concept of critical habitat.

*Our response:* The Act requires that we designate critical habitat to the maximum extent prudent. For wide-ranging species, this may result in large expanses of land or water falling within critical habitat borders.

*Comment 24:* One respondent compares the listing of the short-tailed albatross with that of the Steller's eider, and asked why it is prudent to designate critical habitat for the eider, but not for the albatross when the criteria for determination are nearly identical.

*Our response:* The decline in abundance of short-tailed albatrosses was notable in that it was directly attributable to one cause; direct persecution of the birds by humans such that the species was driven to the brink of extinction (and in fact, for many years, the short-tailed albatross was thought to have been extinct). When commercial harvest of this species discontinued, the species population began to grow at near its maximum biological potential. There is nothing about this species' habitat that is preventing it from growing at or near its biological maximum capacity for growth. The current population is but a tiny fraction of the number of birds that the habitat once supported. In short, we know what caused this species to decline, and it's decline was completely unrelated to anything in its habitat. We also know that there is no aspect of short-tailed albatross habitat in the U.S. that is preventing it from recovering nearly as fast as it is capable of doing (65 FR 46643). Such may not be the case for the Steller's eider.

We do not know why the Steller's eider has declined, but lacking evidence of excessive direct take by humans, we believe it is possible that changes in the quality of the species' habitat (marine or terrestrial) may have contributed to or caused its decline. Furthermore, certain aspects of its habitat (e.g., lead shot on the breeding grounds or changes in the marine environment) may be slowing or preventing recovery. As such, special management protections and considerations may be needed, and the designation of critical habitat is appropriate.

*Comment 25:* Several commenters stated that we did not consult with Alaska Native communities or local/tribal governments regarding our critical habitat proposals.

*Our response:* Due to the short deadline we were working under, which resulted from a settlement agreement, we did not consult with Alaska Native communities prior to proposing to designate critical habitat. However, we attempted to notify all potentially affected communities, local and regional governments regarding the proposed designation after it was published in the **Federal Register** on March 13, 2000 (65 FR 13262). As noted earlier, we published notices in the **Federal Register** announcing the proposed designation of critical habitat, and the availability of the draft economic analysis. We extended our public comment period three times at the request of Alaska Natives. We sent letters and informational materials pertaining to the proposal, draft economic analysis and notices of the comment period extensions to over 300 individuals, communities, and local and regional Native governments potentially affected by the proposed critical habitat. We provided a briefing opportunity on the proposal for Alaska Native representatives at the commencement of the comment period. We contacted specific individuals with traditional ecological knowledge of eiders and solicited their comments. We discussed our critical habitat proposal at 19 meetings (13 of which were public meetings and 16 of which had Natives in attendance). We held meetings in the Native/rural villages and towns of Chevak, Toksook Bay, Bethel, Barrow, Point Lay, Wainwright, Nuiqsut, Atqasuk, Sand Point, and Nome. At those meetings that were held during the public comment period, meeting attendees were given the opportunity to comment on the proposal and we gave equal weight to oral and written comments on the proposal.

*Comment 26:* Two respondents stated that we are not in compliance with the National Environmental Policy Act and that an Environmental Impact Statement should be completed.

*Our response:* We have determined that we do not need to prepare either an Environmental Impact Statement or Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1979 (NEPA), in connection with regulations adopted pursuant to section 4(a) of the Act. The Ninth Circuit Court determined that NEPA does not apply to our decision to designate critical habitat for an endangered or threatened species under the Act because: (1) Congress intended that the critical habitat procedures of the Act displace the NEPA requirements; (2) NEPA does not apply to actions that do not change the physical environment; and (3) to apply NEPA to the Act would further the purposes of neither statute (*Douglas County* v. *Babbitt,* 48 F.3d 1495, (9th Cir. 1995)). Alaska is within the jurisdiction of the Ninth Circuit Court of Appeals.

*Comment 27:* Several commenters said that we should explain in detail why the proposed critical habitat is essential to the species' survival and recovery. Commenters also stated that we should identify more explicitly the criteria used to determine what areas are considered essential and what special management or protections are needed.

*Our response:* Please see the ''Critical Habitat'' section of this Final Rule. As described above, we identified the habitat features (primary constituent elements) that provide for the physiological, behavioral, and ecological requirements essential for the conservation of Steller's eiders. Within the occupied range of the Steller's eider, we identified areas which provide the primary constituent elements and which met the criteria discussed under ''Criteria Used to Identify Critical Habitat'' in this rule. Then, based in part on public comments and information from eider experts, we selected qualifying portions of these areas we believe essential for the conservation of the Steller's eider and that may require special management considerations or protections.

*Comment 28:* Some commenters stated that ''adverse modification'' and ''jeopardy'' are two different standards and thus disagreed with our position that critical habitat will impose no additional regulatory burden.

*Our response:* Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species. Common

to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the common threshold in these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly where, as here, only habitat within the geographic range occupied by the Steller's eider is designated as critical habitat. The designation of critical habitat for the Steller's eider does not add any new requirements to the current regulatory process. This critical habitat designation adds no additional requirements not already in place following the species' listing.

*Comment 29:* Some commenters stated that the proposed critical habitat designation was inconsistent with the guidelines set forth in the Act because it encompassed more habitat than is necessary for the conservation of the species.

*Our response:* The critical habitat areas identified in the proposed rule constituted our best assessment of the areas needed for the species' conservation using the best available scientific and commercial data available to us at the time. During the public comment period for the proposed rule, we received additional information and recommendations from eider experts, individuals with traditional environmental knowledge of the species' habitat needs and patterns of use, and other individuals and organizations enabling us to refine our assessment of the areas needed to ensure survival and recovery of the species. The critical habitat designated in this rule reflects our assessment of the areas needed for the conservation of Steller's eiders in accordance with the parameters set forth in ESA sections 3(5)(A) and 4(b)(2) and as described in the section of this rule titled ''Criteria Used to Identify Critical Habitat.'' We will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information supports a change.

*Comment 30:* Several commenters stated that our previous determination that designation of critical habitat was ''not prudent'' was the appropriate decision. These commenters criticized us for agreeing to re-evaluate critical habitat for the Steller's eider in response to litigation, and stated that additional biological information should be necessary before critical habitat is re-evaluated.

*Our response:* At the time the initial ''not prudent'' determination was made for this species, we believed that designation afforded few, if any, benefits to the species beyond those conferred by listing. Federal Courts have not agreed with our analysis of the befits of critical habitat and during the last several years have overwhelmingly ruled that the Service must in almost all cases designate critical habitat for listed species. In light of recent court rulings, we opted to reconsider our earlier prudency decision, as stipulated in the terms of a settlement agreement, rather than expend our resources on protracted litigation.

We recognized that there may be informational or educational benefits associated with critical habitat designation. Moreover, we have acquired additional information concerning the biology and ecology of this species that have helped us identify more specifically the areas that are essential to its conservation. Recent satellite telemetry data has provided new information on molting areas of Alaska-breeding Steller's eiders. While there is still much to be learned about this species, the information currently available to us supports our determination that designation of critical habitat is prudent, and that the areas we are designating as critical habitat are essential to the conservation of the species and may require special management considerations or protections.

*Comment 31:* One commenter stated the designation of critical habitat should not occur until discussions had been held to ensure that the designation is consistent with international management regimes, such as those under the auspices of the Migratory Bird Treaty Act and the Arctic Council's working group for the Conservation of Arctic Flora and Fauna.

*Our response:* We agree that collaboration and consistency with international efforts to conserve the eider are very important. We have a working relationship with eider experts in Russia, and our research and management efforts are complementary to those conducted under other conservation programs. We will continue to coordinate with other research and conservation entities. The parameters set forth in the Act and the settlement agreement preclude deferral of designation of critical habitat for this species pending discussions of the type suggested by the commenter.

*Comment 32:* One respondent pointed out that critical habitat designation will result in the need to reinitiate section 7 consultation on projects on which consultation has previously been completed.

*Our response:* We agree. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions when critical habitat is designated subsequent to consultation. However, this reinitiation need be undertaken only if the action is ongoing. We are in the process of contacting Federal agencies to inform them that they should review their ongoing actions that were previously consulted upon to determine if reinitiation of consultation is warranted.

*Comment 33:* One commenter asked whether critical habitat designation would shorten the permitting process for the oil industry or reduce the obligation of the oil industry to seek Native concurrence.

*Our response:* We believe that designating critical habitat will neither simplify nor complicate the Federal permitting process for any actions, including oil exploration or development. Because the only regulatory effect of critical habitat designation is through section 7 of the Act, which only affects Federal actions and permitting, it should not affect interactions between Alaska Natives and any industry.

*Comment 34:* Several commenters stated that additional law enforcement focused on illegal spring subsistence harvest would be a more effective way of achieving recovery than designation of critical habitat.

*Our response:* We do not know with certainty what caused the decline of Steller's eiders, but the available evidence suggests that subsistence harvest of this species is minimal and is not likely the primary cause of the decline. We have worked successfully with Alaska Natives to minimize spring harvest of Steller's eiders, and current efforts to implement recent amendments to the Migratory Bird Treaty Act are expected to enhance these efforts.

*Comment 35:* One commenter indicated that preventative measures such as critical habitat designation are cheaper as well as more productive and efficient than piecemeal restoration of habitat after environmental damage has occurred.

*Our response:* We agree. Designation of critical habitat helps focus awareness on the habitat needs of listed species. It also enables us to work with other federal agencies to ensure that activities they fund, permit, or carry out do not adversely modify or destroy habitat that is essential to the conservation of listed species.

*Issue 3: Economic Issues*

*Comment 36:* Many commenters disagreed with our assessment that the designation of critical habitat for the Steller's eider would not lead to any

new section 7 consultations and our conclusion, as a result, that economic impacts of the proposed designation would be minimal.

*Our response:* Because the Steller's eider is a federally protected species under the Act, Federal agencies are already required to consult with us on any actions they authorize, fund, or carry out that may affect the species. For Federal actions that may adversely affect Steller's eiders, Federal agencies need to enter into a formal section 7 consultation process with us to avoid violating section 9 of the Act, which makes it unlawful for any person to ''take'' a listed species. The term ''take'' is defined by the Act (section 3(18)) to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The U.S. Supreme Court clarified the definition of harm to include adverse modification of habitat (*Sweet Home Chapter of Communities for a Great Oregon, et al.* v. *Babbitt,* 515 U.S. 687 (1995).

We are only designating critical habitat that is occupied by Steller's eiders, is essential to the conservation of the species and may require special management considerations or protection. While this designation will require Federal agencies to further consider whether the actions they authorize, fund, or carry out within designated critical habitat boundaries may affect habitat, it is unlikely that an agency could conclude that an action may affect designated critical habitat without simultaneously concluding that the action may also affect the eiders given the presence of eiders within designated critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy when the area of the proposed action is occupied by Steller's eiders.

While Federal agencies will be required to consider the effect of their actions on critical habitat in determining whether or not to consult with us under section 7 of the Act, the designation of critical habitat for Steller's eiders will not affect activities undertaken within critical habitat boundaries that do not involve a Federal nexus. While any person, public or private, is required to ensure that their actions do not result in the taking of a Federally listed species, only Federal agencies are required to consult with us about their action's effect on designated critical habitat under section 7 of the Act. Persons undertaking activities within critical habitat boundaries that do not have a Federal nexus (i.e., Federal funds or permits) and that do not result in either the direct or indirect taking of a Federally protected species are not required to consult with us concerning the effect their activities may have on designated critical habitat.

*Comment 37:* Many commenters stated that by designating critical habitat for Steller's eiders, section 7 consultation costs would likely increase due to the extra resources needed to determine whether a proposed government action could result in the destruction or adverse modification of designated critical habitat.

*Our response:* We disagree that the designation of critical habitat for Steller's eiders would significantly increase the costs associated with conducting a section 7 consultation. First, as previously described, we have only proposed to designate occupied habitat as critical habitat and as a result the designation would not result in an increase in section 7 consultations because any Federal action that may affect a species' designated critical habitat, which would trigger a section 7 consultation, would also affect the listed species itself due to its presence in the area. For those Federal actions that we find may likely adversely affect a species or its critical habitat, we already consider habitat impacts of the proposed action along with whether or not an action is likely to jeopardize a listed species or constitute ''take'' pursuant to section 9 of the Act during the formal section 7 consultation process. As a result, the designation of critical habitat in the areas already occupied by Steller's eiders will not add any appreciable time or effort required by an action agency, third party applicant, or by our personnel to conduct a section 7 consultation.

*Comment 38:* Some comments stated that the economic analyses failed to consider the effect of reinitiating previously conducted consultations to consider an action's effect on designated critical habitat.

*Our response:* Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Because we have already considered the habitat impacts of the action during the consultation process, we do not believe that any significant resources would be expended by either the action agency or by our personnel to comply with the reinitiation requirement. We anticipate fulfilling the requirements of 50 CFR 402.16 by sending a letter to an action agency undertaking activities on which we have already consulted, and requesting that they make a determination as to whether the ongoing action may affect designated critical habitat. Because habitat impacts were already considered as part of the initial consultation, we believe that most, if not all, non-jeopardy activities already consulted upon will likely not adversely modify or destroy critical habitat. We are committed to working with all Federal agencies that may be affected by the designation of critical habitat to expedite any consultations that require reinitiation.

*Comment 39:* The draft economic analysis failed to consider that Nationwide permits will no longer be allowed without a section 7 consultation.

*Our response:* The conditions, limitations, and restrictions of the Army Corps Nationwide permit program state in 33 CFR 330.4 that no activity is authorized by any nationwide permit if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Act or to destroy or adversely modify the critical habitat of such species. Federal agencies are required to follow their own procedures for complying with the Act while non-federal permittees are required to notify the District Engineer (DE) if any Federally listed (or proposed for listing) endangered or threatened species or critical habitat might be affected or is in the vicinity of the project. In such cases, the prospective permittee may not begin work under authority of the nationwide wetland permit until notified by the DE that the requirements of the Act have been

satisfied and that the activity is authorized. If the DE determines that the activity may affect any Federally listed species or critical habitat, the DE must initiate section 7 consultation in accordance with the Act. Because we are only designating occupied habitat as critical habitat for Steller's eiders, prospective permittees already are required to notify the Army Corps of their activities within these areas. As a result, we do not anticipate that critical habitat designation for Steller's eiders would result in any additional section 7 consultations with the Army Corps concerning activities needing a general permit to proceed.

*Comment 40:* Some commenters stated that minor permitting delays, resulting from an increase in section 7 consultations, can result in a year-long delay given the limited operation windows due to climate conditions in Alaska. As a result, these commenters believed that marginal projects may face funding losses as financing capital is withdrawn due to increased uncertainty associated with such a project.

*Our response:* We disagree that there will be an increase in section 7 consultations that will be attributable to critical habitat designation. Federal agencies are already required to consult with us in situations where actions they undertake, fund, or permit may jeopardize the eiders. We do not believe that the designation of critical habitat will lengthen the section 7 process because we already consider habitat impacts as part of the consultation process. Because we are only designating critical habitat in areas that are occupied by the eiders, we do not believe that there will be an increase in section 7 consultations due to the designation.

*Comment 41:* Several commenters stated that the draft economic analyses failed to adequately address critical habitat effects on the North Slope petroleum economy, including the costs associated with section 7 consultations and project modifications, which may result in project delays and reduced development, associated effects on the regional, State, and national oil prices and economies, and land value impacts in areas where production may be curtailed.

*Our response:* Our draft economic analysis for the proposed critical habitat rule discussed the potential economic impacts to the oil and gas industry operating on the North Slope. Specifically, we discussed the responsibilities of the Bureau of Land Management and the Minerals Management Service in managing oil and gas exploration and production drilling in this area and their current responsibility to consult with us on activities they authorize, fund, or carry out that may affect Steller's eiders. The analyses discussed previous consultations with these Federal agencies concerning oil and gas activities and concluded that for section 7 consultations for which a ''not likely to adversely affect'' determination was made by the agency, and for which we concurred, we fully expect to concur with a corresponding determination that such an action is not likely to result in the destruction or adverse modification of critical habitat. Only for those actions resulting in jeopardy to Steller's eiders would we expect to meet the threshold for destruction or adverse modification of critical habitat during the section 7 process. Similarly, we believe that property value decreases, to the extent that they can be attributed to Steller's eiders and result in actual restrictions in land use, would be a result of the listing of the species as a federally protected species and not because of critical habitat designation. Consequently, we do not believe that critical habitat designation, as proposed, would have an adverse effect on oil and gas industry operations on the North Slope nor have any indirect effects on the regional or State economy.

In this final rule, however, we have withdrawn the North Slope unit from critical habitat designation. As a result, the concerns expressed in this comment are no longer an issue relevant to the final designation.

*Comment 42:* One commenter believed that the economic analyses failed to adequately address potential benefits associated with critical habitat designation.

*Our response:* We believe that the benefits to the species that result from critical habitat will be non-economic in nature. Critical habitat designation for Steller's eiders may heighten public and agency awareness of the habitat needs of Steller's eiders. Other benefits may result from Federal agencies becoming more aware of their obligation to consult on their activities as per section 7 of the Act. However, because we are designating only occupied habitat as critical habitat for Steller's eiders, we believe that the economic consequences (both positive and negative) associated with the designation are limited. We arrive at this conclusion because the designation of critical habitat is unlikely to have any significant effect on both current and planned economic activities within the designated areas. For reasons previously stated, Federal agencies are already required to consult with us on activities that may affect Steller's eiders.

*Comment 43:* The analysis ignores the effect that critical habitat designation may have on commercial fisheries, such as those occurring in the Bering Sea, along the Alaska Peninsula, and in Cook Inlet based on judicial rulings on the fisheries impact on critical habitat for Steller sea lions.

*Our response:* On July 20, 2000, U.S. District Court Judge Thomas S. Zilly issued an injunction on all groundfish trawl fishing within federally regulated waters of the Bering Sea/Aleutian Islands and the Gulf of Alaska within Steller sea lion critical habitat. The judge issued this injunction because he found that the NMFS failed to issue a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish trawl fisheries on Steller sea lions and their critical habitat pursuant to the Act. It is important to note that while the judge limited fishing within Steller sea lion critical habitat, he issued the injunction primarily out of concern that NMFS failed to comply with section 7 of the Act. Consequently, we do not believe that critical habitat designation for the Steller sea lion played a significant role in the judge's decision to issue the injunction but rather was simply used by the judge to determine the boundaries of the injunction.

Our analyses did not address the potential effects of third-party lawsuits directly due to the limited information and experience that critical habitat designation could have on such a lawsuit. However, we recognize that it is possible that some third parties may elect to sue us over future decisions we may make about whether an activity adversely modifies critical habitat. As of yet, we have not faced any such lawsuits and because we are only designating occupied eider habitat as critical habitat, we find it highly unlikely that we would ever determine that a Federal action could adversely modify critical habitat without simultaneously jeopardizing the continued existence of Steller's eiders due to the similarity between the two definitions.

Our economic analyses did address the potential for impacts to commercial fisheries resulting from proposed critical habitat designation. In these analyses we described how we have conducted semi-annual formal consultations with NMFS on the management of Bering Sea fisheries. To date, we are unaware of any Steller's eiders having been taken by these fisheries. As a result, we discontinued formal consultations on this fishery and began conducting only informal consultations. We do not anticipate that

the designation of critical habitat will change our approach to consultations. As a result, we do not expect any adverse economic impacts to occur in Kuskokwim Bay, Seal Islands, Nelson Lagoon, or Izembek Lagoon Steller's eider critical habitat areas as a result of this final rule. Therefore, we believe the potential for a third-party lawsuit that could affect the commercial fishing industry as a result of critical habitat designation is minimal.

*Comment 44:* Several commenters stated that the economic analysis is flawed because it does not quantify any of the expected impacts that may result from critical habitat designation.

*Our response:* The draft economic analyses did not identify any potential impacts associated with critical habitat designation for Steller's eiders. As a result, the analysis was unable to quantify any effects. Although the analyses acknowledged the possibility of impacts associated with project delays and other activities due to section 7 consultations (the Act only requires Federal agencies to consult with us concerning the effect their actions may have in critical habitat areas), we are only designating occupied habitat as critical habitat for Steller's eiders. Because Federal agencies are already required to consult with us concerning the effect their activities may have on Steller's eiders in these areas, we do not believe that the designation will result in any additional impacts. While the Act requires Federal agencies to consult with us on activities that adversely modify critical habitat, we do not believe that within areas being designated as critical habitat for Steller's eiders there will be any Federal government actions that will adversely modify critical habitat without also jeopardizing Steller's eiders due to their presence in designated critical habitat areas.

We have also recognized that, in some instances, the designation of critical habitat could affect the real estate market because participants may incorrectly perceive that land within critical habitat designation is subject to additional constraints. However, we do not believe that this effect will result from the designation of critical habitat for Steller's eiders. We arrived at this determination based on the fact that we believe that critical habitat designation for Steller's eiders will not add any additional protection, beyond that associated with the addition of the species to the list of federally protected species. Additionally, in regard to private lands that may be nearby designated areas, we believe that critical habitat designation for Steller's eiders will not add any additional protection, nor impact landowners, beyond that associated with the addition of the species to the list of Federally protected species. Any resulting real estate market would likely be temporary and have a relatively insignificant effect as it becomes apparent that critical habitat for Steller's eiders does not impose additional constraints on landowner activities beyond that currently associated with the listing of the species.

*Comment 45:* Some commenters stated that the analysis does not consider the cumulative impact of added uncertainty for projects.

*Our response:* While our economic analyses identified some of the concerns stakeholders may have regarding our concern over current or anticipated activities on eider critical habitat, we do not believe that the designation of critical habitat for Steller's eiders will impose any additional restrictions or considerations on projects having a Federal nexus. While section 7 consultations could lead to project delays if they are not properly anticipated for by project planners, we do not believe that the designation of critical habitat will result in any new or additional section 7 consultations above and beyond those that would be required due to an activity's potential to affect Steller's eiders. We already consider the impact that an action has on the eider's habitat as part of our current section 7 process so we do not believe that the section 7 process will take any longer than it currently does once critical habitat is designated.

*Comment 46:* Some commenters believed that we failed to adequately address the requirements of the Small Business Regulatory Enforcement Fairness Act in our draft economic analysis.

*Our response:* The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule requiring public notice and comment under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic impact on a substantial number of small entities and, as a result, we do not need to prepare either an initial or final regulatory flexibility analysis.

We have based our finding on the fact that this rule will not result in any significant additional burden to the regulated community, regardless of the size of the entity. Our economic analysis identified several potential impacts associated with critical habitat designation, including increased consultation costs, project modification costs, and potential temporary decreases in property values. However, because we have only designated property that is within the geographic range occupied by Steller's eiders and because Steller's eiders are already a Federally protected species, other Federal agencies are already required to consult with us on activities that they authorize, fund, or carry out that have the potential to jeopardize the species. Any associated costs related to these section 7 consultations, including project modifications, will therefore be attributable to the listing of the species and not to designation of critical habitat due to the similarity in the definition of jeopardy and adverse modification.

*Issue 4: Other Relevant Issues*

*Comment 47:* Many respondents were concerned that designating critical habitat will invite lawsuits by those aiming to obstruct oil development on the North Slope.

*Our response:* While we cannot predict future litigation, it is not our intent to facilitate litigation through critical habitat designation. However, we cannot use the threat of litigation as an excuse for not designating critical habitat. The Act and regulations at 50 CFR 424.12 require us to designate critical habitat to the maximum extent prudent, and require that we base critical habitat determinations on the best scientific and commercial data available and that we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection.

In this final rule, however, we have withdrawn the North Slope unit from critical habitat designation. As a result, the concerns expressed in this comment are no longer an issue relevant to the final designation.

*Comment 48:* A few respondents asked whether it is possible that there will be additional time in which to submit comments and whether another draft will be presented for public comment before the final rule.

*Our response:* Our public comment period of 197 days greatly exceeds the 60-day public comment period required by regulation. We extended the comment period on three separate occasions to accommodate interested parties. We believe that we allowed ample time for comments. Our proposed

rule, published on March 13, 2000, and the draft economic analysis represent the only documents for which public comment will be sought relative to this rulemaking. However, we welcome at any time new information on the life history, distribution, and status of the Steller's eider, as well as information on the quality, quantity, and viability of the habitats it uses.

*Comment 49:* A few respondents asked whether critical habitat would be the first step towards making the area a refuge.

*Our response:* Critical habitat designation is completely unrelated to the formation of wildlife refuges, and in no way affects, or is a precursor to, establishment of a wildlife refuge. Critical habitat can be designated on existing parks and refuges, state and private lands. Such designation carries with it no implication of future land ownership change, nor does it allow for public access to private land.

*Comment 50:* One respondent stated that our proposal resulted from a politically motivated decision.

*Our response:* Our proposal resulted from an out-of-court settlement in which we agreed to re-examine our initial decision that designation of critical habitat for this species was not prudent. We objectively reexamined the best scientific and commercial data available to us at the time, determined that designation of critical habitat was prudent, and developed the proposal upon which this final rule is based.

*Comment 51:* One respondent stated that designating critical habitat ensures collaboration between Federal, State, and Private agencies and industries, and that designation will foster comprehensive planning and wise management.

*Our response:* We pursue comprehensive planning and management opportunities regardless of the presence of critical habitat. However, we note that the heightened awareness surrounding conservation issues and the delineation of critical habitat areas on maps has resulted in agencies becoming more fully aware of the need to consult with us as per section 7 of the Act. As we discussed for the Proposed North Slope Unit under the *Rationale for the Final Designation* section, in the unique circumstances surrounding the Barrow area, we believe the exclusion of areas from a critical habitat designation can also provide a conservation benefit to the species.

*Comment 52:* One respondent stated that designating as critical habitat the large area proposed on the Arctic Coastal Plain would harm listed eiders by irreparably damaging cooperative and collaborative working relationships between the Service and local and Native governments.

*Our response:* We regard working relationships with local and Native governments to be essential for effecting the recovery of Steller's eiders on the North Slope. We note numerous cooperative conservation actions that are in progress, including jointly conducted or funded research and monitoring projects, efforts to eliminate the use of lead shot by waterfowl hunters, and public education projects. We agree that any action that damages these cooperative efforts will harm listed eiders. However, the Act and our regulations are clear in that critical habitat must be designated if doing so is prudent. It should be noted that in this final rule, we have withdrawn the North Slope unit from critical habitat designation for reasons described in the *Rationale for the Final Designation* section.

*Comment 53:* One respondent challenged our metric/English conversions (40 km = 25 mi; 30 feet = 10 m) used to describe critical habitat units, contending the imprecision in this conversion could cause ambiguity in unit boundaries.

*Our response:* We have revised these conversions where appropriate. The conversion 30ft/10m was changed to 30 ft/9m, while one quarter mile/400 m and 25 miles/40 km were left unchanged in order to maintain the appropriate number of significant digits.

*Comment 54:* One respondent stated that the risks of not designating or designating too small an area appear greater than the risks of designating too large an area.

*Our response:* We believe that any risks associated with the designation of critical habitat derive from misperceptions surrounding critical habitat, and the way in which these misperceptions may affect working relationships between parties with conflicting interests or goals. Conversely, we do not believe that there are notable risks to the listed species that would result from a failure to designate critical habitat.

*Comment 55:* One respondent asked whether critical habitat remains forever or is eliminated once the species is delisted.

*Our response:* Critical habitat is eliminated when the species is delisted.

*Comment 56:* Two oil companies commented that the original listing of eiders and subsequent critical habitat designation may have indirect negative effects on eiders by stimulating more intrusive research on the North Slope and elsewhere, resulting in increased disturbance during nesting.

*Our response:* The only regulatory effect of critical habitat designation is through section 7 of the Act, which requires Federal agencies to consult with the Service on actions they permit, fund, or conduct that may adversely affect listed species or adversely modify or destroy critical habitat. We believe that neither the need to consult nor the outcome of consultations will be affected by critical habitat designation because we currently consider the potential habitat impacts of proposed projects during consultation. While listing may stimulate research on eiders and recovery, any research on the North Slope or elsewhere in the species' occupied range that might result in ''take'' would require a section 10(a)(1)(A) permit from the Service. If the authorization of such a permit may affect a listed species, an intra-agency section 7 consultation on permit issuance must be initiated. Any such consultation will consider the direct, indirect, interrelated, and interdependent effects of the action. No permits would be issued if significant adverse impacts were anticipated.

**Summary of Changes From the Proposed Rule**

Based on a review of public comments received on the proposed determination of critical habitat for the Steller's eider, we re-evaluated our proposed designation of critical habitat for the species. This resulted in five significant changes that are reflected in this final determination. These are the (1) elimination of the proposed North Slope unit; (2) revision of the proposed Kuskokwim Bay unit to include the northern portion, now called the Kuskokwim Shoals unit, and to exclude the southern portion; (3) elimination of the proposed Nunivak Islands, Eastern Aleutians, Alaska Peninsula—south side, Kodiak Archipelago and Kachemak Bay/Ninilchik units; (4) elimination of most of the proposed North Side of the Alaska Peninsula unit, and; (5) separate designation of Seal Islands, Nelson Lagoon, and Izembek Lagoon units. A detailed discussion of the basis for changes from the proposed rule can be found under *Rationale for the Final Designation* section above.

**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.

Economic effects caused by listing the Alaska-breeding population of the Steller's eider as a threatened species and by other statutes are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of Steller's eider critical habitat designation was prepared (Industrial Economics, Incorporated, 2000) and made available for public review August 24, 2000 (65 FR 51577). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the Steller's eider The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the effects of the proposed designation on: (1) Re-initiation of section 7 consultations, (2) length of time in which section 7 consultations are completed, and (3) new consultations resulting from the determination. Because areas proposed for critical habitat are within the geographic range occupied by the Steller's eider, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation whether or not critical habitat is designated. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final.

A copy of the final economic analysis may be obtained by contacting the Northern Alaska Ecological Services office (see **ADDRESSES** section).

## Required Determinations

### *Regulatory Planning and Review*

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The Steller's eider was listed as a threatened species in 1997. Since then, we have conducted 5 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species. We have also issued 5 section 10(a)(1)(A) incidental take permits for research activities that might affect Steller's eiders. We have issued no section 10(a)(1)(B) incidental take permits for this species or within the range of this species.

The areas designated as critical habitat are currently within the geographic range occupied by the Steller's eider. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of areas within the geographic range occupied by the Steller's eider does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat although they continue to be bound by the provisions of the Act concerning ''take'' of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Steller's eider since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any restrictions in addition to those that currently exist because all designated critical habitat is within the geographic range occupied by the Steller's eider. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) This rule will not raise novel legal or policy issues. This final determination follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—ACTIVITIES POTENTIALLY AFFECTED BY STELLER'S EIDER LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities involving a Federal action potentially affected by species listing only [1] | Additional activities involving a Federal action potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal Activities Potentially Affected [3] | Activities that the Federal Government carries out such as scientific research, land surveys, law enforcement, oil spill response, resource management, regulation of commerce, and construction/expansion of physical facilities. | None. |
| Private Activities Potentially Affected [4] .. | Activities that also require a Federal action (permit, authorization, or funding) such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and, and village maintenance, construction and expansion. | None. |

[1] This column represents impacts of the final rule listing the Steller's eider (June 11, 1997; 62 FR 31748) under the Endangered Species Act.
[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the Steller's eider is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Critical Habitat Designation section) we have designated property owned by Federal, State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of commercial fisheries by the National Marine Fisheries Service;

(4) Law enforcement in United States Coastal Waters by the U.S. Coast Guard;

(5) Road construction and maintenance by the Federal Highway Administration;

(6) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(7) Military training and maneuvers on applicable DOD lands;

(8) Regulation of subsistence harvest activities on Federal lands by the U.S. Fish and Wildlife Service;

(9) Regulation of mining and oil development activities by the Minerals Management Service;

(10) Regulation of home construction and alteration by the Federal Housing Authority;

(11) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(12) Construction of communication sites licensed by the Federal Communications Commission;

(13) Wastewater discharge from communities and oil development facilities permitted by the Environmental Protection Agency; and

(14) Other activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this final determination will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

*Takings*

This critical habitat designation is restricted to Federal and State marine waters and no private lands are included. Therefore, this rule does not have significant takings implications and a takings implication assessment is not required.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism

assessment is not required. The designation of critical habitat within the geographic range occupied by the Steller's eider imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The determination 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 Steller's eider.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

*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 final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) 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 Steller's eider because they do not support core Steller's eider populations, nor do they provide essential linkages between core populations. Therefore, critical habitat for the Steller's eider has not been designated on Tribal lands.

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Northern Alaska Ecological Services Office (see **ADDRESSES** section) or from the U.S. Fish and Wildlife Service, Alaska Region webpage at: http://www.r7.fws.gov/es/te.html

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for Steller's eider under ''BIRDS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | | * | | * |
| BIRDS | | | | | | | |
| * | * | * | * | | * | | * |
| Eider, Steller's | *Polysticta stelleri* | USA (AK); Russia | U.S.A. (AK breeding population only). | T | 616 | 17.95(b) | NA |
| * | * | * | * | | * | | * |

3. Amend § 17.95 (b) by adding critical habitat for the Steller's eider (*Polysticta stelleri*) in the same alphabetical order as this species occurs in 17.11 (h) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(b) Birds.

* * * * *

Steller's Eider (*Polysticta stelleri*)

1. Critical habitat units are depicted for the Yukon—Kuskokwim Delta (Unit 1), Kuskokwim Shoals (Unit 2), Seal Islands (Unit 3), Nelson Lagoon (Unit 4), and Izembek Lagoon (Unit 5) on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, roosting, molting, and wintering. The primary constituent elements for Unit 1 include the vegetated intertidal zone and all open water inclusions within this zone. The primary constituent elements for Units 2, 3, 4, and 5 are marine waters up to 9 m (30 feet) deep and the underlying substrate, the associated invertebrate fauna in the water column, the underlying marine benthic community, and where present, eelgrass beds and associated flora and fauna. Critical habitat does not include those areas within the boundary of any unit that do not fit the description of primary constituent elements for that unit.

3. Critical habitat does not include existing human structures, such as buildings, roads, pipelines, utility corridors, airports, other paved areas,

docks, wharves, buoys, or other developed areas.

4. In the following maps and legal descriptions, all geographic coordinates are in North American Datum 1927.

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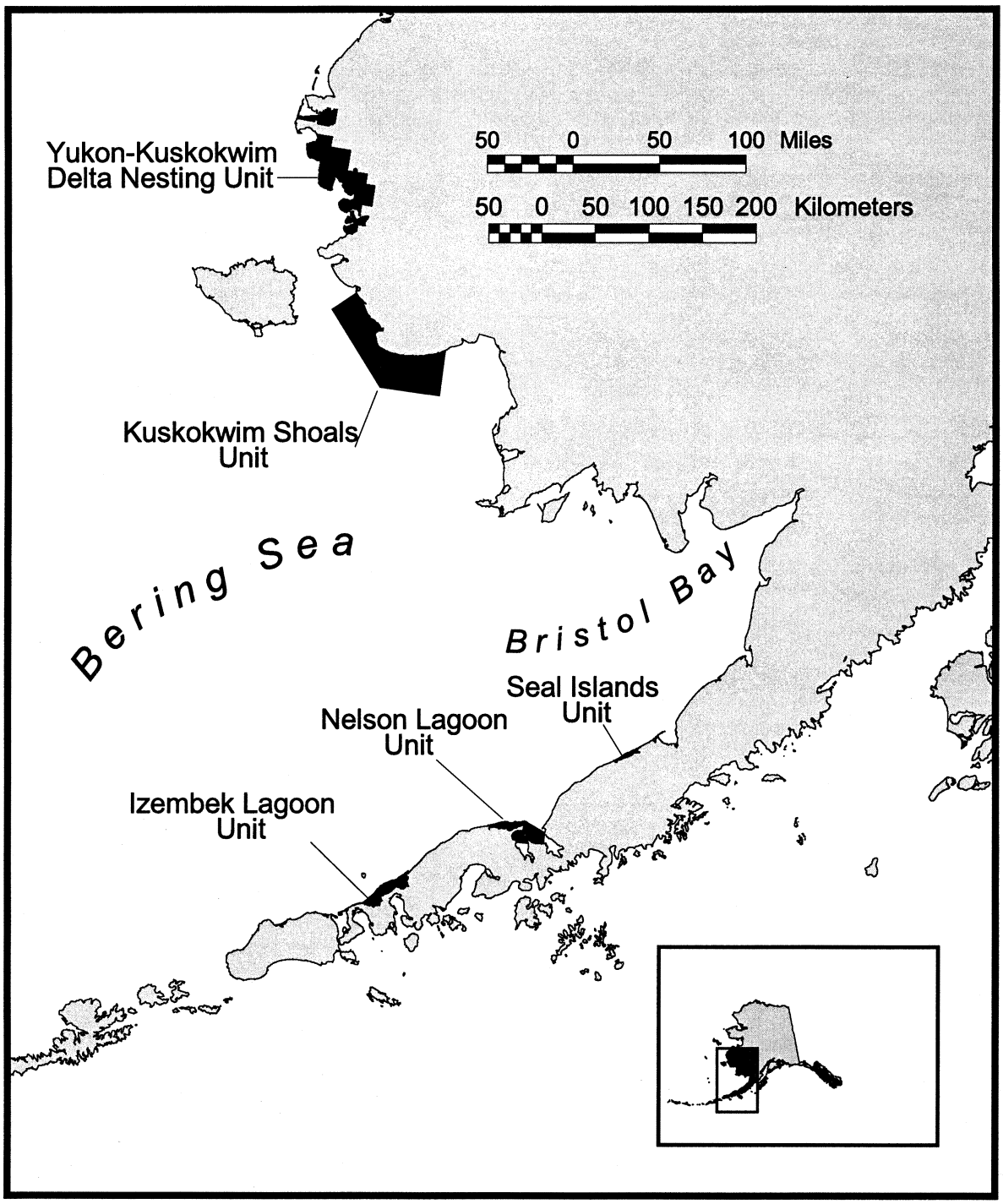

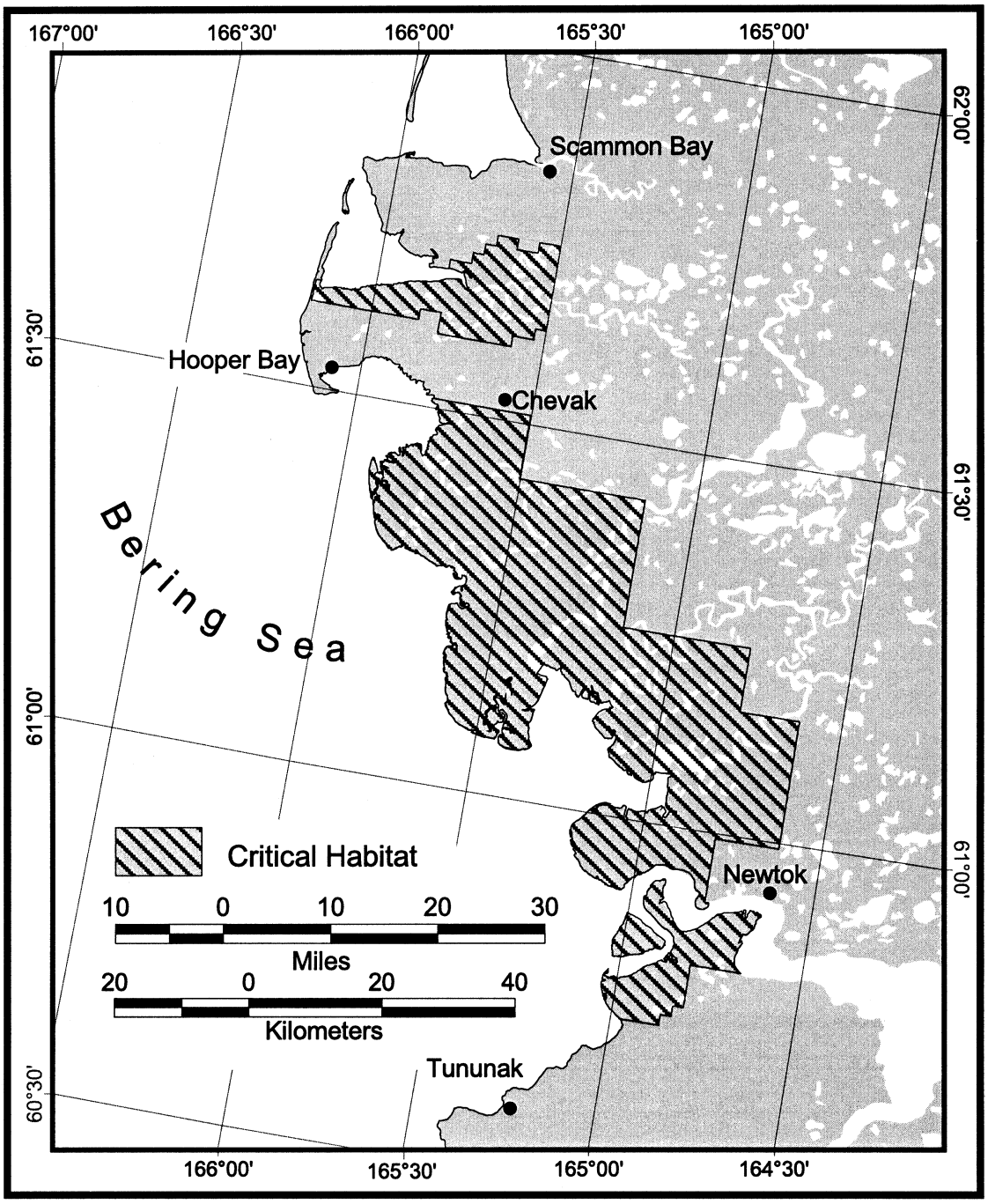


**Unit 1. Yukon—Kuskokwim Delta**

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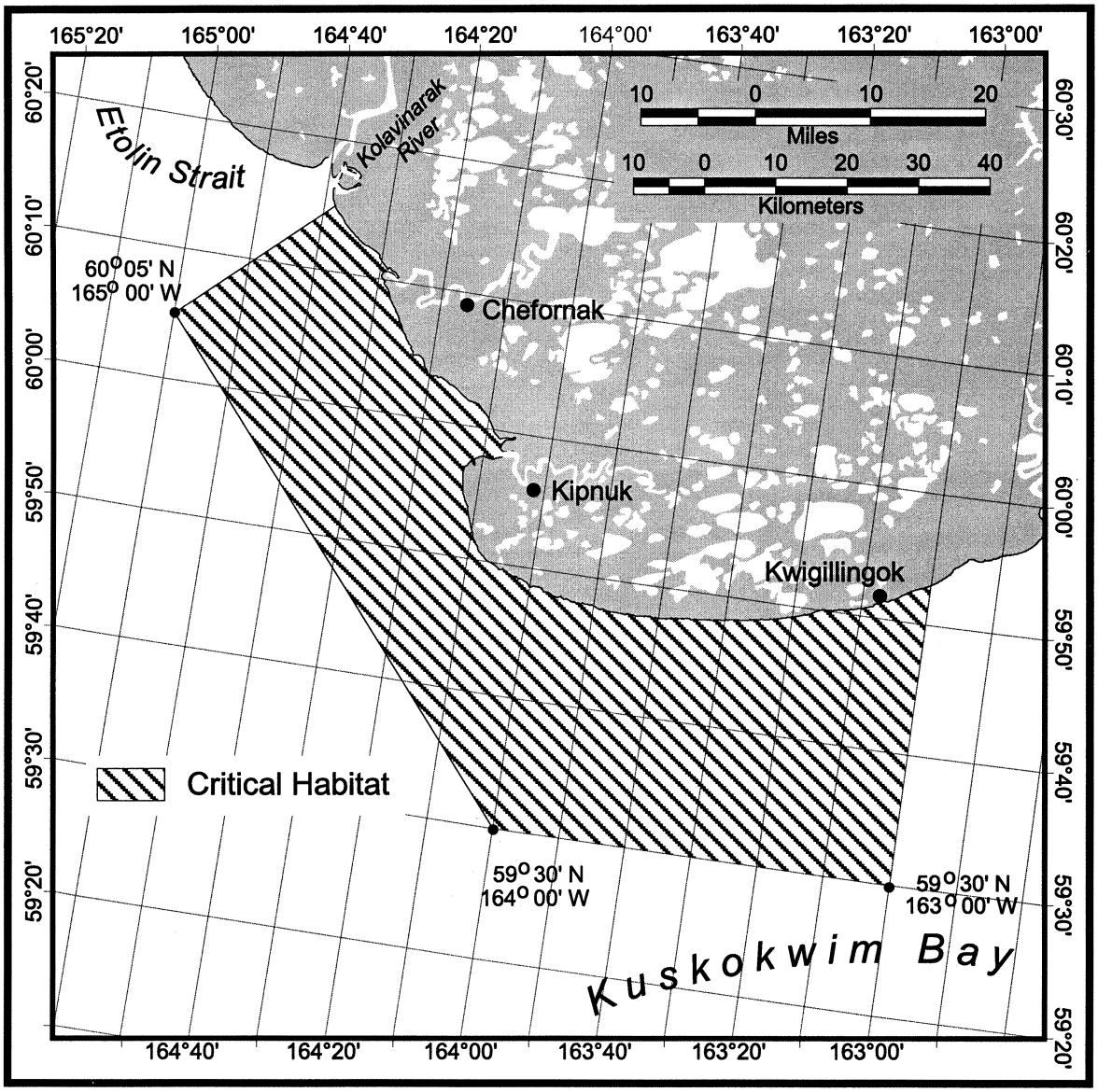


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**Unit 2. Kuskokwim Shoals Unit**

Beginning at a point of land on the line of mean high tide of Etolin Strait of the Bering Sea at latitude 60° 15″ North, approximately 2.5 kilometers (1.6 miles) south of the mouth of the Kolavinarak River, and the true point of beginning of the lands to be described.

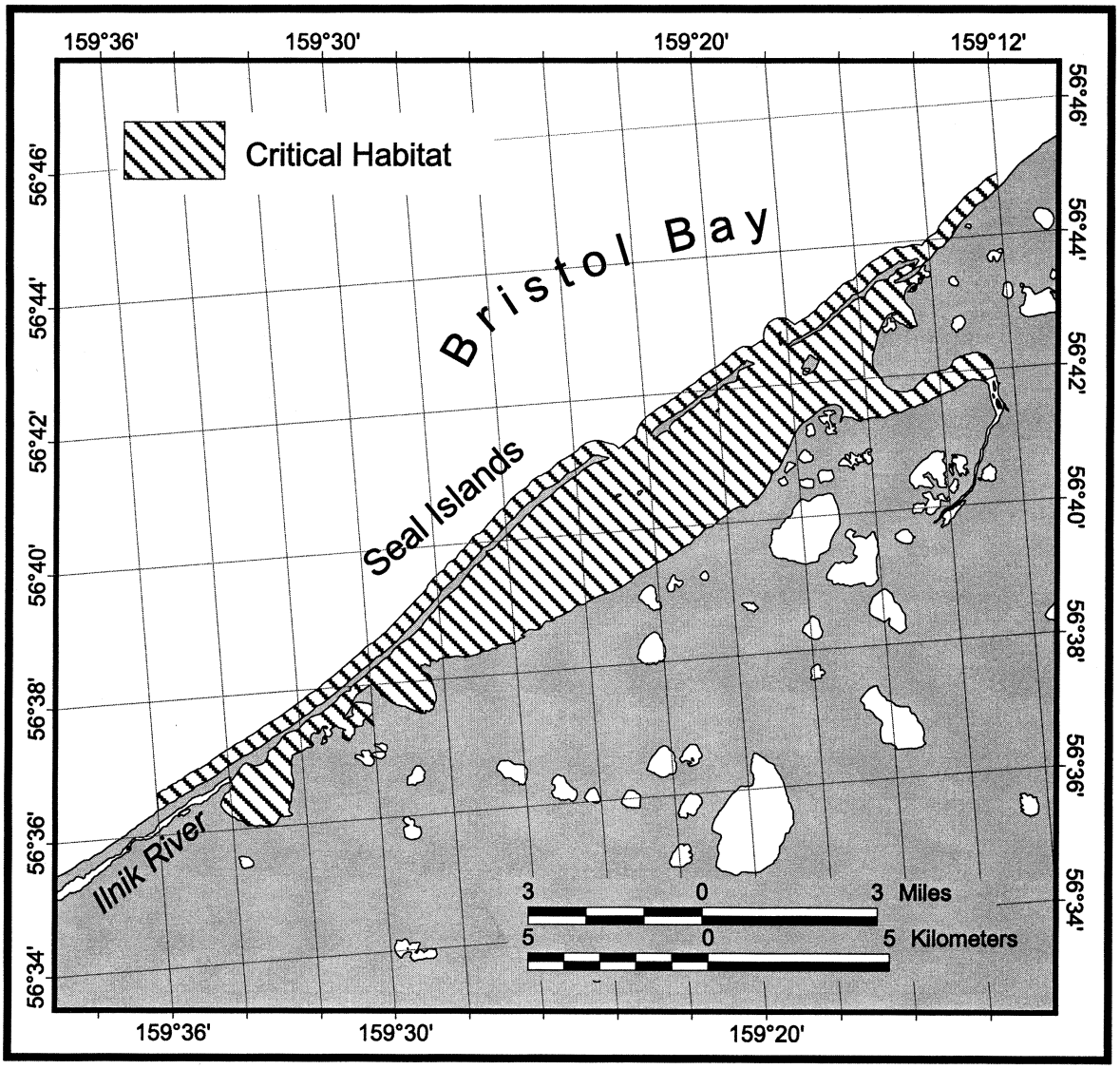
Thence southeasterly and easterly with the line of mean high tide of the Bering Sea, common with the boundary of the Yukon Delta and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 149 kilometers (93 miles), to a point on the line of mean high tide at longitude 163° 00′ West, approximately 8 kilometers (5 miles) east of the Kwigillingok River mouth;

Thence south along the line of longitude 163° 00′ West, approximately 43 km (27 miles), to the point in the waters of Kuskokwim Bay, Bering Sea, at latitude 59° 30′ North, longitude 163° 00′ West;

Thence west along the line of latitude 59° 30′ North, approximately 56 kilometers (35 miles), to a point in the waters of Kuskokwim Bay, Bering Sea, at latitude 59° 30′ North, longitude 164° 00′ West;

Thence northwesterly, approximately 86 kilometers (54 miles), to a point in the waters of Etolin Strait, Bering Sea, at latitude 60° 05′ North, longitude 165° 00′ West;

Thence northeasterly, approximately 27 kilometers (17 miles), to the line of mean high tide of Etolin Strait at latitude 60° 15′′ North, and the true point of beginning.

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**Unit 3. Seal Islands Unit**

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at longitude 159°12′ West, and the True Point of Beginning of the lands to be described.

Thence southwesterly, northeasterly, and southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, to encompass the Seal Islands lagoon and closing the mouth of the Ilnik River, approximately 52 kilometers (32 miles);

Thence northwest with the line of mean high tide of Bristol Bay, common with said refuge boundary approximately 14 kilometers (9 miles) to a point at the entrance to Seal Island lagoon at approximate longitude 159°23′ West;

Thence southwest, with the line of mean high tide of Bristol Bay, common with said refuge boundary, approximately 16 kilometers (10 miles) to a point at longitude 159°36′ West:

Thence north with the line of longitude 159°36′ West to a point in the waters of Bristol Bay at a distance of 400 meters (¼ mile) perpendicular to the line of mean high tide;

Thence in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Seal islands, closing the entrances to Seal Island lagoon, for approximately 30 kilometers (19 miles) to a point in Bristol Bay at longitude 159°12′ West, and at a distance of 400 meters (¼ mile) perpendicular to the line of mean high tide;

Thence south with the line of longitude 159°12′ West, to the line of mean high tide of Bristol Bay, and the True Point of Beginning.

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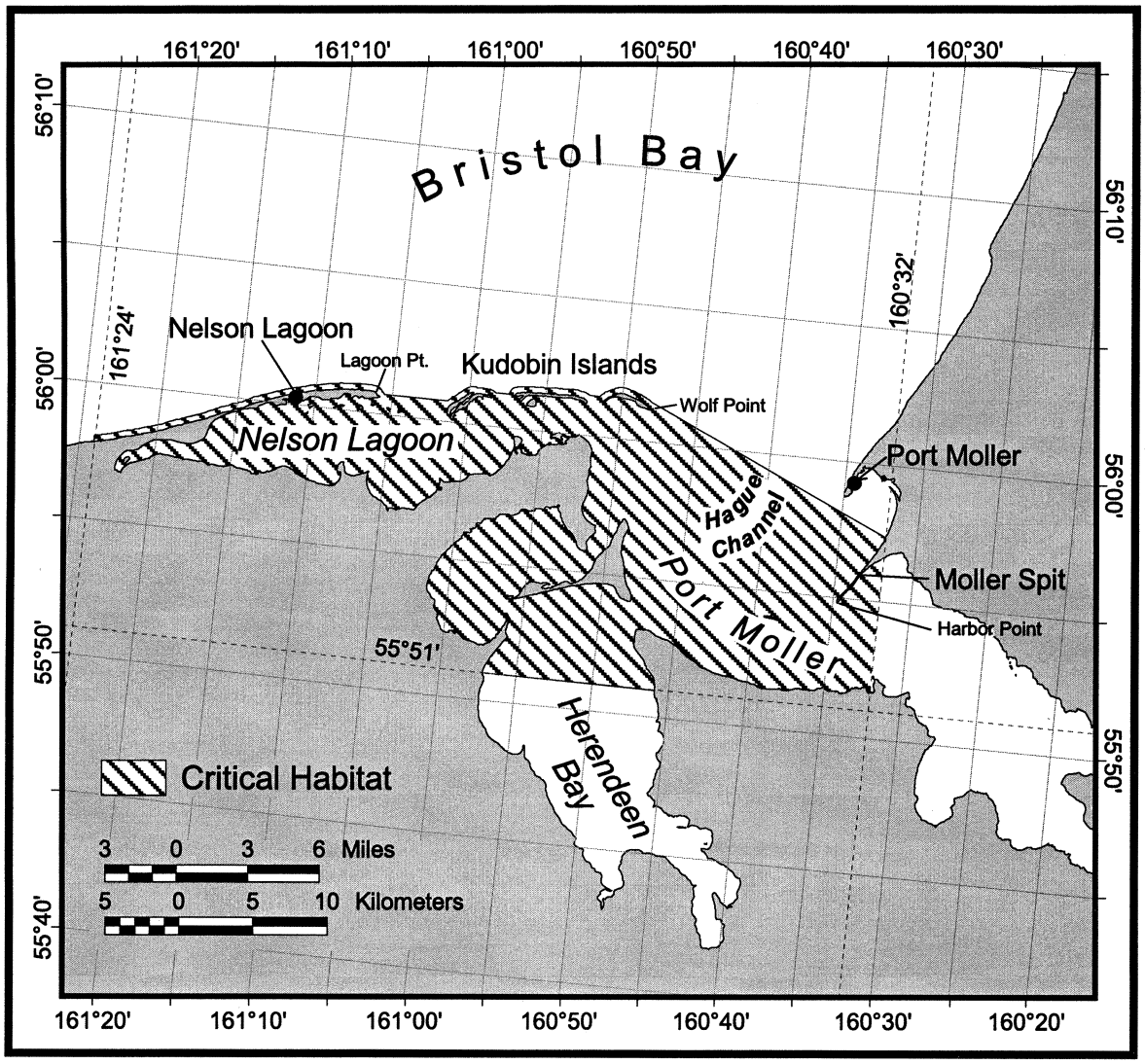


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**Unit 4. Nelson Lagoon Unit**

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea, approximately 5.5 kilometers ( 3.4 miles) north of Harbor Point, on Moller Spit, at longitude 160°32′ West, and the True Point of Beginning of the lands to be described.

Thence southwesterly and northeasterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 10 kilometers (6.2 miles) to a point at longitude160°32′ West;

Thence south with the line of longitude 160°32′ West, crossing Port Moller, approximately 9 kilometers (5.6 miles) to a point at the mean high tide line on the south shore of Port Moller;

Thence westerly and southerly with the line of mean high tide of Port Moller and Herendeen Bay common with said refuge boundary approximately 24 kilometers (15 miles) to a point at latitude 55°51′ North;

Thence west with the line of latitude 55°51′ North, crossing Herendeen Bay approximately 11.7 kilometers (7.3 miles) to a point at the mean high tide line on the west shore of Herendeen Bay;

Thence northerly, westerly, and northeasterly with the line of mean high tide of Herendeen Bay and Nelson Lagoon, common with said refuge boundary; approximately 94 kilometers (58 miles) to Lagoon Point, within Section 22 of Township 48 South, Range 76 West;

Thence southwesterly with the line of mean high tide of the Bering Sea, common with said refuge boundary, approximately 20 kilometers (12 miles) to a point at longitude 161°24′ West;

Thence north along the line of longitude 161°24′ West to a point in the waters of Bristol Bay at a distance of 400 meters (¼ mile) perpendicular to the line of mean high tide;

Thence in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudobin Islands, approximately 40 kilometers (25 miles) to a point at longitude160°48′ West, at a distance of 400 meters (¼ mile) offshore Wolf Point on Walrus island;

Thence southeast, approximately 18 kilometers (11.1 miles), closing the entrance to the Hague Channel to a point at the mean high tide line of Port Moller at 160°32′ West, the True Point of Beginning.

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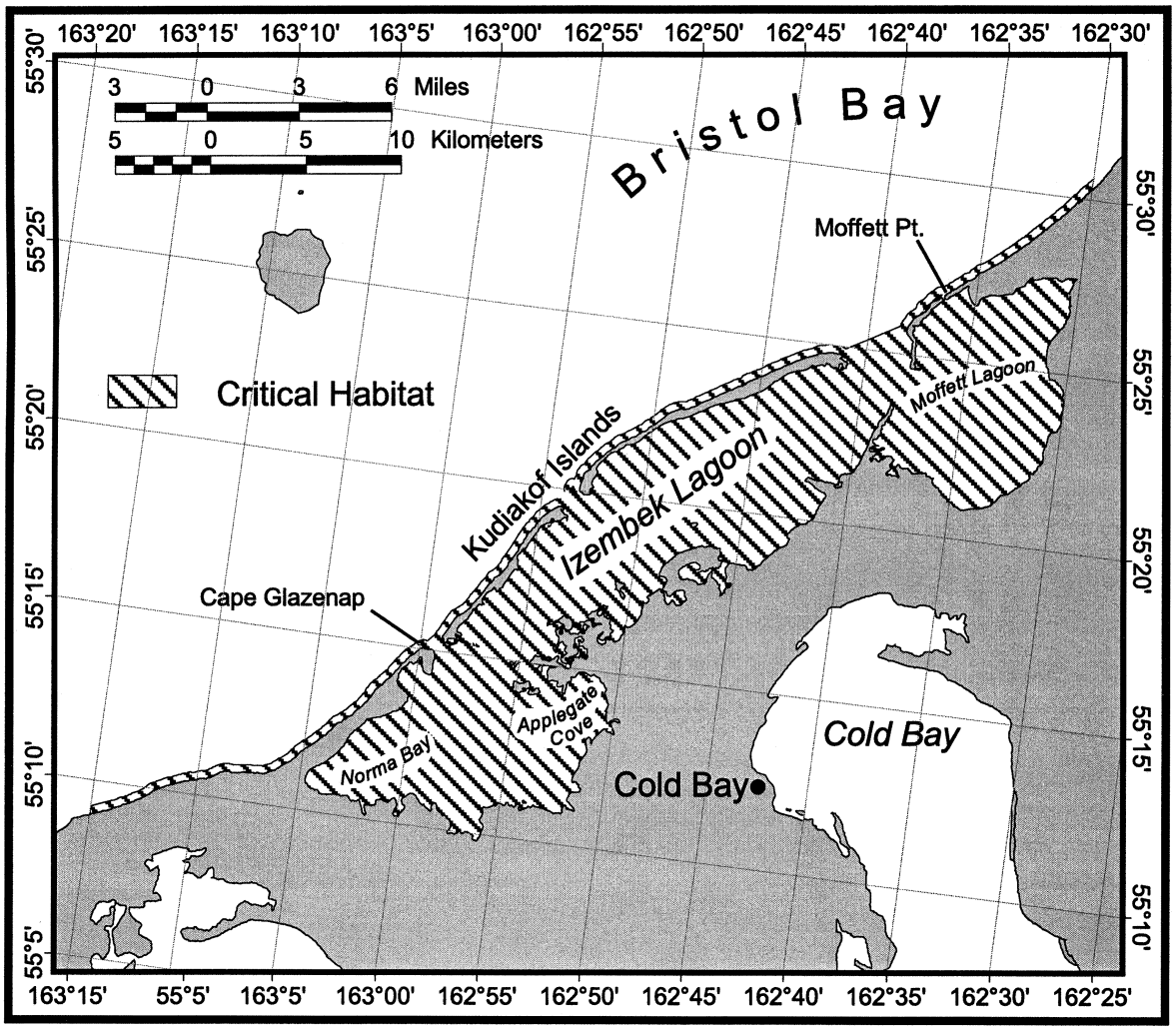


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**Unit 5. Izembek Lagoon Unit**

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at longitude 162°30′ W and the True Point of Beginning of the lands to be described.

Thence southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96–487) on December 2, 1980, approximately 9 kilometers (5.6 miles) to Moffet Point located at approximately 55°27′ N, 162°37′ W;

Thence continuing with the line of mean high tide, inside the boundary of the Izembek National Wildlife Refuge, northeasterly, southwesterly, and northeasterly to encompass Moffett and Izembek Lagoons, Applegate Cove, and Norma Bay, approximately 55 miles to Cape Glazenap, at approximately 55°15′ N, 163°00′ W;

Thence southwest with the line of mean high tide of Bristol Bay, common to the Alaska Maritime refuge boundary, approximately 177 kilometers (110 miles) to a point at longitude 163°15′ W;

Thence north along the line of longitude 163°15′ W to a point in the waters of Bristol Bay at a distance of 400 meters (¼ mile) perpendicular to the line of mean high tide;

Thence in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudiakof Islands, closing the entrances to Izembek Lagoon, for approximately 64 kilometers (40 miles) to a point in the waters of Bristol Bay at longitude 162°30′ W, and at a distance of 400 meters (¼ mile) perpendicular to the line of mean high tide;

Thence south along the line of longitude 162°30′ W, to the line of mean high tide and the True Point of Beginning.

* * * * *

Dated: January 10, 2001.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–1334 Filed 2–1–01; 8:45 am]

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# Reader Aids

**Federal Register**

Vol. 66, No. 23

Friday, February 2, 2001

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