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Presidential Documents

Title 3—

The President

Executive Order 13234 of November 9, 2001

Presidential Task Force on Citizen Preparedness in the War on Terrorism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to support and enhance the efforts of the American public with respect to preparedness and volunteerism in the war on terrorism, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the ''Presidential Task Force on Citizen Preparedness in the War On Terrorism'' (Task Force).

Sec. 2. *Membership.* (a) The Task Force shall be composed of the heads of the following executive branch entities, who may designate representatives from within their respective entities to assist them in their duties in connection with the Task Force: the Office of the Vice President, the Office of Homeland Security, the Domestic Policy Council, the Office of Science and Technology Policy, the Office of Management and Budget, the Department of the Treasury, the Department of Justice, the Department of Labor, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Transportation, the Department of Energy, the Department of Veterans Affairs, the Environmental Protection Agency, the Federal Emergency Management Agency, and the Corporation for National and Community Service. The heads of other executive branch departments and agencies and other senior executive branch officials may participate in the work of the Task Force upon the invitation of the Co-Chairs.

(b) The heads of the Office of Homeland Security and the Domestic Policy Council, or their designated representatives, shall serve as Co-Chairs of the Task Force.

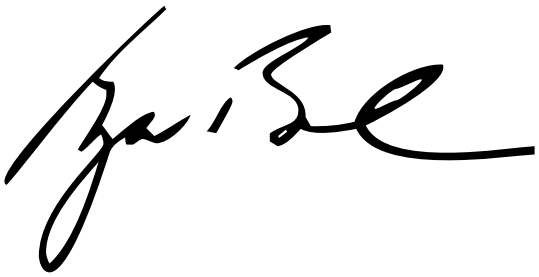
Sec. 3. *Mission.* The Task Force shall identify, review, and recommend appropriate means by which the American public can:

(a) prepare in their homes, neighborhoods, schools, places of worship, workplaces, and public places for the potential consequences of any possible terrorist attacks within the United States; and

(b) volunteer to assist or otherwise support State and local public health and safety officials and others engaged in the effort to prevent, prepare for, and respond to any possible terrorist attacks within the United States.

Sec. 4. *Reporting Requirement.* The Task Force shall submit its recommendations to the President within 40 days from the date of this order.

Sec. 5. *Termination of Task Force.* The Task Force shall terminate 30 days after submitting its report to the President.



THE WHITE HOUSE,
November 9, 2001.

[FR Doc. 01–28762
Filed 11–14–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Memorandum of November 9, 2001

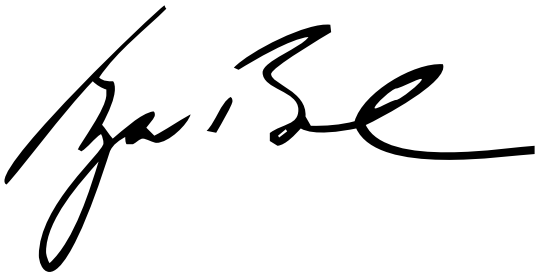
Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—People's Republic of China

Memorandum for the United States Trade Representative

Pursuant to section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988, (19 U.S.C. 2905(a)), I determine that state trading enterprises account for a significant share of the exports of the People's Republic of China (China) and goods that compete with imports into China. I further determine that such state trading enterprises unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or are likely to result in such a burden, restriction, or effect.

China is seeking to become a member of the World Trade Organization (WTO). The terms and conditions for China's accession to the WTO include China's commitments that it will ensure that all state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, such as price, quality, marketability, and availability, and that U.S. business firms will have an adequate opportunity to compete for sales to and purchases from these enterprises on nondiscriminatory terms and conditions. In addition, the Government of China will not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value, or country of origin of any goods purchased or sold, except in a manner consistent with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). China has also confirmed that state trading enterprises will make purchases that are not for government use. The obligations that China will assume under the WTO Agreement, including China's protocol of accession, meet the requirements of section 1106(b)(2)(A), (19 U.S.C. 2905(b)(2)(A)), and thus my determinations under section 1106(a) do not require invocation of the nonapplication provisions of the WTO Agreement.

You are directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 9, 2001.

[FR Doc. 01–28763
Filed 11–14–01; 8:45 am]
Billing code 3190–01–M

Presidential Documents

Memorandum of November 9, 2001

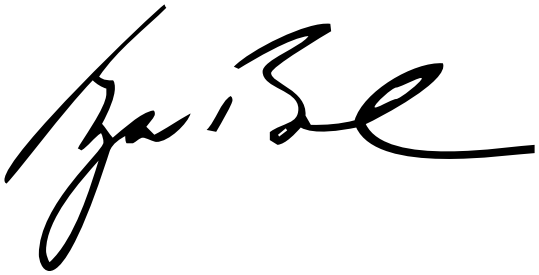
Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu

Memorandum for the United States Trade Representative

Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988, (19 U.S.C. 2905(a)) (the ''1988 Act''), requires the President to determine for any major trading country that is acceding to the World Trade Organization (WTO) whether state trading enterprises account for a significant share of the exports of that major trading country or goods that compete with imports into that country and whether such state trading enterprises unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or are likely to result in such a burden, restriction, or effect.

Taiwan, known in the WTO as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu,'' is in the final stage of its accession to the WTO. Thus, pursuant to section 1106(a) of the 1988 Act, I determine that state trading enterprises do not account for a significant share of the exports of the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu or of goods that compete with exports to the Separate Customs Territory. Further, I determine that such state trading enterprises do not unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, and are not likely to result in such a burden, restriction, or effect.

You are directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 9, 2001.

[FR Doc. 01–28764
Filed 11–14–01; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

Federal Register

Vol. 66, No. 221

Thursday, November 15, 2001

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–26–AD; Amendment 39–12500; AD 2001–23–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172N, 172P, R172K, 172RG, F172N, F172P, FR172J, and FR172K Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–04–08, which requires inspecting (one-time) the fuel line and map light switch in the left hand forward door post for chafing or arcing on certain Cessna Aircraft Company (Cessna) Model 172N, R172K, F172N, and FR172K airplanes and repairing any damage found. AD 80–04–08 also requires providing at least a 0.50-inch clearance between the map light switch and the fuel line; and installing a switch cover (insulator) over the map light switch. This AD requires you to extend the inspections and installation of the switch cover requirement to certain 172N, 172P, R172K, 172RG, F172N, F172P, FR172J, and FR172K series airplanes. This AD also requires replacement of the fuel line, if damaged; and makes the switch cover inspection and replacement repetitive. This AD is the result of FAA receiving several reports of incidents of electrical shorts on Cessna Model 172N airplanes. The actions specified by this AD are intended to detect and correct any chafing between the map light switch and the bordering fuel line, which could result in a fuel leak and an in-flight fire.

DATES: This AD becomes effective on December 27, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 27, 2001.

ADDRESSES: You may get the service information referenced in this AD from the Cessna Aircraft Company, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800, facsimile: (316) 942–9006. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–26–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. Clyde Erwin, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946-4149; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? The FAA issued AD 80–04–08, Amendment 39–3696, February 16, 1980, in order to preclude the possibility of a fuel leak or an in-flight fire due to contact between a map light switch and an adjacent fuel line of certain Cessna Models 172N, R172K, F172N, and FR172K airplanes. AD 80–04–08 requires that you do the following on the affected airplanes:

—Visually inspect the fuel line and map light switch located in the left hand forward door post for chafing or arcing and replace damaged parts as necessary. If not already existing, provide at least a 0.50-inch clearance between the map light switch and the fuel line in accordance with procedures in FAA Advisory Circular 43.13–1A.

—Install a cover (insulator), Cessna Part Number 0511080–1, over the map light switch in accordance with Cessna Single Engine Service Information Letter SE80–3 and Supplement #1 thereto, both dated January 21, 1980.

AD 80–04–08 was the result of instances of chafing between the map light switch and the adjacent fuel line on the affected airplanes. When the chafing caused an electrical short, insulation melted from the map light wire and a hole was burned in the fuel line.

What has happened to necessitate further AD action? Since issuance of AD 80–04–08, FAA has received several reports of incidents of electrical shorts on Cessna Model 172N airplanes. These electrical shorts have resulted because the mounting screws may be elongated or broken out on the affected airplanes or doorpost cover shapes have changed over time. Switch covers may:

—Deteriorate over time;

—Receive damage from service activities,

—Be left off after service activities;

—Not be mounted properly; or

—Not be used in after-market interior installations.

AD 80–04–08 applied to only certain serial numbers and did not cover all of the models that have map light switches in the doorpost.

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 Cessna Model 172N, 172P, R172K, 172RG, F172N, F172P, FR172J, and FR172K series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 8, 2001 (66 FR 1273). The NPRM proposed to supersede AD–80–04–08 with a new AD that would require:

—Repetitively inspecting for the existence and damage to the cover (insulator) for the doorpost map light switch;

—Installing a cover (insulator) if missing or damaged; and

—Replacing the fuel line, if damaged.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. At the request of several commenters, we issued an NPRM to extend the comment period from February 12, 2001, to April 13, 2001. This document was published in the **Federal Register** on February 12, 2001 (66 FR 9779). A summary of the comments received on both of these documents follow, along with our responses.

Comment Issue No. 1: **Agree That This AD Will Correct an Unsafe Condition and Provide Aviation Safety**

What is the commenter's concern? One commenter suggests that the proposed AD is necessary because the doorposts in these aircraft have become conduits for wiring of add-on systems accomplished by the field approval process. The commenter suggests that repetitive inspections would significantly enhance the safety and reliability of airplane operation.

Several commenters agree that FAA is correct in adding aircraft serial numbers to the proposed AD.

What is FAA's response to the concern? Since the comments agree with the NPRM as written, we are not changing the final rule as a result of these comments.

Comment Issue No. 2: **AD 80–04–08 Already Addresses the Unsafe Condition**

What is the commenter's concern? Several commenters suggest that a new AD is not necessary to correct the unsafe condition. They believe AD 80–04–08 adequately addresses this issue. The commenters suggest that if any further action regarding this unsafe condition is taken, FAA should either revise or suspend the current AD. Two commenters suggest that accomplishment of the manufacturer's service bulletin by the owners/operators of the affected airplanes will correct the unsafe condition.

What is FAA's response to the concern? We do not concur that AD 80–04–08 addresses the unsafe condition. Reports indicate electrical shorts on Cessna Model 172N airplanes have occurred after compliance with AD 80–04-08. We have determined that the electrical shorts resulted because the doorpost cover deteriorated over time from heat and sunlight, which caused the attachment bolt holes to become elongated or broken out and resulted in the fuel line and the switch contact to become jammed together. AD 80–04–08 did not cover all of the airplane models that have map light switches in the doorpost. In addition, AD 80–04–08 only required an initial inspection so no requirement exists for detecting damaged doorpost covers that occur after the initial inspection. Since we are adding additional requirements and additional airplanes, we must supersede the current AD because it provides an additional burden over that in AD 80–04–08.

We concur that accomplishment of the referenced service bulletin will correct the unsafe condition. However, we can only require compliance through AD action.

We are not changing the AD based on these comments.

Comment Issue No. 3: **The Condition Results From Poor or Lack of Maintenance**

What is the commenter's concern? Several commenters suggest that the conditions referenced in the proposed AD are a result of incorrect maintenance activities. The commenters state that, if damage to the doorpost cover is a result of maintenance activities, e.g., left off or not properly mounted, an AD would not correct this situation. These conditions result from incorrect aircraft maintenance and airframe and powerplant (A&P) mechanic functions and not AD requirements. If these problems arise, the pilot should report the condition so that corrective maintenance can be performed.

What is FAA's response to the concern? We do not concur. The unsafe condition is a result of the doorpost cover deteriorating over time because of the material it is made of, exposure to the heat, and use. The deterioration of the doorpost cover causes the attachment bolt holes to become elongated or broken out, which results in the fuel line and the switch contact to become jammed together.

We are not changing the AD based on these comments.

Comment Issue No. 4: **Correct the Applicability**

What is the commenter's concern? Several commenters suggest that FAA should clarify whether Model F172N airplanes, serial numbers F17201515 through F17201639, should be included in the AD. We infer that the commenters believe that they should be included.

What is FAA's response to the concern? We concur. We inadvertently left Model F172N airplanes, serial numbers F17201515 through F17201639, out of the proposed AD. These airplane models will be covered in the applicability of this AD.

We are changing the final rule to include these airplane models. None of these airplanes are currently on the U.S. Register so this would not add any additional burden upon the public.

Comment Issue No. 5: **Extend the Comment Period 60 Days**

What is the commenter's concern? Two commenters request the comment period be extended to allow the FAA a greater opportunity to hear from more people in the aviation community.

What is FAA's response to the concern? We concur with this comment. The comment period was extended on the NPRM from February 12, 2001, to April 13, 2001, to give the public an additional 60 days to respond.

Comment Issue No. 6: **Change or Eliminate the Repetitive Inspection Interval**

What is the commenter's concern? Several commenters suggest that the need for repetitive inspections are not necessary because they add no safety value. Specifically, one commenter suggests that the doorpost cover, switch, insulator, and fuel line should be inspected as part of the annual inspection (or when any work is performed in that area) or extended to 5 year intervals because the material the doorpost cover is made of will not deteriorate in a year's time. Another commenter suggests that the affected area is not designed for repeated access and could, in fact, contribute to and exacerbate the problem addressed by the proposed AD or create new ones. All commenters suggest that if required maintenance is done properly, there would be no need for repetitive inspections because the switch retaining screws will remain installed until they are removed; and, if installed correctly, the insulator is designed as such that it will function properly until it is removed.

What is FAA's response to the concern? We do not concur. As discussed previously, electrical shorts result because the doorpost cover deteriorates over time from heat and sunlight. Our analysis shows that 12 months is a reasonable time period for detecting such a problem. A longer period would not provide the assurance that the condition was detected before a serious problem developed. We have determined that, if correctly accessed, new problems will not occur. The 12 month repetitive inspection interval should also coincide with annual inspections.

We are not changing the final rule as a result of these comments.

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 7,750 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 initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	7,750 × $60 = $465,000.

The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes, or how many covers (insulators) or fuel lines will need to be replaced. If replacement parts are required as a result of the inspection, the estimated cost per airplane for the cover (insulator) is $6.00. The cost for a replacement fuel line varies from $26.00 to $129.00, plus labor, depending on the airplane model.

What is the difference between the cost impact of this AD and the cost impact of AD 80–04–08? The cost impact of this AD is more than currently required by AD 80–04–08. The differences between this AD and AD 80–04–08 are the additional airplane models that will be affected and the repetitive inspections each affected airplane owner/operator will incur over the life of the airplane.

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 andProcedures (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 AviationRegulations (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 removing Airworthiness Directive (AD) 80–04–08, Amendment 39–3696, and by adding a new AD to read as follows:

2001–23–03 Cessna Aircraft Company: Amendment 39–12500; Docket No. 2000–CE–26–AD; Supersedes AD 80–04–08, Amendment 39–3696.

(a) *What airplanes are affected by this AD?* This AD affects the following Cessna model airplanes, certificated in any category:

Model	Serial No.
172N	17267585 through 17270049; 17270051 through 17274009; 17261445, 17261578, and 17270050.
172P	17274010 through 17276654.
172RG	172RG0001 through 172RG1191; and 691.
F172N	F17201515 through F17202039.
F172P	F17202040 through F17202254.
FR172J	FR17200531 through 17200590.
FR172K	FR17200591 through 17200675.
R172K	R1722000 through R1723454; and 680.

(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 any chafing between the map light switch and the bordering fuel line, which could result in a fuel leak or an in-flight fire.

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

Actions	Compliance	Procedures
(1) Inspect the doorpost map light switch insulator (part number 0511080–1) to verify it is installed and (if installed) not damaged.	Initially inspect within the next 100 hours time-in-service (TIS) after December 27, 2001 (the effective date of this AD), or within the next 12 calendar months after December 27, 2001 (the effective date of this AD), whichever occurs first. Repetitively inspect thereafter at intervals not to exceed 12 calendar months.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SEB00–1, dated January 17, 2000.

Actions	Compliance	Procedures
(2) If a switch cover (insulator) is not installed or is damaged in any way, install a new insulator (part number 0511080–1).	Before further flight after the inspection where any damage is found or the cover is found missing.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SEB00–1, dated January 17, 2000, and the Cessna Manufacturer's Maintenance Manual.
(3) If the fuel line is damaged in any way, install a new fuel line. The replacement fuel line part number varies with aircraft model.	Before further flight after the inspection where any damage is found.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SEB00–1, dated January 17, 2000, and the Cessna Manufacturer's Maintenance Manual.

Note 1: The compliance times specified in Cessna Service Bulletin SEB00–1, dated January 17, 2000, are different from those required by this AD. The compliance times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

(ii) The Manager, 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.

(2) Alternative methods of compliance approved in accordance with AD 80–04–08, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 2: 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. Clyde Erwin, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4149; 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 Cessna Service Bulletin SEB00–1 and Accomplishment Instructions, dated January 17, 2000. 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 the Cessna Aircraft Company, PO Box 7706, Wichita, Kansas 67277. 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) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 80–04–08, Amendment 39–3696.

(j) *When does this amendment become effective?* This amendment becomes effective on December 27, 2001.

Issued in Kansas City, Missouri, on November 5, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28332 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–28–AD; Amendment 39–12504; AD 2001–01–07]

RIN 2120–AA64

Airworthiness Directives; Reims Aviation S.A. Model F406 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Reims Aviation S.A. (Reims) Model F406 airplanes. This AD requires you to repetitively inspect the canted rib upper cap in the center wing carry-through area for cracks, and, if cracks are found, immediately repair the cracks or modify this area depending on the extent of any cracks found. This AD also requires you to modify the canted rib upper cap at a certain time period as terminating action for the repetitive inspections. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct cracks in the canted rib upper cap in the center wing carry-through area, which could result in structural failure of the wing with possible loss of control of the airplane.

DATES: This AD becomes effective on January 7, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 7, 2002.

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–28–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: Brian A. Hancock, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143, facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Reims F406 airplanes. The DGAC reports that a crack was found in the canted rib upper cap in the center wing carry-through area during a routine inspection of one of the affected airplanes.

What is the potential impact if FAA took no action? This condition, if not detected and corrected in a timely manner, could result in structural failure of the wing with possible loss of control of 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 Reims Model F406 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 21, 2001 (66 FR 43811). The NPRM proposed to require you to repetitively inspect the canted rib upper cap in the center wing carry-through area for cracks, and, if cracks are found, immediately repair the cracks or modify this area depending on the extent of any cracks found. The NPRM also proposed to require you to modify the canted rib upper cap at a certain time period as terminating action for the repetitive inspections.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

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

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 4 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 inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 inspections × 3 workhours × $60 per hour = $720	Not applicable	$720	$2,880

We estimate the following costs to do any necessary modifications that will be required because of the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
60 workhours × $60 per hour = $3,600	$3,375	$6,975	$27,900

Regulatory Flexibility Determination and Analysis

What are the requirements of the Regulatory Flexibility Act? The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What is FAA's determination? The FAA has determined that this AD will not have a significant economic impact on a substantial number of small entities. Reims Aviation Model F406 aircraft are produced in France and only 4 airplanes are owned by U.S. entities. Of these 4 airplanes, Cessna Finance Corporation owns 2. Cessna Finance Corporation is part of a larger corporation with more than 1,500 employees and is not considered a small entity. We do not believe that the two remaining entities owning the F406 aircraft constitute a substantial number. Therefore, we have determined that this AD will not have a significant economic impact on a substantial number of small entities.

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:

2001–01–07 Reims Aviation S.A.: Amendment 39–12504; Docket No. 99–CE–28–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model F406 airplanes, serial numbers F406–0001 through F406–0083, 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 cracks in the canted rib upper cap in the center wing carry-through area, which could result in structural failure of the wing with possible loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the canted rib upper cap in the center wing carry-through area for cracks.	Within the next 75 hours time-in-service (TIS) after January 7, 2002 (the effective date of this AD), and thereafter at 200-hour TIS intervals, but not to exceed three 200-hour interval inspections (675 hours TIS: 75-hour TIS initial inspection plus three additional 200-hour TIS repetitive inspections).	Following the ACCOMPLISHMENT INSTRUCTIONS section of REIMS/CESSNA Service Bulletin CAB98–16, dated November 2, 1998.
(2) If, during any inspection required by this AD, cracks are found, accomplish the following:.	Before further flight after the inspection where the crack is found.	Following the ACCOMPLISHMENT INSTRUCTIONS section of REIMS-CESSNA Service Bulletin CAB98–16, dated November 2, 1998.
(i) If the cracks are less than 2 inches in length, modify the canted rib upper cap in the center wing carry-through area.		
(ii) If the cracks are 2 inches in length or more, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme.		
(3) Modify the canted rib upper cap in the center wing carry-through area.	Within 600 hours TIS after the initial inspection required by paragraph (d)(1) of this AD, unless already accomplished through paragraphs (d)(2)(i) or (d)(2)(ii) of this AD.	Following the ACCOMPLISHMENT INSTRUCTIONS section of REIMS-CESSNA Service Bulletin CAB98–16, dated November 2, 1998.
(4) Accomplishing the repair or modification required in paragraphs (d)(2)(i), (d)(2)(ii), or (d)(3) of this AD is considered terminating action for the inspection requirements of this AD.	Not applicable	Not applicable.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Brian A. Hancock, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143, facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with REIMS/CESSNA Service Bulletin CAB98–16, dated November 2, 1998. 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 Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277. 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 January 7, 2002.

Note 2: The subject of this AD is addressed in French AD 1999–087(A), dated February 24, 1999.

Issued in Kansas City, Missouri, on November 6, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–28571 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 99N–0035]

Medical Devices; Reclassification of Three Anesthesiology Preamendments Class III Devices into Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying three anesthesiology preamendments devices from class III (premarket

approval) into class II (special controls). FDA is also identifying the special controls that the agency believes will reasonably ensure the safety and effectiveness of the devices. This reclassification is being undertaken on the agency's own initiative based on new information under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the FDA Modernization Act of 1997.

DATES: This rule is effective December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Christy Foreman, Division of Cardiovascular and Respiratory Devices (HFZ–450), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. FDA invited interested persons to comment on the proposed rule by June 14, 1999. FDA had not made the guidance documents that were proposed as special controls for the three anesthesiology devices available for comment through FDA's good guidance practices (GGPs). In the **Federal Register** of November 22, 2000, FDA announced the availability of two guidance documents for these devices (65 FR 70357) and reopened the comment period on the reclassification of the three devices (65 FR 70325) until February 20, 2001. FDA received no comments on the proposed reclassification of these three devices.

In this final rule, FDA is reclassifying the three devices into class II with a guidance document entitled ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA'' as the special control. The guidance document combines and supersedes ''Guidance for Electrical Safety, Electromagnetic Compatibility and Mechanical Testing for Indwelling Blood Gas Analyzer Premarket Notification Submissions'' and ''Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions,'' which in turn incorporated the special controls listed separately in the proposed rule to reclassify these devices.

The devices that are being reclassified in this final rule are:

- Indwelling blood carbon dioxide partial pressure (Pco_2) analyzer (21 CFR 868.1150),
- Indwelling blood hydrogen ion concentration (pH) analyzer (21 CFR 868.1170), and
- Indwelling blood oxygen partial pressure (Po_2) analyzer (21 CFR 868.1200).

II. FDA's Conclusion

FDA has concluded, based on a review of the available information, that the guidance document ''Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA,'' in conjunction with general controls, provides reasonable assurance of the safety and effectiveness of these three devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the final guidance document.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers because most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

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

2. Section 868.1150 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1150 Indwelling blood carbon dioxide partial pressure (Pco_2) analyzer.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA.''

3. Section 868.1170 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1170 Indwelling blood hydrogen ion concentration (pH) analyzer.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA.''

4. Section 868.1200 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 868.1200 Indwelling blood oxygen partial pressure (Po_2) analyzer.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA.''

Dated: November 4, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 01–28561 Filed 11–14–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 01N–0238]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final rule exempting from the premarket notification requirements the fluoroscopic compression device, a manual compression device that allows a radiologist to press on the abdomen during a fluoroscopic procedure without exposing his or her hand to the x-ray beam. The device is classified as an accessory to the image-intensified fluoroscopic x-ray system. FDA received a petition requesting an exemption for the F-Spoon device, a type of fluoroscopic manual compression device. FDA is expanding the exemption for this type of generic device to include other fluoroscopic compression devices. FDA is publishing this order in accordance with the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

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

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

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

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

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled ''Procedures for Class II

Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petition

On March 25, 2001, FDA received a petition requesting an exemption from premarket notification for the F-Spoon, a manual compression device that allows a radiologist to press on the abdomen during a fluoroscopic procedure without exposing his or her hand to the x-ray beam. In the **Federal Register** of June 18, 2001 (66 FR 32828), FDA published a notice announcing that this petition had been received and provided an opportunity for interested persons to submit comments on the petition by July 18, 2001. FDA also announced that it intended to expand the exemption to include all fluoroscopic compression devices of this generic type, subject to limitations in 21 CFR 892.9. FDA received no comments. FDA has reviewed the petition and has determined that this device meets the criteria for exemption described previously and is, therefore, issuing this order exempting the device from the requirements of premarket notification. The fluoroscopic compression device is an accessory to the image-intensified fluoroscopic x-ray system classified under 21 CFR 892.1650.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

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

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

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

2. Section 892.1650 is amended by revising paragraph (b) to read as follows:

§ 892.1650 Image-intensified fluoroscopic x-ray system.

* * * * *

(b) *Classification*. Class II. When intended as an accessory to the device described in paragraph (a) of this section, the fluoroscopic compression device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: October 25, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 01–28563 Filed 11–14–01; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2001. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: December 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2001, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2001, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2001.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.10 percent for the first 20 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for November 2001) of 0.40 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.50 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for November 2001) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2001, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 98, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
98	12–1–01	1–1–02	4.50	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 98, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * * * *

Rate set	For plans with a valuation date		Immediate annuities rate (percent)	Deferred annuity (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
98	12–1–01	1–1–02	4.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* *	*	*	*	*	*	
December 2001	.0610	1–20	.0625	>20	N/A	N/A

Issued in Washington, DC, on this 7th day of November 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–28623 Filed 11–14–01; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V and Part 539

Additional Designations and Removal of Persons Listed in Appendix A to 31 CFR Chapter V and Appendix I to 31 CFR Part 539, Weapons of Mass Destruction Trade Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V to add or remove, as appropriate, the names of individuals and entities designated as specially designated narcotics traffickers, a foreign terrorist organization, or blocked persons or specially designated nationals designated pursuant to Executive Orders 13088, 13192, or 13219; amending the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A and the publication of the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545; and amending appendix I to 31 CFR part 539 to remove two entities previously designated as designated foreign persons.

EFFECTIVE DATE: November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

A. Amendments to Appendix A and the Notes to the Appendices to 31 CFR Chapter V

Appendix A to 31 CFR chapter V lists the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers with respect to whom transactions are subject to the various economic sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (''OFAC''). OFAC, acting under authority delegated by the Secretary of the Treasury, is amending appendix A to add or remove, as appropriate, the names of individuals and entities designated as specially designated narcotics traffickers, a foreign terrorist organization, or blocked persons or specially designated nationals designated pursuant to Executive Orders 13088, 13192, or 13219. OFAC is also amending notes 4 and 6 to the notes to the appendices to 31 CFR chapter V to reflect the revisions to appendix A and the publication of the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545.

Specially Designated Narcotics Traffickers. On June 1, 2001, President Bush identified twelve individuals as significant foreign narcotics traffickers pursuant to section 804(b) of the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1903(b). In accordance with § 598.314 of the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, those twelve individuals and their known aliases are added to appendix A as specially designated narcotics traffickers identified by the term ''[SDNTK].''

As of June 1, 2001, all property and interests in property, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, that are owned or controlled by any of those twelve persons are with limited exceptions blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. All transactions or dealings by U.S. persons or within the United States in property or interests in property of any of those twelve persons are prohibited unless licensed by OFAC or otherwise authorized.

Foreign Terrorist Organization. On May 16, 2001, the Secretary of State in a notice published in the **Federal Register** (66 FR 27442) designated the ''Real IRA'' a foreign terrorist organization pursuant to section 302 of the Antiterrorism and Effective Death Penalty Act of 1996, 8 U.S.C. 1189 (''AEDPA''). In furtherance of section 303 of AEDPA, 18 U.S.C. 2339B, implemented in part by the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (the ''FTO Regulations''), the ''Real IRA'' and its known aliases are added to appendix A as a foreign terrorist organization identified by the term ''[FTO].''

Section 303 of AEDPA, as implemented in part by § 597.201 of the FTO Regulations, requires financial institutions in possession or control of funds in which a foreign terrorist organization or its agent has an interest to block such funds except as authorized pursuant to the FTO Regulations, and to file reports in accordance with the FTO Regulations. Financial institutions that violate section 303(a)(2) of AEDPA, 18 U.S.C. 2339B(a)(2), and the FTO Regulations are subject to civil penalties administered by OFAC.

Specially Designated Nationals and Blocked Persons; Executive Orders 13088 and 13192. On January 17, 2001, President Clinton issued Executive Order 13192 (66 FR 7379, Jan. 23, 2001), lifting with respect to future transactions remaining sanctions imposed on the Governments of the Federal Republic of Yugoslavia (Serbia & Montentegro) (''FRY(S&M)'') and the Republic of Serbia pursuant to Executive Order 13088 (63 FR 32109, June 12, 1998), as amended by Executive Order 13121 (64 FR 24021, May 5, 1999). (Sanctions imposed on the Government of the Republic of Montenegro had previously been suspended by OFAC general licenses.) Consistent with the lifting of the sanctions on a prospective basis, all entries for individuals or entities identified by the term ''[FRYK]'' are removed from appendix A. Notes 4 and 6 to the appendices to 31 CFR chapter V are amended to remove the identifying term for ''[FRYK]'' entries. Because Executive Order 13192 requires all property blocked before January 19, 2001, to remain blocked due to the need to address possible claims and encumbrances involving the property, a separate, comprehensive list of ''[FRYK]'' entries is available to the public upon request from OFAC's Compliance Programs Division at (202) 622–2490. Similar lists are available with respect to persons whose property and interests in property continue to be blocked pursuant to part 585 of 31 CFR chapter V. *See* 61 FR 1282 (Jan. 19, 1996); 61 FR 24696 (May 16, 1996).

Executive Order 13192 also imposes sanctions on designated family members, supporters, and members of the regime of former FRY(S&M) President Slobodan Milosevic, as well as certain persons under open indictment by the International Criminal Tribunal for the former Yugoslavia and other specified parties. In an annex to the order, President Clinton identified eighty-one individuals with respect to whom transactions currently are subject to those sanctions. Those individuals are added to appendix A as blocked persons and are identified by the term ''[FRYM].'' Notes 4 and 6 to the appendices to 31 CFR chapter V are amended to add the identifying term ''[FRYM].''

As of January 19, 2001, all property and interests in property, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, that are owned or controlled by any of those eighty-one persons are with limited exceptions blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. All transactions or dealings by U.S. persons or within the United States in property or interests in property of any of those eighty-one persons are prohibited unless licensed by OFAC or otherwise authorized.

Blocked Persons; Executive Order 13219. On June 26, 2001, President Bush issued Executive Order 13219 (66 FR 34777, June 29, 2001), imposing economic sanctions on persons who threaten international stabilization efforts in the Western Balkans region. In an annex to the order, President Bush identified twenty-three individuals and five organizations with respect to whom transactions currently are subject to those sanctions. Those individuals and organizations are added to appendix A as blocked persons and are identified by the term ''[Balkans].'' Note 6 to the appendices to 31 CFR chapter V is amended to add the identifying term ''[Balkans]'' and to provide the citation to Executive Order 13219.

As of June 27, 2001, all property and interests in property, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, that are owned or controlled by any of those twenty-three individuals or five organizations are with limited exceptions blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. This blocking includes, but is not limited to, the prohibition of the making or receiving by a United States person of any contribution or provision of funds, goods, or services to or for the benefit of any of those individuals or organizations.

Taliban (Afghanistan) Regulations. On January 11, 2001, OFAC published in the **Federal Register** (66 FR 2729) the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545. Note 6 to the notes to the appendices to 31 CFR chapter V is amended to replace the reference to Executive Order 13129 that follows the identifying term ''[TALIBAN]'' with a reference to those published regulations.

B. Amendments to Appendix I to 31 CFR Part 539

Appendix I to 31 CFR part 539, the Weapons of Mass Destruction Trade Control Regulations, lists the names of foreign persons with respect to whose goods, technology, or services are subject to import prohibitions, based upon a determination by the Secretary of State that the persons have contributed to the proliferation of weapons of mass destruction. On December 19, 2000, the Department of State issued Public Notice 3514 (65 FR 79441), announcing its determination on November 17, 2000, that it is in the foreign policy and national security interests of the United States to remove the restrictions imposed on July 30, 1998, with respect to INOR Scientific Center (''INOR'') and Polyus Scientific Production Association (''Polyus''). Those two entities are removed from appendix I. The authority citation to part 539 is amended to reflect the publication of Executive Order 13094 in the 1998 compilation of Presidential documents.

As of November 17, 2000, the general prohibition on the importation into the United States of goods, technology, or services produced or provided by a ''designated foreign person'' no longer applies to either INOR or Polyus or to any entity they own or control, and U.S. persons are no longer prohibited from engaging in import-related transactions involving goods, technology, or services produced or provided by any of those entities. *See* §§ 539.201, 539.202, and 539.301 of the Weapons of Mass Destruction Trade Control Regulations, 31 CFR part 539.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 8 U.S.C. 1189; 18 U.S.C. 2339B; 21 U.S.C. 1901–1908; 22 U.S.C. 2751–2799aa-2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13121,

64 FR 24021, 3 CFR, 1999 Comp., p. 176; E.O. 13129, 64 FR 36759, 3 CFR, 1999 Comp., p. 200; E.O. 13192, 66 FR 7379 January 23, 2001; and E.O. 13219, 66 FR 34777, June 29, 2001, the appendices to 31 CFR chapter V and appendix I to 31 CFR part 539 are amended as set forth below:

Appendices to 31 CFR Chapter V

1. The notes to the appendices to 31 CFR chapter V are amended by revising notes 4 and 6 to read as follows:

Notes: * * *

* * * * *

4. Abbreviations: ''a.k.a.'' means ''also known as''; ''f.k.a.'' means ''formerly known as''; ''n.k.a.'' means ''now known as''; ''DOB'' means ''date of birth''; ''DWT'' means ''deadweight''; ''FRYM'' means ''Federal Republic of Yugoslavia (Serbia and Montenegro)—Milosevic''; ''GRT'' means ''Gross Registered Tonnage''; ''POB'' means ''place of birth''.

* * * * *

6. References to regulatory parts in chapter V or other authorities:

[BALKANS]: Executive Order 13219, 66 FR 34778, June 29, 2001;
[CUBA]: Cuban Assets Control Regulations, part 515;
[FRYM]: Executive Order 13192, 66 FR 7379, Jan. 23, 2001;
[FTO]: Foreign Terrorist Organizations Sanctions Regulations, part 597;
[IRAQ]: Iraqi Sanctions Regulations, part 575;
[LIBYA]: Libyan Sanctions Regulations, part 550;
[NKOREA]: Foreign Assets Control Regulations, part 500:
[SDGT]: Executive Order 13224, 66 FR 49079, September 25, 2001;
[SDNT]: Narcotics Trafficking Sanctions Regulations, part 536;
[SDNTK]: Foreign Narcotics Kingpin Sanctions Regulations, part 598;
[SDT]: Terrorism Sanctions Regulations, part 596;
[SUDAN]: Sudanese Sanctions Regulations, part 538;
[TALIBAN]: Taliban (Afghanistan) Sanctions Regulations, part 545;
[UNITA]: UNITA (Angola) Sanctions Regulations, part 590.

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Appendix A—[Amended]

2. Appendix A to 31 CFR chapter V is amended by adding the following names and aliases of specially designated narcotics traffickers inserted in alphabetical order:

AFGHAN, Shear (a.k.a. AFGHAN, Sher; a.k.a. AFGHAN, Shir; a.k.a. AZIZ, Mohammad; a.k.a. KHAN, Abdullah) DOB 1962; alt. DOB 1959; POB Pakistan (individual) [SDNTK]

AFGHAN, Sher (a.k.a. AFGHAN, Shear; a.k.a. AFGHAN, Shir; a.k.a. AZIZ, Mohammad; a.k.a. KHAN, Abdullah) DOB 1962; alt. DOB 1959; POB Pakistan (individual) [SDNTK]

AFGHAN, Shir (a.k.a. AFGHAN, Shear; a.k.a. AFGHAN, Sher; a.k.a. AZIZ, Mohammad; a.k.a. KHAN, Abdullah) DOB 1962; alt. DOB 1959; POB Pakistan (individual) [SDNTK]

ALCIDES MAGANA, Ramon (a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

ALCIDES MAGANE, Ramon (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

ALCIDES MAYENA, Ramon (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

ALCIDEZ MAGANA, Ramon (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

ALVAREZ TOSTADO, Jose (a.k.a. CASTELLANOS ALVAREZ TOSTADO, Juan Jose; a.k.a. GONZALEZ, Jose); DOB 27 Aug 1955; POB Mexico (individual) [SDNTK]

AREGON, Max (a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

AZIZ, Mohammad (a.k.a. AFGHAN, Shear; a.k.a. AFGHAN, Sher; a.k.a. AFGHAN, Shir; a.k.a. KHAN, Abdullah) DOB 1962; alt. DOB 1959; POB Pakistan (individual) [SDNTK]

BECERRA, Martin (a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

BECERRA MIRELES, Martin (a.k.a. BECERRA, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

CARDENAS CASTILLO, Osiel (a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GILLEN, Osiel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. ; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GUILLEN, Ociel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GUILLEN, Oscar (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GUILLEN, Osiel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a.

CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GUILLEN, Oziel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS GULLEN, Osiel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARDENAS TUILLEN, Osiel (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. ; a.k.a. SALINA AGUILAR, Jorge; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

CARO QUINTERO, Miguel Angel; DOB 9 Mar 1963; POB Mexico (individual) [SDNTK]

CARO RODRIGUEZ, Gilberto (a.k.a. AREGON, Max; a.k.a. ; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

CASTELLANOS ALVAREZ TOSTADO, Juan Jose (a.k.a. ALVAREZ TOSTADO, Jose; a.k.a. GONZALEZ, Jose); DOB 27 Aug 1955; POB Mexico (individual) [SDNTK]

CHANG, Ping Yun (a.k.a KHUN, Saeng); DOB 7 Jan 1940; POB Burma (individual) [SDNTK]

GIL, Josef (a.k.a. GILBERT, Joseph; a.k.a. GILBOA, Joseph; a.k.a. GILBOA, Joseph Papzian; a.k.a. GILBOA, Yosef); DOB 8 Apr 1943; POB Israel (individual) [SDNTK]

GILBERT, Joseph (a.k.a. GIL, Josef; a.k.a. GILBOA, Joseph; a.k.a. GILBOA, Joseph Papzian; a.k.a. GILBOA, Yosef); DOB 8 Apr 1943; POB Israel (individual) [SDNTK]

GILBOA, Joseph (a.k.a. GIL, Josef; a.k.a. GILBERT, Joseph; a.k.a. GILBOA, Joseph Papzian; a.k.a. GILBOA, Yosef); DOB 8 Apr 1943; POB Israel (individual) [SDNTK]

GILBOA, Joseph Papzian (a.k.a. GIL, Josef; a.k.a. GILBERT, Joseph; a.k.a. GILBOA, Joseph; a.k.a. GILBOA, Yosef); DOB 8 Apr 1943; POB Israel (individual) [SDNTK]

GILBOA, Yosef (a.k.a. GIL, Josef; a.k.a. GILBERT, Joseph; a.k.a. GILBOA, Joseph; a.k.a. GILBOA, Joseph Papzian); DOB 8 Apr 1943; POB Israel (individual) [SDNTK]

GONZALEZ, Jose (a.k.a. ALVAREZ TOSTADO, Jose; a.k.a. CASTELLANOS ALVAREZ TOSTADO, Juan Jose); DOB 27 Aug 1955; POB Mexico (individual) [SDNTK]

GONZALEZ QUIONES, Jorge (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

GUIERREZ LOERA, Jose Luis (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUMAN LOERAL, Joaquin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN, Achivaldo (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN, Archibaldo (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN, Aureliano (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN, Chapo (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN FERNANDEZ, Joaquin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN, Joaquin Chapo (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN LOEIA, Joaguin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN LOERA, Joaquin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a.GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN LOESA, Joaquin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN LOREA, Chapo (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

GUZMAN PADILLA, Joaquin (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

HAMEIAH, Jamel (a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMEIAH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMEIAH, Mamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMEIEH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMEIH, Jamill (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMER, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIAEH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIAH, Jamiel (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH,

Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIE, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIE, Jamil Abdulkarim (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIE, Jamile (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEAH, Jamiel (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEAH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEH, Jamal (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEH, Jamiel (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEH, Mamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEL, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEYE, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIEYYEH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH,

Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIL, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIYA, Abdul Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIYE, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIYYAH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMIYYEH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HAMYH, Jamil (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

HIGUERA GUERRERO, Ismael; DOB 17 Mar 1961; POB Mexico (individual) [SDNTK]

KARIM, Jamil Abdul (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

KHAN, Abdullah (a.k.a. AFGHAN, Shear; a.k.a. AFGHAN, Sher; a.k.a. AFGHAN, Shir; a.k.a. AZIZ, Mohammad) DOB 1962; alt. DOB 1959; POB Pakistan (individual) [SDNTK]

KHAN, Ali (a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHAN, Nafir Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHAN, Nasir Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHAN, Nazir Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHAN, Nisan Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHAN, Nisar Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. NASIR, Ali Khan; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

KHUN, Saeng (a.k.a CHANG, Ping Yun); DOB 7 Jan 1940; POB Burma (individual) [SDNTK]

MACHERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MAGANA ALCIDES, Ramon (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

MAGANA, Jorge (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

MAGNA ALCIDEDES, Ramon (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a.

RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

MAHERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MAHLERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MAHLERBE, Polo (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALARBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALERHBE DE LEON, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALERVA, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALHARBE DE LEON, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALHERBE DE LEON, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALHERBE DELEON, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MALMERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

MATA, Alcides (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

MELARBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a.MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

NALHERBE, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

NASIR, Ali Khan (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Khan Ali); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

NASIR, Khan Ali (a.k.a. KHAN, Ali; a.k.a. KHAN, Nafir Ali; a.k.a. KHAN, Nasir Ali; a.k.a. KHAN, Nazir Ali; a.k.a. KHAN, Nisan Ali; a.k.a. KHAN, Nisar Ali; a.k.a. NASIR, Ali Khan); DOB 1 Oct 1955; POB Pakistan (individual) [SDNTK]

NAZIM, Abou (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil;

a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NEZAM, Abu; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

NEZAM, Abu (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NIZAM, Abou); DOB Sep 1938 (individual) [SDNTK]

NIZAM, Abou (a.k.a. HAMEIAH, Jamel; a.k.a. HAMEIAH, Jamil; a.k.a. HAMEIAH, Mamil; a.k.a. HAMEIEH, Jamil; a.k.a. HAMEIH, Jamill; a.k.a. HAMER, Jamil; a.k.a. HAMIAEH, Jamil; a.k.a. HAMIAH, Jamiel; a.k.a. HAMIE, Jamil Abdulkarim; a.k.a. HAMIE, Jamil; a.k.a. HAMIE, Jamile; a.k.a. HAMIEAH, Jamiel; a.k.a. HAMIEAH, Jamil; a.k.a. HAMIEH, Jamal; a.k.a. HAMIEH, Jamiel; a.k.a. HAMIEH, Jamil; a.k.a. HAMIEH, Mamil; a.k.a. HAMIEL, Jamil; a.k.a. HAMIEYE, Jamil; a.k.a. HAMIEYYEH, Jamil; a.k.a. HAMIL, Jamil; a.k.a. HAMIYA, Abdul Jamil; a.k.a. HAMIYE, Jamil; a.k.a. HAMIYYAH, Jamil; a.k.a. HAMIYYEH, Jamil; a.k.a. HAMYH, Jamil; a.k.a. KARIM, Jamil Abdul; a.k.a. NAZIM, Abou; a.k.a. NEZAM, Abu); DOB Sep 1938 (individual) [SDNTK]

ORTEGA, Miguel (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

OSUNA, Gilberto (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. RAMIREZ, Joise Luis; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

QALHARBE DE LEON, Oscar (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. VARGAS, Jorge); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

RAMIREZ, Joise Luis (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMOX PEREZ, Jorge) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

RAMON MAGANA, Alcedis (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcides; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

RAMON MAGANA, Alcides (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. ROMERO, Antonio); DOB 4 Sep 1957 (individual) [SDNTK]

RAMOX PEREZ, Jorge (a.k.a. AREGON, Max; a.k.a. CARO RODRIGUEZ, Gilberto; a.k.a. GUIERREZ LOERA, Jose Luis; a.k.a. GUMAN LOERAL, Joaquin; a.k.a. GUZMAN, Achivaldo; a.k.a. GUZMAN, Archibaldo; a.k.a. GUZMAN, Aureliano; a.k.a. GUZMAN, Chapo; a.k.a. GUZMAN FERNANDEZ, Joaquin; a.k.a. GUZMAN, Joaquin Chapo; a.k.a. GUZMAN LOEIA, Joaguin; a.k.a. GUZMAN LOERA, Joaquin; a.k.a. GUZMAN LOESA, Joaquin; a.k.a. GUZMAN LOREA, Chapo; a.k.a. GUZMAN PADILLA, Joaquin; a.k.a. ORTEGA, Miguel; a.k.a. OSUNA, Gilberto; a.k.a. RAMIREZ, Joise Luis) DOB 25 Dec 1954; POB Mexico (individual) [SDNTK]

ROMERO, Antonio (a.k.a. ALCIDES MAGANA, Ramon; a.k.a. ALCIDES MAGANE, Ramon; a.k.a. ALCIDES MAYENA, Ramon; a.k.a. ALCIDEZ MAGANA, Ramon; a.k.a. GONZALEZ QUIONES, Jorge; a.k.a. MAGANA ALCIDES, Ramon; a.k.a. MAGANA, Jorge; a.k.a. MAGNA ALCIDEDES, Ramon; a.k.a. MATA, Alcides; a.k.a. RAMON MAGANA, Alcedis; a.k.a. RAMON MAGANA, Alcides); DOB 4 Sep 1957 (individual) [SDNTK]

SALINA AGUILAR, Jorge (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINAS AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

SALINAS AGUILAR, Jorge (a.k.a. CARDENAS CASTILLO, Osiel; a.k.a. CARDENAS GILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Ociel; a.k.a. CARDENAS GUILLEN, Oscar; a.k.a. CARDENAS GUILLEN, Osiel; a.k.a. CARDENAS GUILLEN, Oziel; a.k.a. CARDENAS GULLEN, Osiel; a.k.a. CARDENAS TUILLEN, Osiel; a.k.a. SALINA AGUILAR, Jorge) DOB 18 May 1967; POB Mexico (individual) [SDNTK]

VARGAS, Jorge (a.k.a. BECERRA, Martin; a.k.a. BECERRA MIRELES, Martin; a.k.a. MACHERBE, Oscar; a.k.a. MAHERBE, Oscar; a.k.a. MAHLERBE, Oscar; a.k.a. MAHLERBE, Polo; a.k.a. MALARBE, Oscar; a.k.a. MALERBE, Oscar; a.k.a. MALERHBE DE LEON, Oscar; a.k.a. MALERVA, Oscar; a.k.a. MALHARBE DE LEON, Oscar; a.k.a. MALHERBE DE LEON, Oscar; a.k.a. MALHERBE DELEON, Oscar; a.k.a. MALMERBE, Oscar; a.k.a. MELARBE, Oscar; a.k.a. NALHERBE, Oscar; a.k.a. QALHARBE DE LEON, Oscar); DOB 10 Jan 1964; POB Mexico (individual) [SDNTK]

3. Appendix A to 31 CFR chapter V is further amended by adding the following names and aliases of a foreign terrorist organization inserted in alphabetical order:

32 COUNTY SOVEREIGNTY COMMITTEE (a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO]

32 COUNTY SOVEREIGNTY MOVEMENT (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO]

IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO]

REAL IRA (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL

OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO]
REAL IRISH REPUBLICAN ARMY (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO]
REAL OGLAIGH NA HEIREANN (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. RIRA) [FTO]
RIRA (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN) [FTO]

4. Appendix A to 31 CFR chapter V is further amended by removing all entries with the designation ''[FRYK]''.

5. Appendix A to 31 CFR chapter V is further amended by adding the following names of individuals identified in Executive Order 13192 inserted in alphabetical order:

ACIMOVIC, Slobodan, Assistant Director of Beogradska Banka (DOB 19 Sep 51) (individual) [FRYM]
ALBUNOVIC, Veljko, General Manager of Pozarevacka Banka AD (individual) [FRYM]
BALTOVSKI, Mira, General Manager for International Operations of Beogradska Banka (individual) [FRYM]
BANOVIC, Nenad, (ICTY indictee, Bosnian Serb) (individual) [FRYM] BANOVIC, Predrag, (ICTY indictee, Bosnian Serb) (individual) [FRYM]
BOROVNICA, Goran, (ICTY indictee, Bosnian Serb) (individual) [FRYM]
BOZOVIC, Radoman, ex-Managing Director of Genex (DOB 10 Jan 53) (individual) [FRYM]
BUDISIN, Radmila, General Manager, Legal, BB Browncourt Trading (DOB 3 Mar 44; POB Srobobran) (individual) [FRYM]
BULATOVIC, Momir, Ex-Prime Minister, Federal Republic of Yugoslavia (DOB 21 Sep 56) (individual) [FRYM]
CESIC, Ranko, (ICTY indictee, Bosnian Serb) (DOB 5 Sep 64; POB Drvar) (individual) [FRYM]
CVETANOVIC, Ninoslav, General Director, RUDARSKO; Executive of Bor Mining (DOB 1940) (individual) [FRYM]
DJAKOVIC, Milan, Director of NIS JUGOPETROL (DOB 5 Oct 37) (individual) [FRYM]
FUSTAR, Dragan, (ICTY indictee, Bosnian Serb) (DOB 28 Mar 56) (individual) [FRYM]
GAJIC-MILOSEVIC, Milica, daughter-in-law of Slobodan Milosevic (DOB 1970) (individual) [FRYM]
GALOVIC, Predrag, General Manager of Jugobanka AD; ex-Assistant Minister for the Economy, Federal Republic of Yugoslavia (individual) [FRYM]
GRUBAN, Momcilo, (ICTY indictee, Bosnian Serb) (DOB 19 Jun 61) (individual) [FRYM]
JANJIC, Stanisa, Director of JUMKO Holding; member of SPS Main Committee (DOB 10 Mar 48) (individual) [FRYM]
JANKOVIC, Gojko, (ICTY indictee, Bosnian Serb) (DOB 31 Oct 54) (individual) [FRYM]
JANKOVIC, Tomislav, President of Galenika Board (individual) [FRYM]
JOCIC, Vladislav, General Manager of Sabacka Banka AD (individual) [FRYM]
JOSIC, Milan, General Manager of Loznicka Banka AD (individual) [FRYM]
KARADZIC, Radovan, (ICTY indictee, Bosnian Serb) (DOB 19 Jun 45; POB Petnica, Montenegro) (individual) [FRYM]
KARIC, Palmira Bogoljub, Businessman; ex-Minister without Portfolio, Republic of Serbia (DOB 17 Jan 54; POB Pec, Kosovo) (individual) [FRYM]
KERTES, Mihail, Ex-Director of Customs, Federal Republic of Yugoslavia (DOB 29 Aug 47; POB Palanka, Vojvodina, Serbia) (individual) [FRYM]
KNEZEVIC, Dusan, (ICTY indictee, Bosnian Serb) (DOB 23 Jun 55; POB Orlovci) (individual) [FRYM]
LUKIC, Milan, (ICTY indictee, Bosnian Serb) (DOB 6 Sep 67; POB Foca, Bosnia-Herzegovina) (individual) [FRYM]
LUKIC, Sredoje, (ICTY indictee, Bosnian Serb) (DOB 5 Apr 61; POB Visegrad, Bosnia-Herzegovina) (individual) [FRYM]
MALJKOVIC, Nebojsa, Member of JUL Directorate; ex-Deputy Prime Minister, Federal Republic of Yugoslavia; ex-Minister for Cooperation, Federal Republic of Yugoslavia; President of Dunav Insurance (DOB 4 Sep 54) (individual) [FRYM]
MARINIC, Zoran, (ICTY indictee, Bosnian Serb) (DOB 6 Jun 63; POB Busovaca) (individual) [FRYM]
MARJANOVIC, Mirko, Ex-Prime Minister of Serbia (DOB 27 Jul 37; POB Knin, Croatia) (individual) [FRYM]
MARKOVIC, Mirjana, wife of Slobodan Milosevic (DOB 10 Jul 42) (individual) [FRYM]
MARKOVIC, Momir, Private Banker; ex-Deputy Governor of National Bank of Yugoslavia; Editor of Velika Srbija (individual) [FRYM]
MARKOVIC, Radomir, Chief of Intelligence; head of RDB (DOB 1946 or 1947) (individual) [FRYM]
MARKOVIC, Vladimir, Member of JUL; General Director of Merima Chemical (individual) [FRYM]
MARKOVIC, Zoran, Executive Director of Beogradska Banka (individual) [FRYM]
MARTIC, Milan, (ICTY indictee, Bosnian Serb) (DOB 18 Nov 54; POB Zagrovic) (individual) [FRYM]
MEJAKIC, Zeljko, (ICTY indictee, Bosnian Serb) (DOB 2 Aug 64; POB Petrov Gaj) (individual) [FRYM]
MILACIC, Borislav, Minister of Finance, Republic of Serbia (DOB 13 May 53) (individual) [FRYM]
MILANOVIC, Dafina, ex-President of Dafiment Bank (individual) [FRYM]
MILOSEVIC, Borislav, brother of Slobodan Milosevic (DOB 1936) (individual) [FRYM]
MILOSEVIC, Marija, daughter of Slobodan Milosevic (DOB 1965) (individual) [FRYM]
MILOSEVIC, Marko, son of Slobodan Milosevic (DOB 2 Jul 74) (individual) [FRYM]
MILOSEVIC, Milanka, sister-in-law of Slobodan Milosevic (individual) [FRYM]
MILOSEVIC, Slobodan, Ex-President of Federal Republic of Yugoslavia; (ICTY indictee) (DOB 20 Aug 41; POB Pozarevac, Serbia) (individual) [FRYM]
MILUTINOVIC, Milan, President, Republic of Serbia; (ICTY indictee) (DOB 19 Dec 42; POB Belgrade, Serbia) (individual) [FRYM]
MITROVIC, Borislav, Ex-Secretary General, President's Secretariat (individual) [FRYM]
MITROVIC, Zeljko, Owner of TV Pink; Member of JUL Directorate (DOB 31 May 67) (individual) [FRYM]
MLADIC, Ratko, (ICTY indictee, Bosnian Serb) (DOB 12 Mar 43; POB Bozinovici, Bosnia Herzegovina) (individual) [FRYM]
MRKSIC, Milan, (ICTY indictee, Serb) (DOB 20 Jul 47) (individual) [FRYM]
OJDANIC, Dragoljub, Ex-Minister of Defense, Federal Republic of Yugoslavia; (ICTY indictee) (DOB 1 Jun 41; POB Ravni, Cajetina) (individual) [FRYM]
PAUNOVIC, Radisav, General Manager of Izvozna Banka AD (individual) [FRYM]
PAVKOVIC, Nebojsa, Chief of General Staff, Army (DOB 10 Apr 46; POB Senjski Rudnik, Despotovac Municipality, Pozarevac, Serbia) (individual) [FRYM]
PENEZIC, Branislav, General Manager of DUNAV Banka AD (individual) [FRYM]
PETROVIC, Radoje, General Manager for International Payments of Beogradska Banka (individual) [FRYM]
RADENKOVIC, Ljiljana, Anglo-Yugoslav Bank London; Antexol Trading Ltd., Cyprus (individual) [FRYM]
RADIC, Miroslav, (ICTY indictee, Serb) (DOB 1 Jan 61) (individual) [FRYM]
RAHMAN, Pavle, General Manager for Funds and Liquidity of Beogradska Banka (individual) [FRYM]
RAJIC, Ivica, (ICTY indictee, Bosnian Croat) (DOB 5 May 58; POB Johovac) (individual) [FRYM]
RAKETIC, Srdjan, Director General of Privredna Banka Pancevo AD (individual) [FRYM]
RISTIC, Ljubisa, President of JUL (DOB 8 Feb 47) (individual) [FRYM]
RISTIC, Milorad, Director General of Niska Banka AD (individual) [FRYM]
RODIC, Milan, Member of JUL Directorate; CEO Serbian Lumber Monopoly (DOB 11 Dec 48) (individual) [FRYM]
SAINOVIC, Nikola, Ex-Deputy Prime Minister, Federal Republic of Yugoslavia; (ICTY indictee) (DOB 7 Dec 48; POB Bor, Serbia) (individual) [FRYM]
SEKULIC, Zarko, Director-General of Agrobanka AD (individual) [FRYM]
SIMANOVIC, Vojislav, General Manager of PKB; President of JUL Comm. for Agri. (DOB 23 Sep 53) (individual) [FRYM]
SIMIC, Blagoje, (ICTY indictee, Bosnian Serb) (DOB 1 Jul 60; POB Kruskovo, Polje) (individual) [FRYM]
SLIJIVANCANIN, Veselin, (ICTY indictee, Serb) (DOB 13 Jun 53) (individual) [FRYM]
SOKOLOVACKI, Zivko, Member of JUL Directorate; Chairman of the Board, Nis (individual) [FRYM]

STANKOVIC, Radovan, (ICTY indictee, Bosnian Serb) (DOB 10 Mar 69; POB Trebica) (individual) [FRYM]
STANKOVIC, Srboljub, Director of NIS Naftagas; Member of JUL Directorate (DOB 1940) (individual) [FRYM]
STOJILJKOVIC, Vlajko, Ex-Minister of the Interior, Serbia; (ICTY indictee) (DOB 1937; POB Mala Krsna, Serbia) (individual) [FRYM]
TOMASEVIC, Ljiljana, Executive Director of Beogradska Banka (individual) [FRYM]
TOMOVIC, Slobodan, SPS Regional head KRAGUJEVAC; ex-Minister of Energy, Federal Republic of Yugoslavia; Member of SPS Main Committee (DOB 1946) (individual) [FRYM]
UNKOVIC, Slobodan, Federal Republic of Yugoslavia Ambassador to China (DOB 1938) (individual) [FRYM]
VASILJEVIC, Jezdimir, Director of failed pyramid scheme based out of Jugoskandik Bank (DOB 1948) (individual) [FRYM]
VLATKOVIC, Dusan, Ex-Governor, NBJ, member of JUL (DOB 12 Feb 38) (individual) [FRYM]
VUCIC, Borka, Minister for Cooperation with International Financial Institutions, Federal Republic of Yugoslavia (DOB 4 Apr 26) (individual) [FRYM]
VUKOVIC, Slobodan, General Manager of PRVA Preduzetnicka Banka AD (DOB 2 Jan 40) (individual) [FRYM]
ZECEVIC, Miodrag, Director of Jubmes Bank (individual) [FRYM]
ZELENOVIC, Dragan, (ICTY indictee, Bosnian Serb) (DOB 12 Feb 61) (individual) [FRYM]

6. Appendix A to 31 CFR chapter V is further amended by adding the following names of individuals and organizations identified in Executive Order 13219 inserted in alphabetical order:

ADEMI, Xhevat, Member of National Liberation Army (NLA) (DOB: 8 Dec 1962; POB: Tetovo, FYROM) (individual) [BALKANS]
AHMETI, Ali, Member of National Liberation Army (NLA) (DOB: 4 Jan 1959; POB: Kicevo, FYROM) (individual) [BALKANS]
BEXHETI, Nuri, Member of National Liberation Army (NLA) (DOB: 1962; POB: Tetovo, FYROM) (individual) [BALKANS]
DALIPI, Tahir, Member of Political Council of Presevo, Medvedja, and Bujanovac (PCPMB) (DOB: 1958; POB: Ilince, Presevo mun., FRY) (individual) [BALKANS]
ELSHANI, Gafur, Member of Popular Movement of Kosovo (LPK) (DOB: 29 Mar 1958; POB: Suva Reka, FRY) (individual) [BALKANS]
GASHI, Sabit, Member of National Movement for the Liberation of Kosovo (LKCK) (DOB: 30 Dec 1967; POB: Suva Reka, FRY) (individual) [BALKANS]
HABIBI, Skender, Member of Party for Democratic Progress for Kosovo (PDK) (DOB: 13 Jul 1968; POB: Ljubiste, FRY) (individual) [BALKANS]
HARADINAJ, Daut, Chief of Staff of Kosovo Protection Corps (KPC) (DOB: 6 Apr 1978; POB: Goldane, FRY) (individual) [BALKANS]
HASANI, Xhavit, Member of National Liberation Army (NLA) (DOB: 5 May 1957; POB: Tanishec, FYROM) (individual) [BALKANS]
LIBERATION ARMY OF PRESEVO, MEDVEDJA, AND BUJANOVAC (a.k.a. PMBLA; a.k.a. UCPMB) [BALKANS]
LKCK (a.k.a. NATIONAL MOVEMENT FOR THE LIBERATION OF KOSOVO) [BALKANS]
LLADROVICI, Ramiz, Deputy Commander, Guard & Rapid Reaction Group of Kosovo Protection Corps (KPC) (DOB: 3 Jan 1966) (individual) [BALKANS]
LPK (a.k.a. POPULAR MOVEMENT OF KOSOVO) [BALKANS]
LUSHTAKU, Sami, Regional Task Group 2 Commander of Kosovo Protection Corps (KPC) (DOB: 20 Feb 1961; POB: Srbica, FRY) (individual) [BALKANS]
MUSLIU, Jonusz, Member of Political Council of Presevo, Medvedja, and Bujanovac (PCPMB) (DOB: 5 Jan 1959; POB: Konculj, FRY) (individual) [BALKANS]
MUSLIU, Shefqet, Member of Liberation Army of Presevo, Medvedja, and Bujanovac (UCPMB) (DOB: 12 Feb 1963; POB: Konculj, FRY) (individual) [BALKANS]
MUSTAFA, Rrustem, Regional Task Group 6 Commander of Kosovo Protection Corps (KPC) (DOB: 27 Feb 1971; POB: Podujevo, FRY) (individual) [BALKANS]
NATIONAL LIBERATION ARMY (a.k.a. NLA; a.k.a. UCK) [BALKANS]
NATIONAL MOVEMENT FOR THE LIBERATION OF KOSOVO (a.k.a. LKCK) [BALKANS]
NLA (a.k.a. NATIONAL LIBERATION ARMY; a.k.a. UCK) [BALKANS]
OSTREMI, Gezim, Member of National Liberation Army (NLA) (DOB: 1 Nov 1942; POB: Debar, Macedonia) (individual) [BALKANS]
PCPMB (a.k.a. POLITICAL COUNCIL OF PRESEVO, MEDVEDJA, AND BUJANOVAC) [BALKANS]
PMBLA (a.k.a. LIBERATION ARMY OF PRESEVO, MEDVEDJA, AND BUJANOVAC; a.k.a. UCPMB) [BALKANS]
POLITICAL COUNCIL OF PRESEVO, MEDVEDJA, AND BUJANOVAC (a.k.a. PCPMB) [BALKANS]
POPULAR MOVEMENT OF KOSOVO (a.k.a. LPK) [BALKANS]
SELIMI, Rexhep, Commander, Guard & Rapid Reaction Group of Kosovo Protection Corps (KPC) (DOB: 15 Mar 1971; POB: Iglarevo, FRY) (individual) [BALKANS]
SHAKIRI, Hisni, Member of National Liberation Army (NLA) (DOB: 1 Mar 1949; POB: Otlja, FYROM) (individual) [BALKANS]
SHAQIRI, Shaqir, Member of Liberation Army of Presevo, Medvedja, and Bujanovac (UCPMB) (DOB: 1 Sep 1964; POB: FRY) (individual) [BALKANS]
SUMA, Emrush, Member of National Liberation Army (NLA) (DOB: 27 May 1974; POB: Dimce, FRY) (individual) [BALKANS]
SYLA, Azem, Member of Party for Democratic Progress for Kosovo (PDK) (DOB: 5 Apr 1951; POB: FRY) (individual) [BALKANS]
UCK (a.k.a. NATIONAL LIBERATION ARMY; a.k.a. NLA) [BALKANS]
UCPMB (a.k.a. LIBERATION ARMY OF PRESEVO, MEDVEDJA, AND BUJANOVAC; a.k.a. PMBLA) [BALKANS]
VELIU, Fazli, Member of National Liberation Army (NLA) (DOB: 4 Jan 1945; POB: Kercove, FYROM) (individual) [BALKANS]
XHEMAJLI, Emrush, Member of Popular Movement of Kosovo (LPK) (DOB: 5 May 1959; POB: Urosevac, FRY) (individual) [BALKANS]
XHEMAJLI, Muhamet, Member of Liberation Army of Presevo, Medvedja, and Bujanovac (UCPMB) (DOB: 8 Feb 1958; POB: Muhovac, FRY) (individual) [BALKANS]

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

1. The authority citation for part 539 is amended to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200.

2. Appendix I to 31 CFR part 539 is amended by removing item 5 (INOR Scientific Center, including at Moscow, Russia) and item 7 (Polyus Scientific Production Association, including at 3 Ulitsa Vvedenskogo, 117342 Moscow, Russia) and redesignating item 6 as item 5 and items 8 through 10 as items 6 through 8.

Dated: September 24, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 27, 2001.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–28626 Filed 11–9–01; 3:32 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG79

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: Representatives of the military departments, defense agencies and other DoD activities, have agreed on a final rule that amends the interim rule as a result of comments received and incorporates clarification enacted in fiscal year 2001 that limits Comptroller General access in certain situations. This final rule requires inclusion of a

clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants, or cooperative agreements for prototype projects that provide for total payments in excess of $5,000,000.

DATES: This rule is effective December 17, 2001. This final rule will apply for solicitations issued on or after December 17, 2001. This final rule may be used for new prototype awards that result from solicitations issued prior to that date.

INFORMATION CONTACT: Teresa Brooks, (703) 695–8567.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects and are generally not subject to statutes or regulations limited in applicability to procurement contracts.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an ''other transaction'' agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records. Section 804 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 clarified Comptroller General access when the only cooperative agreements or ''other transactions'' that the party, entity, or subordinate element entered into with government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. 2371 or Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 note).

An interim rule was published in the **Federal Register** for public comment on June 5, 2000. Comments on the Interim Rule were received from one respondent.

A. Manner of Implementation

The respondent cited a September 13, 1999, Under Secretary of Defense for Acquisition and Technology letter stating that DoD was considering issuing guidance for prototype other transactions (OTs) in the form of a DoD Directive. The respondent expressed its understanding that the guidance may include changes regarding implementation of Section 801 of the National Defense Authorization Act of Fiscal Year 2000. The respondent expressed concern that there may be multiple and potentially inconsistent guidance being promulgated regarding the inclusion of the Comptroller General access clauses in these OTs. The respondent urged DoD to consolidate guidance regarding these agreements to avoid redundant and potentially inconsistent guidance.

Response: the DoD agrees that the guidance regarding these agreements should be consolidated. The DoD therefore plans for the Code of Federal Regulation coverage on Comptroller General Access to be incorporated in its entirety as an Appendix to internal DoD guidance, so that the Comptroller General requirements will not be redundant or inconsistent.

B. Revised Exclusion for Commercial Companies

The respondent expressed concern that although the language of the interim rule appears to have been drafted to exclude coverage of commercial companies, under certain circumstances, a strict reading of the regulation would cause the Comptroller General access clause to apply to the very parties they believe the Congress intended to exempt. Two scenarios were identified where the respondent thought this could occur. First, if a commercial company as a member of a consortium with traditional defense companies entered into a prototype OT that includes the Comptroller General access clause, then the commercial company has now ''entered into'' an agreement that provides for audit access and; therefore, would no longer be excepted from the Comptroller General access requirement. The second scenario would involve an unsophisticated commercial company that unintentionally executes a prototype OT that provides for audit access, eliminating its future exemption. The respondent recommended specific language be added that excepted any entity that has entered into only OTs or FAR Part 12 contracts.

Response: The clause excludes parties or participating entities which have not allowed Government records access in the preceding year. The applicability of the records access clause to each participant in a ''mixed'' consortium is required to be based on the plain language of the clause. Thus a commercial consortium member would not have entered into an agreement providing for government audit access since that clause would have been inapplicable to it in the transaction involving the consortium.

We cannot agree with the respondent's proposed change excepting any entity that has entered into only OTs or FAR Part 12 contracts. FAR Part 12 contracts provide for Comptroller General audit access. In addition, previous OTs may have also provided for audit access by a government entity. By statute, the clause is required to be included in OTs with entities that have entered into such contracts or agreements. However, to assure that there is no misunderstanding regarding this requirement, the final rule clarifies that the presence of the clause is necessary to fully implement the law by insuring flow-down to participating entities which are not parties to the agreement. The final rule also clarifies that parties or participating entities which have not entered into a contract, grant, cooperative agreement or ''other transaction'' that provides for audit access by a government entity in the year prior to the agreement are specifically excluded from coverage of the clause, as provided in the law.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule requires only that the Comptroller General be provided access to records of certain projects. It does not

require additional record keeping or other significant expense by project participants.

Pub. L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

(To be inserted by the Federal Register Liaison Officer.)

Accordingly, part 3 is revised to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Sec.
3.1 Purpose.
3.2 Applicability.
3.3 Definitions.
3.4 Policy.

Authority: Section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and Section 804 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398).

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) and section 804 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of $5,000,000.

3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as ''other transaction'' agreements and are hereafter referred to as agreements.

3.3 Definitions.

Contracting activity. An element of an agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

3.4 Policy.

(a) A clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity, that has not entered into any other contract, grant, cooperative agreement or ''other transaction'' agreement that provides for audit access by a government entity in the year prior to the date of the agreement. The clause must be included in all agreements described in paragraph (a) of this section in order to fully implement the law by covering those participating entities and their subordinate elements which have entered into prior agreements providing for Government audit access, and are therefore not exempt. The presence of the clause in an agreement will not operate to require Comptroller General access to records from any party or participating entity, or subordinate element of a party or participating entity, or subordinate element of a party or participating entity, which is otherwise exempt under the terms of the clause and the law.

(c)(1) The right provided to the Comptroller General in a clause of an agreement under paragraph (a) of this part, is limited as provided by subparagraph (c)(2) of this part in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity, if the only cooperative agreements or ''other transactions'' that the party, entity, or subordinate element entered into with government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. 2371 or Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 note).

(c)(2) The only records of a party, other entity, or subordinate element referred to in subparagraph (c)(1) of this part that the Comptroller General may examine in the exercise of the right referred to in that subparagraph, are records of the same type as the records that the government has had the right to examine under the audit access clauses of the previous cooperative agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(d) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(e) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(f) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(g) The clause referenced in paragraph (a) of this section, must provide for the following:

(1) The Comptroller General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

(2) Excepted from the Comptroller General access requirement is any party

to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that, in the year prior to the date of the agreement, has not entered into any other contract, grant, cooperative agreement, or ''other transaction'' agreement that provides for audit access to its records by a government entity.

(3)(A) The right provided to the Comptroller General is limited as provided in subparagraph (B) in the case of a party to the agreement, any entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only cooperative agreements or ''other transactions'' that the party, entity, or subordinate element entered into with government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under 10 U.S.C. 2371 or Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 note).

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(5) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

(6) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.

Dated: October 23, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27182 Filed 11–14–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–056]

RIN 2115–AE47

Drawbridge Operation Regulations; Snake Creek Drawbridge, Islamorada, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations governing the Snake Creek drawbridge (US 1) connecting Windley Key and Plantation Key at Islamorada, Florida. This rule requires the drawbridge to open on signal, except that from 8 a.m. until 4 p.m., the draw need open only on the hour and half-hour.

DATES: This rule is effective December 17, 2001.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–056] and are available for inspection or copying at Seventh Coast Guard District, Bridge Branch, Miami, Florida, 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 19, 2001 we published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Snake Creek Drawbridge, Islamorada, FL, in the **Federal Register** (66 FR 37615).

Background and Purpose

The Snake Creek bascule bridge has a vertical clearance of 27 feet at mean high water and a horizontal clearance of 60 feet. It is a two lane, narrow, undivided arterial roadway, which is the only roadway into and out of the Florida Keys and is severely congested due to insufficient capacity. The bridge's current operating schedule is governed by the general bridge operation provision in 33 CFR § 117.5 that requires the bridge to open on demand.

The bridge owner requested a modification of the existing schedule to allow the drawbridge to open on signal, except from 7 a.m. until 6 p.m. when the draw would open on the hour and half-hour. This modification would ease the flow of vehicular traffic during peak traffic periods.

Discussion of Comments and Changes

The Coast Guard received one comment letter regarding this proposed rule. The comment requested that the hour and half-hour regulation be from 8 a.m. until 4 p.m. instead of the proposed period from 7 a.m. until 6 p.m. After consultation with the bridge owner and city officials, we agree with this comment and have changed the proposed schedule accordingly.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because the rule will still allow the bridge to open on a regular schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Snake Creek drawbridge. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because the rule will still allow the bridge to open on a regular schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities

in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Section 117.331 is added to read as follows:

§ 117.331 Snake Creek.

The draw of the Snake Creek bridge, at Islamorada, Florida, shall open on signal, except that from 8 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

Dated: November 2, 2001.

D.B. Peterman,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 01–28619 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD1–01–193

RIN 2115–AA97

Safety Zones; The Icebreaker Youth Rowing Championship—Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for the Icebreaker Youth Rowing Championship to be held on November 17, 2001 in Boston, MA. These safety zones are needed to protect the maritime public from any hazards. This rule will temporarily prohibit entry into all waters of Boston Inner Harbor within 300 yards around vessels participating in the Icebreaker Youth Rowing Championship.

DATES: This rule is effective from 8 a.m. until 4:30 p.m. on November 17, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in

the **Federal Register**. Information about this event was not provided to the Coast Guard until October 22, 2001, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of the Boston Inner Harbor, Boston, Massachusetts, and provide for the safety of vessels participating in the Icebreaker Youth Rowing Championship, their crews, and others in the maritime community and to provide generally for safety of life on navigable waters. Additionally, these temporary safety zones will only exist during this 8-hour-and-30-minute-long local event and should have negligible impact on vessel transits because vessels are not precluded from using other portions of the waterway.

Background and Purpose

The Icebreaker Youth Rowing Championship will be taking place in Boston Inner Harbor on Saturday, November 17, 2001. This event is a round-robin race with two starting points, the Charles River Dam to Pier 2 at the Charlestown Navy Yard and Pier 4 at the Charlestown Navy Yard to a point off the U.S. Coast Guard Support Center. There will be four to six participating vessels, oared row boats, in this race. This regulation establishes safety zones in the waters of Boston Inner Harbor within 300 yards of the participating vessels.

These safety zones are in effect from 8 a.m. to 4:30 p.m. on November 17, 2001. These safety zones prohibit entry into or movement within these portions of the Boston Inner Harbor and are needed to protect participating vessels and their crews, and the maritime public from possible collision between participating vessels and others in the maritime community. Marine traffic may transit safely outside of the safety zones during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Boston Inner Harbor during this event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the zones, that vessels may safely transit outside of the safety zones, and advance notifications which will be made to the local maritime community by marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Boston Inner Harbor from 8 a.m. until 4:30 p.m. November 17, 2001. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zones during the event, the event is limited in duration, and the Coast Guard will issue maritime advisories before the effective period via marine information broadcasts.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.

2. Add temporary § 165.T01–193 to read as follows:

§ 165.T01–193 Safety Zones: The Icebreaker Youth Rowing Championship—Boston Harbor, Boston, Massachusetts.

(a) *Location.* The following areas are safety zones: All waters of Boston Inner Harbor within 300 yards of row boats participating in the Icebreaker Youth Rowing Championship.

(b) *Effective date.* This section is effective from 8 a.m. until 4:30 p.m. on November 17, 2001.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: October 30, 2001.

B.M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–28620 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0305; FRL–7102–3]

Partial Removal of Direct Final Rule Revising the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial removal of direct final rule.

SUMMARY: On September 12, 2001 (65 FR 47392), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP) which pertained to the Bay Area Air Quality Management District (BAAQMD) Rule 8–51, Adhesive and Sealant Products. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by October 12, 2001, EPA would publish a timely removal in the **Federal Register**. EPA subsequently received adverse comments on the direct final rule. Therefore, EPA is removing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on September 12, 2001 (65 FR 47419). The direct final approval of the South Coast Air Quality Management District Rule 443.1, Labeling of Materials Containing Organic Solvent, also published on September 12, 2001 is not affected by this removal and is incorporated into the SIP as of the effective date of the September 12, 2001 direct final action.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 1, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

Subpart F—California

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

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

§ 52.220 [Amended]

2. Section 52.220 is amended by removing paragraph (c)(282).

[FR Doc. 01–28340 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0307; FRL–7102–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination That State Has Corrected the Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: On September 12, 2001 in the **Federal Register**, EPA published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Bay Area Air Quality Management District (BAAQMD) Rule 8–51, Adhesive and Sealant Products. On that date, EPA also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on December 6, 1999. This action will stay the application of the offset sanction and defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment. If comments are received on this interim final action, EPA will publish a final action taking into consideration any comments received.

DATES: This interim final determination is effective November 15, 2001. Comments must be received by December 17, 2001.

ADDRESSES: Comments should be sent to: Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The state submittal and EPA's analysis for that submittal, which are

the basis for this action, are available for public review at the above address and at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT:

Yvonne Fong, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Background

On June 23, 1998, the State submitted BAAQMD Rule 8–51, for which EPA published a limited disapproval in the **Federal Register** on November 4, 1999. 64 FR 60109. EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted a revised rule on May 31, 2001. In the Proposed Rules section of the **Federal Register** dated September 12, 2001, EPA proposed full approval of the State's submittal.

Based on the proposed approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and or stayed.

This action does not stop the sanctions clock that started for this area on November 4, 1999. However, this action will stay the application of the offsets sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994). If EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the sanctions consequences described in the sanctions rule will apply. See 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, application of the offset sanction will be stayed and application of the highway sanction will be deferred until EPA takes action proposing or finally disapproving in whole or part the State submittal.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clock. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiencies that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is appropriate to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is associated with approving state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 NOTE) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

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

Dated: November 1, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 01–28341 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 0137–1137a; FRL–7103–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving the State Implementation Plan (SIP) revision submitted by the state of Missouri which provides for the attainment and maintenance of the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in St. Joseph (Buchanan County), Missouri. This revision approves a Consent Decree which requires SO_2 emission reductions from a major air emissions source in St. Joseph. Approval of this SIP revision will make the Consent Decree Federally enforceable.

DATES: This direct final rule will be effective January 14, 2002 unless EPA receives adverse comments by December 17, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation or control strategy mean to me?
What is the NAAQS for SO_2?
What NAAQS violation occurred in St. Joseph, Missouri?
How was the problem addressed?
What is the control strategy?
What is contained in the SIP submittal?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations and control strategies to be incorporated into the Federally enforceable SIP, states must formally adopt them consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state regulation or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The Missouri SIP is published in 40 CFR part 52, subpart AA.

The actual state regulations and control strategies which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation or control strategy with a specific effective date.

What Does Federal Approval of a State Regulation or Control Strategy Mean to Me?

Enforcement of the state regulation or control strategy before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the NAAQS for SO_2?

As mentioned above, we have established ambient air quality standards for a number of pollutants, including SO_2. These standards are set at levels to protect public health and welfare. The standards are published in 40 CFR part 50. If ambient air monitors measure violations of the standard, states are required to identify the cause of the problem and to take measures which will bring the area back within the level of the standard. The 24-hour standard for SO_2 is 0.14 parts per million, not to be exceeded more than once per year. There is also a 3-hour and an annual standard.

What NAAQS Violations Occurred in St. Joseph, Missouri?

In 1995, there was one exceedance of the 24-hour SO_2 standard. In 1997 there were two exceedances of the standard. In 1998, there was one final exceedance of the standard. Two exceedances of the standard in a calendar year constitute a violation of the NAAQS. Thus, there was a violation of the 24-hour SO_2 standard in 1997.

How Was the Problem Addressed?

The source of the SO_2 emissions identified as contributing to the violation of the NAAQS was the St. Joseph Light and Power (SJLP) Company's Lake Road power generating station. There are six boilers and three combustion turbines at the Lake Road site.

The Missouri Department of Natural Resources (MDNR) and the SJLP conducted an extensive air dispersion modeling analysis to determine the appropriate source control strategy. The modeling was performed in accordance with the requirements of the *EPA's Guideline on Air Quality Models (Revised) and Supplement A.*

What Is the Control Strategy?

MDNR negotiated enforceable emission limitations and other control measures, means, and techniques, as well as schedules and timetables for compliance, sufficient to ensure that the NAAQS for SO_2 will be achieved and maintained in the future. These measures incorporate the use of low sulfur coal, low sulfur fuel oil, natural gas, and fuel blending. Specific emission limits have been set for each boiler and turbine. Compliance will be determined through coal sampling and fuel certification, stack tests, and continuous emissions monitoring.

These control strategy requirements were incorporated into a Consent Decree issued by MDNR to SJLP. In addition to the conditions above, the Consent Decree contains monitoring, reporting, and recordkeeping requirements sufficient to determine compliance. The Consent Decree also contains provisions for stipulated penalties in the event SJLP fails to adhere to the requirements of the Consent Decree.

What Is Contained in the SIP Submittal?

MDNR submitted a request to us to approve the Consent Decree as a revision to the Missouri SIP. Additional information is contained in the state submittal and in the EPA Technical Support Document (TSD) for this notice which can be obtained by contacting us at the address above.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving a revision to the Missouri SIP which requires source specific SO_2 emission reductions which will result in attainment and maintenance of the SO_2 NAAQS in St. Joseph (Buchanan County), Missouri.

Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

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

Dated: November 2, 2001.

James B. Gulliford,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. Section 52.1320 is amended:

a. By adding a table heading to the table in paragraph (d).

b. By adding a new entry to the end of the table in paragraph (d).

The additions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
St. Joseph Light & Power SO_2	Consent Decree	05/21/01	November 15, 2001 [Insert FR cite.].	

* * * * *

[FR Doc. 01–28519 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0039a & MT–001–0041a; FRL–7086–3]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan for Montana; Revisions to the Missoula City-County Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions regarding the Missoula City-County Air Pollution Control Program, as submitted by the Governor of Montana with a letter dated April 30, 2001. On November 17, 2000, the Montana Board of Environmental Review (MBER) adopted the revisions to the Missoula program rules regarding program authority and administration, definitions, failure to attain standards, emergency episode planning, general provisions, standards for stationary sources (including air quality permit program), outdoor burning, fugitive particulate, solid fuel burning devices, fuels, motor vehicles, enforcement and administrative procedures, and penalties. EPA's approval makes these revisions federally enforceable. In addition, the State requested that rules of the Missoula program that are not appropriate for incorporation into the SIP be removed from the federally approved plan. Finally, the Governor's April 30, 2001 submittal consists of several other revisions to Montana regulations, which will be handled separately.

DATES: This direct final rule is effective on January 14, 2002 without further notice, unless EPA receives adverse comment by December 17, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it means EPA.

I. Background

EPA approved the Missoula nonattainment area SIP for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) on January 18, 1994 (59 FR 2537–2540). Subsequent

revisions to the Missoula PM_{10} SIP were approved as follows. On December 13, 1994 (59 FR 64133), we approved revisions to the Missoula City-County Air Pollution Control Program regulations related to, among other things, PM_{10} contingency measures, inspections, emergency procedures, minor source construction permitting, open burning and wood waste burners. On August 30, 1995 (60 FR 45051), we approved revisions to the Missoula City-County Air Pollution Control Program regulations related to emergency procedures; the paving of roads, driveways, and parking lots; and solid fuel burning devices. On January 3, 2000 (65 FR 16), we approved revisions to the Missoula program related to general definitions, open burning, and criminal penalties.

EPA approved the Missoula carbon monoxide (CO) nonattainment area plan on January 16, 1986 (51 FR 2397). Subsequent revisions were approved on November 8, 1994 (59 FR 55585) regarding the oxygenated gasoline program in Missoula, December 13, 1994 (59 FR 64133) regarding CO contingency measures, and December 6, 1999 (64 FR 68034) regarding an update to the SIP narrative.

II. Analysis of State Submission

A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565). Our completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. We attempt to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the Montana Board of Environmental Review (MBER), after providing adequate notice, held a public hearing on November 17, 2000 to address the revisions to the Missoula program. At the conclusion of the public hearing, the MBER approved the revisions by teleconference which was affirmed by a Board Order dated November 30, 2000. By approving the revisions, the MBER made them enforceable at the State level to satisfy the requirements of section 110(a)(2)(E) of the Federal Clean Air Act, U.S.C. 7410(a)(2)(E). On February 20, 2001, after providing adequate notice, the Montana Department of Environmental Quality (MDEQ) held a hearing to provide for public comment on the inclusion of the Missoula regulation revisions in the SIP.

The Governor of Montana submitted the revisions to the Missoula City-County Air Pollution Control Program regulations to EPA with a letter dated April 30, 2001. EPA determined that the SIP submittal was administratively and technically complete on June 29, 2001.

B. November 17, 2000 Revisions

The revisions to the Missoula City-County Air Pollution Control Program regulations include extensive renumbering of the regulations. In addition, revisions were made to chapters regarding program authority and administration, failure to attain standards, emergency procedures, general provisions, standards for stationary sources (including air quality permit program), outdoor burning, fugitive particulates, solid fuel burning devices, fuels, motor vehicles, enforcement and administrative procedures, and penalties. In most cases, the rule revisions are either editorial in nature, allow for easier use through reorganization, clarify existing policy, and/or ensure consistency with the Montana and Federal Clean Air Acts. Since the State is constantly revising its rules, the county must periodically update its rules to stay consistent. Finally, several provisions are being removed because they were not appropriate for incorporation into the Federally approved SIP for various reasons. The more substantive revisions are discussed in detail below.

1. Revisions to Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan

Numerous revisions were made to the emergency episode avoidance plan to ensure that the county plan is as stringent as, or consistent with, the State's plan. For example, new requirements were added for emergency episode operations planning, and a new rule states that the county may require sources to periodically review and update their abatement plans, and submit them for review and approval. In addition, there are some new control activities required at the various stages of the emergency episode avoidance plan. These revisions satisfy Federal Clean Air Act requirements and are approvable.

2. Revisions to Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources

The construction and operating permits programs were combined into one ''air quality permit'' program. Requirements for public review of air quality permit applications were added, to be consistent with Federal requirements. Also, clarification was made that the conditions of a construction permit are permanent, so there is always an enforceable permit applicable to the source. Accordingly, a source is required to renew its combined permit every 5 years (unless another time line is warranted because additional construction that is not covered by an existing permit begins on the source, a change in operation could result in an increase of emissions at the source, the permit is revoked or modified, or the permit clearly states otherwise). A source whose permit has expired may not operate without the issuance of a renewal permit. An exemption from the requirement to obtain a construction permit for routine maintenance and repair of equipment was clarified such that it does not apply to the replacement of equipment. In addition, definitions for ''commencement of construction'' and ''source'' have been added to be consistent with Federal requirements. These revisions satisfy Federal requirements and are approvable. Please note that in addition to meeting Missoula's permitting requirements, major sources subject to Prevention of Significant Deterioration (PSD) permitting requirements and several other source categories must obtain permits to construct from the State of Montana, and all sources subject to Title V of the Clean Air Act must obtain operating permits from the State.

3. Revisions to Chapter 7, Outdoor Burning

Numerous revisions were made to Chapter 7 to clarify the meaning of Missoula City-County Department of Health's (MCCDH's) interpretation of certain rules. For instance, the firefighter training rule now specifies that the MCCDH will inspect every structure before it is burned. While this had been MCCDH practice, it was not clear in the rules previously. In addition, Impact Zone M was increased in area. The purpose of the Impact Zone is to help protect the ambient air standards in a populated area where smoke is only one of many air pollution sources. It was originally established as a way of prioritizing the scrutiny given

to large burns occurring in the autumn. The adjustment to the boundary now will take inversion effects into account and thus protect the public, as well as mitigate harm, by preventing thick smoke events caused by air flows draining down valleys into populated areas. Also, revisions allow for prescribed wildland burning in the Impact Zone only on days of good dispersion throughout the period of smoke generation (as opposed to just the day that the fire is lit). In addition, provisions were added for bonfire permits, Christmas tree waste outdoor burning permits (to be consistent with State requirements), and public notice requirements for outdoor burning permit applications. The revisions to this chapter meet Federal Clean Air Act requirements and are approvable.

4. Revisions to Chapter 8, Fugitive Particulate

The definition of ''approved de-icer'' was revised to allow for a ''magnesium chloride based product or other product with similar dust suppression properties * * *'' as opposed to strictly requiring a magnesium chloride based product. Since any alternative will have to demonstrate the same level of dust suppression, EPA believes this revision is approvable. In addition, some new rules were added to this chapter. One rule addresses construction sites and specifies what reasonable precautions must be taken to control fugitive particulate matter emissions. Another new section requires new roads to be paved in the Air Stagnation Zone. Also, provisions for additional options to control fugitive emissions from parking lots in the Air Stagnation Zone have been expanded. However, fugitive emissions from parking lots cannot increase over what they would be if paving were the control measure utilized. The revisions to this chapter meet Federal Clean Air Act requirements and are approvable.

5. Revisions to Chapter 9, Solid Fuel Burning Devices

For the most part, the changes made to this chapter were editorial in nature or merely clarified the current implementation of the program (*e.g.*, removing provisions that no longer apply because certain types of solid fuel burning devices are no longer allowed to be installed in the area). The substantive changes made to this already stringent program make it even more stringent. Revisions to this chapter include a streamlined process for certifying that woodstoves are removed at the time of the sale of a property (when they are required to be removed). Also, a requirement was added that woodstoves sold in the Air Stagnation Zone must be labeled if they cannot be lawfully installed in the Air Stagnation Zone. These changes are approvable.

6. Rules Being Removed from the Federally Approved SIP

The State of Montana originally submitted Missoula's National Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61 National Emissions Standards for Hazardous Air Pollutants (part 61 NESHAPs) regulations (Rules 1423 and 1424 under the old numbering system) for approval by EPA as part of the Montana SIP. EPA approved this submittal on August 30, 1995 (60 FR 45051). With a November 14, 1997 SIP submittal, the State requested revisions to these rules. Subsequent to the 1997 submittal, EPA and the State agreed that these rules should be removed from the SIP because programs for which EPA can delegate authority to the State, such as NSPS and NESHAPs and which the State, in turn, can delegate authority to the County, if appropriate, should not be incorporated into the SIP. Therefore, with its April 30, 2001 submittal, the State requested that Missoula's NSPS and part 61 NESHAPs be removed from the Federally approved SIP.

In addition, rules that are not generally related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) also should not be incorporated in the SIP. Therefore, although the State of Montana originally submitted Missoula's fluoride emissions standards rule (Rule 1419 under the old numbering system) for approval by EPA through the SIP process (see 59 FR 2537, January 18, 1994), with its April 30, 2001 submittal, the State requested that this provision also be removed from the Federally approved SIP.

The removal of these rules conforms with the requirements of section 110(k)(6) of the Federal Clean Air Act and is approvable. Finally, with the removal of the NSPS and part 61 NESHAPs rules, EPA has completed its actions on the November 14, 1997 SIP submittal.

III. Section 110(l) Analysis

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. EPA approved the Missoula PM_{10} attainment demonstration on January 18, 1994 (59 FR 2537) and subsequent revisions to the Missoula PM_{10} SIP were approved on December 13, 1994 (59 FR 64133), August 30, 1995 (60 FR 45051), and January 3, 2000 (65 FR 16). EPA approved the Missoula nonattainment area plan which provided for the attainment of the CO NAAQS (*i.e.*, attainment demonstration) on January 16, 1986 (51 FR 2397) and subsequent revisions to the Missoula CO SIP were approved on November 8, 1994 (59 FR 55585), December 13, 1994 (59 FR 64133), and December 6, 1999 (64 FR 68034). The area has been maintaining the NAAQS for many years. EPA has determined that the revisions to the Missoula City-County Air Pollution Control Program that are the subject of this document do not interfere with the federally approved attainment demonstrations for the area, but will enhance the area's efforts in maintaining the NAAQS since certain requirements in the local regulations have been strengthened. Therefore, section 110(l) requirements are satisfied.

IV. Final Action

EPA is approving the revisions to the Missoula City-County Air Pollution Control Program, as submitted by the Governor with a letter dated April 30, 2001. The revisions being approved include extensive renumbering of the program and completely replace the previous version of the program. In addition, the rules of the Missoula program that are not appropriate for incorporation into the SIP are being removed from the federally approved plan. The approved version of the Missoula program is as follows: Chapter 1, Program Authority and Administration; Chapter 2, Definitions; Chapter 3, Failure to Attain Standards; Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan; Chapter 5, General Provisions, Rules 5.101–5.103, 5.105–5.106, and 5.112; Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources, Rules 6.101–6.103 and 6.105–6.109, Subchapter 5, Emission Standards, Rules 6.501–6.504, Subchapter 6, Incinerators, Rules 6.601–6.604, and Subchapter 7, Wood Waste Burners, Rules 6.701–6.703; Chapter 7, Outdoor Burning; Chapter 8, Fugitive Particulate; Chapter 9, Solid Fuel Burning Devices; Chapter 10, Fuels; Chapter 11, Motor Vehicles; Chapter 14, Enforcement and Administrative Procedures; Chapter 15, Penalties; Appendix A, Maps; Appendix B, Missoula's Emergency Episode Avoidance Plan Operations and Procedures; and Appendix D,

Oxygenated Fuels Program Sampling Requirements for Blending Facilities.

V. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 5, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(54) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(54) The Governor of Montana submitted revisions to the Missoula City-County Air Pollution Control Program with a letter dated April 30, 2001. The revisions completely replace the previous version of the program regulations in the SIP.

(i) Incorporation by reference.

(A) November 17, 2000 Montana Board of Environmental Review order approving revisions to the Missoula City-County Air Pollution Control Program regulations.

(B) Missoula City-County Air Pollution Control Program regulations as follows: Chapter 1, Program Authority and Administration; Chapter 2, Definitions; Chapter 3, Failure To Attain Standards; Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan; Chapter 5, General Provisions, Rules 5.101–5.103, 5.105–5.106, and 5.112; Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources, Rules 6.101–6.103 and 6.105–6.109, Subchapter 5, Emission Standards, Rules 6.501–6.504, Subchapter 6, Incinerators, Rules 6.601–6.604, and Subchapter 7, Wood Waste Burners, Rules 6.701–6.703; Chapter 7, Outdoor Burning; Chapter 8, Fugitive Particulate; Chapter 9, Solid Fuel Burning Devices; Chapter 10, Fuels; Chapter 11, Motor Vehicles; Chapter 14, Enforcement and Administrative Procedures; Chapter 15, Penalties; Appendix A, Maps; Appendix B, Missoula's Emergency Episode Avoidance Plan Operations and Procedures; and Appendix D, Oxygenated Fuels Program Sampling Requirements for Blending Facilities, effective November 17, 2000.

[FR Doc. 01–28189 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD120–3071a; FRL–7100–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOC RACT Determination for the Thomas Manufacturing Corporation Inc. in the Baltimore Ozone Nontattainmant Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the State of Maryland's State Implementation Plan (SIP). The revision was submitted by the Maryland Department of the Environment (MDE) to establish and require reasonably available control technology (RACT) for a major source of volatile organic compounds (VOC) in Maryland, the Thomas Manufacturing Corporation, Inc. This source is located in the Baltimore ozone nonattainment area. EPA is approving this revision to establish a RACT requirement in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on December 31, 2001 without further notice, unless EPA receives adverse written comment by December 17, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Catherine Magliocchetti at (215) 814–2174 at the EPA Region III address above or by e-mail at *magliocchetti.catherine@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On February 21, 2001, the Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP that establishes and imposes a source-specific RACT determination for the Thomas Manufacturing Corporation, Inc., a major source of VOC's in the State of Maryland. The submittal consists of a consent order that imposes VOC RACT requirements for this source. This source is located in Baltimore County. Maryland is imposing a source-specific RACT determination under COMAR 26.11.19.02 G. Once this SIP revision is approved by EPA, the Thomas Manufacturing Corporation Inc. will no longer be subject to COMAR 26.11.06.06.

II. Summary of the SIP Revision

Thomas Manufacturing Corporation Inc. is a light bulb coating facility located in Baltimore County, Maryland. Thomas Manufacturing Corporation Inc. is a major VOC emitting facility. The MDE issued a consent order to impose RACT for this VOC emitting source as follows.

The consent order for this facility requires Thomas Manufacturing Corporation Inc. to operate and maintain the existing Carbon Adsorption/Absorption Unit on the light bulb coating operation to reduce VOC emissions. The source also must operate the control system, at all times, in accordance with the manufacturer's specifications. The source must adjust the operating cycles of adsorption and desorption to maximize VOC recovery, and in no event can the cycles exceed a two (2) hour cycle. The source is required to operate and maintain the existing Carbtrol system to reduce VOC emissions from the material mixing room. The source must operate the control system at all times in accordance with the manufacturer's specifications. The source must use chemical sensing detector tubes to determine when carbon breakthough occurs, which shall be defined as a VOC reading of greater than or equal to 50 parts per million (ppm) on the detector. Upon detection of breakthrough, the carbon canisters shall be removed and replaced with fresh carbon canisters. All used canisters of carbon shall be capped to prevent fugitive emissions until recovery has taken place. Thomas Manufacturing Corporation Inc. agrees to design and operate the carbon control system to reduce VOC emissions by 85 percent or more, overall. The source shall demonstrate compliance through the calculation of monthly material balance under which the company shall record the total VOC used and recovered during each calendar month. The source must retain all VOC use and recovery records for three years and make such records available to the MDE upon request. Under this consent order, Thomas Manufacturing Corporation Inc. shall not be subject to the otherwise applicable general VOC requirements in COMAR 26.11.06.06, provided that the source achieves and maintains compliance with the terms of the consent order.

III. Final Action

EPA is approving this revision to the Maryland SIP submitted by MDE on February 21, 2001 to establish and require VOC RACT for the Thomas Manufacturing Corporation Inc., located in the Baltimore area. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 31, 2001 without further notice unless EPA receives adverse comment by December 17, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. This action merely approves state law as meeting Federal requirements and imposes no additional

requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **NOTE**) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland's source-specific RACT requirements to control VOC emissions from the Thomas Manufacturing Corporation Inc. in Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 31, 2001.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(167) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(167)

(i) Incorporation by reference.

(A) Letter dated February 21, 2001 submitted by the Maryland Department of the Environment transmitting the source-specific VOC RACT determination for the Thomas Manufacturing Corporation Inc., in the form of a Consent Order.

(B) Consent Order for the Thomas Manufacturing Corporation Inc., dated February 6, 2001, with an effective date of February 15, 2001.

(ii) Additional Materials—Other materials submitted by the State of Maryland in support of and pertaining to the RACT determination for the source listed in paragraph (c)(167)(i)(B) of this section.

[FR Doc. 01–28187 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02; I.D. 110801D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon, local time, November 10, 2001, through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42 (c)(1)(i)(A)(*2*)(*ii*)).

Under 50 CFR 622.43 (a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 168,750 lb (76,544 kg) for Gulf group king mackerel in the northern Florida west coast subzone was reached on November 9, 2001. Accordingly, the commercial fishery for king mackerel in the northern Florida west coast subzone is closed at 12 noon, local time, November 10, 2001, through June 30, 2002, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31'06′ W. long. (a line directly south from the Alabama/Florida boundary).

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39 (c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to prevent an overrun of the commercial quota (50 CFR 622.42 (c)(1)) of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Overruns could potentially lead to further overfishing and unnecessary delays in rebuilding this resource. Therefore, any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds, for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43 (a) and is exempt from review under Executive Order 12866.

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

Dated: November 8, 2001.

Richard W. Surdi,

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

[FR Doc. 01–28647 Filed 11–9–01; 4:32 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110601A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Quota transfers; fishery reopening.

SUMMARY: NMFS adjusts the October-December subquota for the General category Atlantic bluefin tuna (BFT) fishery by transferring 40 metric tons (mt) from the Longline South subcategory quota, 50 mt from the Angling category (25 mt from the school size class North and 25 mt from the school size class South subcategories), and 3 mt from the Trap category for a revised coastwide General category subquota of approximately 431.9 mt for October-December, including the addition of underharvest from previous time periods. NMFS reopens the coastwide BFT General category until the adjusted October-December subquota has been filled. These actions are being taken to allow for maximum utilization of the U.S. landings quota of BFT while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted subquotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective November 9, 2001, through December 31, 2001. The General category reopening is effective November 12, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas

Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Quota Transfers

Under the implementing regulations at 50 CFR 635.27 (a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

Quota Adjustments

Annual BFT quota specifications issued under § 635.27 provide for a quota of 666.7 mt of large medium and giant BFT to be harvested from the regulatory area by vessels fishing under the General category quota during the 2001 fishing year. The General category BFT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. The October-December subquota was initially set at 65.7 mt for the 2001 fishing year, and is currently 338.9 mt, after the addition of approximately 113.2 mt of unharvested subquota from previous periods and a previous quota transfer of 160 mt (66 FR 53346, October 22, 2001). As of October 26, 2001, General category landings against this adjusted October-December subquota have totaled approximately 402.1 mt, exceeding the available coastwide quota by 64.5 mt. An additional 10 mt has been set aside for the traditional fall New York Bight fishery.

After considering the factors for making transfers between categories, NMFS has determined that 40 mt of the remaining adjusted Longline South subcategory quota of approximately 116.6 mt should be transferred to the General category quota. While substantial quota remains in the Longline category, NMFS is in the process of developing proposed regulations to adjust the target catch requirements for pelagic longline vessels retaining bluefin tuna, and is therefore not transferring additional quota from the Longline category. NMFS has also determined that 50 mt of the remaining Angling school subcategory quota of approximately 118.7 mt (25 mt of the remaining Angling school north subcategory quota of approximately 74.7 mt, and 25 mt of the remaining Angling school south subcategory quota of approximately 59 mt) should be transferred to the General category. Finally, NMFS has determined to transfer 3 mt of the remaining Trap category quota of 3.9 mt into the General category quota. The adjusted subquota for the coastwide General category fishery for the October-December period is 431.9 mt. Landings of Trap category BFT have been nonexistent in recent years and this transfer should not adversely impact this category.

Once the adjusted General category subquota for the October-December period has been attained, the coastwide fishery will be close. Announcement of the closure will be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line at (888) USA-TUNA or (978) 281–9305, to check the status of the fishery before leaving for a fishing trip.

Classification

This action is taken under 50 CFR 635.23 and 635.27, is consistent with the management measures contained in the HMS FMP, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–28648 Filed 11–9–01; 4:32 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010208032–1109–02; I.D. 110701E]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfer

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia has transferred a total of 100,000 lb (45,372 kg) of commercial bluefish quota to the State of New York for 2001. NMFS has adjusted the quotas and announces the revised commercial quotas for Virginia and New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and prevent negative economic impacts to the New York commercial bluefish fishery.

DATES: Effective November 15, 2001 through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978)281–9135, e-mail *Myles.A.Raizin@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

The initial total commercial quota for bluefish for the 2001 calendar year was set equal to 9,583,010 lb (4,348,008 kg) (66 FR 23625, May 9, 2001). The resulting quota for New York was 995,204 lb (451,544 kg), and for Virginia was 1,138,412 lb (516,521 kg). Effective August 2, 2001, (66 FR 41151) Virginia transferred 300,000 lb (136,116 kg) of its

quota to North Carolina, leaving 838,412 lb (380,405 kg) available to Virginia.

The FMP allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 100,000 lb (45,360 kg) of its 2001 commercial quota to New York. The revised quotas for the calendar year 2001 are: Virginia, 738,412 lb (335,033 kg), and New York, 1,095,204 lb (496,784 kg). The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. This action does not alter any of the conclusions reached in the environmental assessment for the 2001 specifications for the Atlantic bluefish fishery. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 9, 2001.

Richard W. Surdi

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

[FR Doc. 01–28663 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 66, No. 221

Thursday, November 15, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106186–00]

RIN 1545–AW36

Withdrawal of Proposed Regulations Relating to Certain Corporate Reorganizations Involving Disregarded Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking relating to certain corporate reorganizations involving disregarded entities. The proposed regulations were published on May 16, 2000, and a public hearing on the regulations was held on August 8, 2000. In addition, written comments were received. After consideration of the comments received, the IRS and Treasury have decided to withdraw the proposed regulations and issue new proposed regulations.

DATES: These proposed regulations are withdrawn November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Reginald Mombrun (202) 622–7750 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2000, the IRS issued proposed regulations relating to certain corporate reorganizations involving disregarded entities (65 FR 31115). After consideration of comments received on the proposed regulations, the IRS and Treasury have decided to issue new proposed regulations on this matter. Accordingly, the proposed regulations published on May 16, 2000, are withdrawn.

Drafting Information

The principal author of this withdrawal notice is Reginald Mombrun of the Office of the Associate Chief Counsel (Corporate).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirement.

Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on May 16, 2000 (65 FR 31115) is hereby withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–28671 Filed 11–14–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126485–01]

RIN 1545–BA06

Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that define the term statutory merger or consolidation as that term is used in section 368(a)(1)(A). The proposed regulations permit certain transactions involving entities that are disregarded as entities separate from their corporate owners for Federal tax purposes to qualify as a statutory merger or consolidation. These proposed regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for March 13, 2002, must be received by February 20, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–126485–01), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:ITA:RU (REG–126485–01), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Reg option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs.reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Reginald Mombrun (202) 622–7750 or Marlene P. Oppenheim, (202) 622–7770; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. Section 368(a) Generally

The Internal Revenue Code of 1986 (the Code) provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term reorganization includes ''a statutory merger or consolidation.'' Section 1.368–2(b)(1) currently provides that a statutory merger or consolidation must be ''effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia.'' A transaction will only qualify as a reorganization under section 368(a)(1)(A), however, if it satisfies certain nonstatutory requirements, including the business purpose requirement of § 1.368–1(b), the continuity of business enterprise requirement of § 1.368–1(d), and the continuity of interest requirement of § 1.368–1(e).

B. Disregarded Entities Generally

A business entity (as defined in § 301.7701–2(a)) that has only one owner may be disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b)) that is a qualified REIT subsidiary

(within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

Because qualified REIT subsidiaries and qualified subchapter S subsidiaries are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit a limited liability company to merge with another limited liability company or with a corporation.

C. Previous Proposal of Regulations

On May 16, 2000, the IRS and Treasury issued a notice of proposed rulemaking (REG–106186–98, 65 FR 31115) providing guidance under section 368(a)(1)(A), including guidance regarding whether certain mergers involving disregarded entities may qualify as statutory mergers under section 368(a)(1)(A) (hereinafter referred to as the 2000 proposed regulations). The 2000 proposed regulations provided that neither the merger of a disregarded entity into a corporation nor the merger of a target corporation into a disregarded entity was a statutory merger or consolidation qualifying as a reorganization under section 368(a)(1)(A).

A public hearing on the 2000 proposed regulations was held on August 8, 2000. In addition, written comments were received. While commentators generally agreed that the merger of a disregarded entity into a corporation should not qualify as a statutory merger under section 368(a)(1)(A), commentators asserted that the merger of a target corporation into a disregarded entity with a corporate owner should be able to qualify as a statutory merger under section 368(a)(1)(A). Commentators argued that not permitting the merger of a target corporation into a disregarded entity to qualify as a statutory merger under section 368(a)(1)(A) is inconsistent with the general treatment of the disregarded entity as a division of its owner for Federal tax purposes.

Explanation of Provisions

A. Definitions

After consideration of the comments received, the IRS and Treasury have decided to withdraw the 2000 proposed regulations and issue new proposed regulations (hereinafter referred to as the 2001 proposed regulations) to provide guidance concerning the definition of the terms *statutory merger* and *consolidation* as those terms are used in section 368(a)(1)(A), including as those terms relate to transactions involving disregarded entities.

The 2001 proposed regulations introduce a number of terms that are employed in the definition of statutory merger or consolidation. The term disregarded entity is defined as a business entity (as defined in § 301.7701–2(a)) that is disregarded as an entity separate from its owner for Federal tax purposes. The term combining entity is defined as a business entity that is a corporation (as defined in § 301.7701–2(b)) that is not a disregarded entity. The term combining unit is defined as a combining entity and all disregarded entities, if any, the assets of which are treated as owned by such combining entity for Federal tax purposes.

The 2001 proposed regulations provide that, for purposes of section 368(a)(1)(A), a statutory merger or consolidation must be effected pursuant to the laws of the United States or a State or the District of Columbia. Pursuant to such laws, the following events must occur simultaneously at the effective time of the transaction: (1) all of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and (2) the combining entity of each transferor unit ceases its separate legal existence for all purposes.

The IRS and Treasury believe that these definitions of statutory merger and consolidation are consistent with the principles of current law. *See Cortland Specialty Co.* v. *Commissioner,* 60 F.2d 937 (2d Cir. 1932), cert. denied, 288 U.S. 599 (1933); Rev. Rul. 2000–5 (2000–1 C.B. 436). In particular, the IRS and Treasury do not intend for the requirement that all of the assets of one or more transferor units be transferred in the statutory merger or consolidation to be interpreted in the same manner as the ''substantially all'' requirement of 368(a)(1)(C), 368(a)(1)(D), 368(a)(2)(D), and 368(a)(2)(E). However, the IRS and Treasury do intend this requirement to ensure that divisive transactions do not qualify as statutory mergers or consolidations under section 368(a)(1)(A). *See* Rev. Rul. 2000–5.

In addition, the 2001 proposed regulations, like the 2000 proposed regulations, remove the word corporation from the requirement that, in order to qualify as a reorganization under section 368(a)(1)(A), a merger or consolidation must be ''effected pursuant to the corporation laws.'' This change conforms the regulations to the IRS's long-standing position that a transaction may qualify as a reorganization under section 368(a)(1)(A) even if it is undertaken pursuant to laws other than the corporation law of the relevant jurisdiction. *See* Rev. Rul. 84–104 (1984–2 C.B. 94) (treating a consolidation pursuant to the National Banking Act, 12 U.S.C. 215, as a merger for Federal tax purposes).

Finally, the 2001 proposed regulations remove the word ''Territory'' from the types of jurisdictions pursuant to the laws of which a transaction that qualifies as a reorganization under section 368(a)(1)(A) may be effected to be consistent with the definition of domestic under section 7701(a)(4), which was amended by section 1906(c) of Tax Reform Act of 1976 (Public Law 94–455; 90 Stat. 1525).

In this guidance project, the IRS and Treasury are not addressing the treatment under section 368(a)(1)(A) of transactions that involve one or more foreign corporations. As discussed below, the IRS and Treasury are considering issuing guidance regarding such transactions as part of a separate regulations project.

B. Mergers Involving Disregarded Entities

The 2001 proposed regulations' definition of a statutory merger or consolidation, unlike the approach of the 2000 proposed regulations, permits certain statutory mergers and consolidations involving disregarded entities to qualify as statutory mergers and consolidations under section 368(a)(1)(A). However, the 2001 proposed regulations provide that such a transaction in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit is not a statutory merger or consolidation within the meaning of section 368(a)(1)(A) unless such combining entity, the combining entity of the transferee unit, such disregarded entities, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia.

Permitting certain transactions involving disregarded entities that have a single corporate owner to qualify as statutory mergers and consolidations for purposes of section 368(a)(1)(A) is appropriate because it is consistent with the general treatment of a disregarded

entity as a division of its owner. Therefore, under the 2001 proposed regulations, the merger of a target corporation into a disregarded entity may qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A). Consistent with the 2000 proposed regulations, however, the 2001 proposed regulations do not permit the merger of a disregarded entity into a member of a transferee unit, where the owner of the disregarded entity does not also merge into a member of the transferee unit, to qualify as a statutory merger or consolidation under section 368(a)(1)(A). In such a transaction, all of the transferor unit's assets may not be transferred to the transferee unit, with the result that the transferor unit's assets may be divided between the transferor unit and the transferee unit. Moreover, the separate legal existence of the combining entity of the transferor unit does not terminate as a matter of law. Although such a transaction cannot qualify as a statutory merger or consolidation under section 368(a)(1)(A), it may qualify for nonrecognition treatment under other provisions of the Code.

C. Request for Comments

Treasury and the IRS are considering further revisions to the regulations under section 368(a)(1)(A) to address statutory mergers and consolidations that involve one or more foreign corporations, including transactions involving a disregarded entity. Comments are requested regarding the appropriate scope for any such revision. Comments also are specifically requested concerning what related changes would be necessary to the regulations under sections 358 (concerning the determination of stock basis in certain triangular reorganizations), 367, and 897, as well as other international provisions of the Code. Because a revision of the regulations may include revisions related to transactions under foreign merger or consolidation laws, comments are requested on what changes, if any, may be appropriate to the definition of a statutory merger or consolidation to facilitate the application of the definition in the context of the laws of a foreign jurisdiction. Finally, comments are requested regarding what additional reporting requirements may be appropriate to facilitate administration of the rules regarding statutory mergers or consolidations involving foreign entities.

Effective Date

These regulations are proposed to apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Regs option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 13, 2002 beginning at 10 am in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 20, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Reginald Mombrun and Marlene P. Oppenheim of the office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is prepared to be amended as follows:

PART 1— INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.368–2, paragraph (b)(1) is revised to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(b)(1)(i) *Definitions.* For purposes of this paragraph (b)(1), the following terms shall have the following meanings:

(A) *Disregarded entity.* A disregarded entity is a business entity (as defined in § 301.7701–2(a) of this chapter) that is disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b) of this chapter) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(B) *Combining entity.* A combining entity is a business entity that is a corporation that is not a disregarded entity.

(C) *Combining unit.* A combining unit is comprised solely of a combining entity and all disregarded entities, if any, the assets of which are treated as

owned by such combining entity for Federal tax purposes.

(ii) *Statutory merger or consolidation generally.* For purposes of section 368(a)(1)(A), a statutory merger or consolidation is a transaction effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, the following events occur simultaneously at the effective time of the transaction—

(A) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and

(B) The combining entity of each transferor unit ceases its separate legal existence for all purposes.

(iii) *Statutory merger or consolidation involving disregarded entities.* A transaction effected pursuant to the laws of the United States or a State or the District of Columbia in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit is not a statutory merger or consolidation within the meaning of section 368(a)(1)(A) and paragraph (b)(1)(ii) of this section unless such combining entity, the combining entity of the transferee unit, such disregarded entities, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia.

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section. In each of the examples, except as otherwise provided, each of V, Y, and Z is a domestic corporation. X is a domestic limited liability company. Except as otherwise provided, X is wholly owned by Y and is disregarded as an entity separate from Y for Federal tax purposes. The examples are as follows:

Example 1. Divisive transaction pursuant to a merger statute. (i) Under State W law, Z transfers some of its assets and liabilities to Y, retains the remainder of its assets and liabilities, and remains in existence following the transaction. The transaction qualifies as a merger under state W corporate law. Prior to the transaction, Y is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of Y, the combining entity and sole member of the transferee unit. In addition, the transaction does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because the separate legal existence of Z does not cease. Accordingly, the transaction does not qualify as a statutory merger or consolidation under section 368(a)(1)(A).

Example 2. Merger of a target corporation into a disregarded entity in exchange for stock of the owner. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their stock of Z for stock of Y. Prior to the transaction, Z is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction meets the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal tax purposes, and Z ceases its separate legal existence for all purposes. Paragraph (b)(1)(iii) of this section does not apply to prevent the transaction from qualifying as a statutory merger or consolidation for purposes of section 368(a)(1)(A) because each of Z, Y and X is a domestic entity. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 3. Triangular merger of a target corporation into a disregarded entity. (i) The facts are the same as in *Example 2*, except that V owns 100 percent of the outstanding stock of Y and, in the merger of Z into X, the Z shareholders exchange their stock of Z for stock of V. In the transaction, Z transfers substantially all of its properties to X.

(ii) The transaction is not prevented from qualifying as a statutory merger or consolidation under section 368(a)(1)(A), provided the requirements of section 368(a)(2)(D) are satisfied. Because the assets of X are treated for Federal tax purposes as the assets of Y, Y will be treated as acquiring substantially all of the properties of Z in the merger for purposes of determining whether the merger satisfies the requirements of section 368(a)(2)(D). As a result, the Z shareholders that receive stock of V will be treated as receiving stock of a corporation that is in control of Y, the combining entity of the transferee unit that is the acquiring corporation for purposes of section 368(a)(2)(D). Accordingly, the merger will satisfy the requirements of section 368(a)(2)(D) such that the Z shareholders' receipt of stock of V in the merger will not cause the transaction to fail to qualify as a reorganization under section 368(a)(1)(A).

Example 4. Merger of a target corporation into a disregarded entity owned by a partnership. (i) The facts are the same as in *Example 2*, except that Y is organized as a partnership under the laws of State W and is classified as a partnership for Federal tax purposes.

(ii) The transaction does not meet the requirements of paragraph (b)(1)(ii)(A) of this section. All of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit because neither X nor Y qualifies as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 5. Merger of a disregarded entity into a corporation. (i) Under State W law, X merges into Z. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction all of the assets and liabilities of X (but not the assets and liabilities of Y other than those of X) become the assets and liabilities of Z and X's separate legal existence ceases for all purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of a transferor unit do not become the assets and liabilities of one or more members of the transferee unit. The transaction also does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because X does not qualify as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 6. Merger of a corporation into a disregarded entity in exchange for interests in the disregarded entity. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger of Z into X, the Z shareholders exchange their stock of Z for interests in X so that, immediately after the merger, X is not disregarded as an entity separate from Y for Federal tax purposes. Following the merger, pursuant to § 301.7701–2(b)(1)(i) of this chapter, X is classified as a partnership for Federal tax purposes.

(ii) The transaction does not meet the requirements of paragraph (b)(1)(ii)(A) of this section because immediately after the merger X is not disregarded as an entity separate from Y and, consequently, all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

(v) *Effective date.* This paragraph (b)(1) applies to transactions occurring

on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–28670 Filed 11–14–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

[Notice No. 933]

RIN 1512–AB73

Implementation of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, Relating to a National Repository for Arson and Explosives Information (98R–266P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend the regulations to implement the provision of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, relating to a national repository for information on explosives incidents and arson. The proposed regulations implement the law by requiring all Federal agencies having information concerning incidents involving arson and the suspected criminal misuse of explosives to report such information to ATF.

DATES: Comments must be received on or before February 13, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 933.* Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ x 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Public Participation section at the end of this notice for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1996, Public Law 104–208 (110 Stat. 3009), the Omnibus Consolidated Appropriations Act of 1997 (hereafter, ''the Act''), was enacted. The Act amended the Federal explosives laws in Title 18, United States Code (U.S.C.), Chapter 40. As amended, section 846(b) authorizes the Secretary of the Treasury to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. This section also requires all Federal agencies having information concerning such incidents to report the information to the Secretary. This includes information regarding arson and explosives incidents investigated by a Federal agency, as well as information on such incidents reported to a Federal agency by other sources (e.g., a State or local agency) and criminal dispositions, if any. In addition, the law provides that such repository will contain information on incidents voluntarily reported to the Secretary by State and local authorities.

The National Repository

The Secretary tasked ATF with establishing and maintaining the national repository of information concerning arson and explosives incidents. The information that we collect will be available for statistical analysis and research, investigative leads, and intelligence. We recognize that partnerships with other agencies are vital to the success of the national repository. The principal Federal partners in the data collection effort are ATF, the Federal Bureau of Investigation (FBI), and the United States Fire Administration (USFA).

The national repository of information will be available in a database designed and implemented with input from Federal, State, and local fire service and law enforcement authorities. The database will include some 80,000 incidents, dating back over 25 years, from ATF's Explosives Incidents System (EXIS), now known as the Arson and Explosives Incidents System (AEXIS). The database also will incorporate information from a variety of law enforcement and fire service sources. Finally, a public Internet site will provide aggregate statistical summaries of data collected from Federal and State agencies.

Currently, the ATF National Repository Branch is working on integrating data from all contributing sources to establish the most accurate and complete arson and explosives informational data. It will provide statistical information to the public and it will establish a secure web site that will provide selected investigative information to authorized user groups. The national repository's secure site will be a law enforcement and fire service intelligence database designed to aid investigators in identifying trends and similarities between arson and explosives incidents. The repository will help authorized investigators identify suspects, case-specific similarities regarding explosive and incendiary device construction, methods of initiation, types of fuels/explosives used, and methods of operation. The system will also be capable of linking thefts of explosive materials with the later criminal misuse of the explosives. Through partnership with other Federal, State, and local law enforcement and fire service agencies, the system will also help identify persons who commit crimes of violence using arson and explosives, and assist in tracking dispositions of arson and explosive criminal cases. The system will link investigators who may be investigating similar incidents and will rely on communication between investigators to disseminate case-specific information on a case-by-case basis. We have also established a toll free telephone number (1–800–461–8841) to provide a method for direct exchange of information between authorized users and our National Repository Intelligence Research Specialists who have detailed knowledge of the system's capabilities.

To facilitate the development of the national repository, we have established the Arson and Explosives National Repository Branch (AENRB) within the Arson and Explosives Programs Division at our headquarters in Washington, DC. The Branch is available to assist other Federal, State, and local law enforcement and fire service investigators with arson and explosives investigations. The Branch is staffed with ATF special agents, intelligence research specialists, and support personnel who are all experienced in arson and explosives related investigations.

Proposed Regulations

The proposed regulations require all agencies having information concerning incidents involving arson and the suspected criminal misuse of explosives, from whatever source received, to report such information to ATF. The term ''agency'' is defined in

the proposed regulations as each of the executive agencies and military departments (as defined in 5 U.S.C. 105 and 102, respectively) and the United States Postal Service. The term ''incident'' is defined as an event or occurrence, other than accidental, resulting in the response of an emergency service, fire service, or law enforcement agency which results in the recording of certain action(s) or reportable event(s) in an official report. The term ''arson'' is defined as the crime of maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. The term ''suspected criminal misuse'' is defined as any activity triggering an official report of an explosives incident. The term ''explosives'' has the same meaning as that defined in the law (18 U.S.C. 232(5), 841(d), and 844(j)) and regulations (27 CFR 55.11 and 55.23).

Under the proposed regulations, agencies will report certain minimal information to ATF, in the format mutually agreed upon by the agency and ATF. In order to arrange a method to submit the data, agencies should contact the AENRB at the toll free number mentioned above. The minimal information reported to ATF includes:

1. General information about the arson or explosive incident (e.g., incident/case number, agency name, date);
2. Basic information about the arson or explosive incident (e.g., location of the incident, date and time of the incident, type of incident);
3. A complete list of all stolen explosives;
4. A complete list of all recovered explosives;
5. Estimated property value and loss;
6. Casualties (e.g., fire service, law enforcement, civilian);
7. Any narrative summary regarding an arson or explosive incident and information on all device components. The term ''device component(s)'' is defined in the proposed regulations as items or materials used to assemble or to construct any type of an improvised explosive or incendiary device, such as containers, explosives, fuels, propellants, and materials used to cause the device to function or to cause the fire to occur;
8. Suspect(s) or arrested or convicted person(s) full name and identifiers (e.g., date of birth, race, nationality, sex, social security number, law enforcement identifying number); and
9. Disposition of the case (i.e., court and date of conviction, statutory provisions violated, and the length of sentence imposed, if any), if available.
10. Information, if any, to assist in evaluating similarities with other arson and explosives incidents, such as features specific to the incident that are unique, highly distinctive, or sufficiently idiosyncratic to merit inclusion.

The proposed rule requires that agencies will report arson and explosives incidents to ATF at least quarterly (i.e., January–March; April–June; July–September; October–December), no later than 15 days after the quarter ends, but may report any incident as soon as it happens.

State and local authorities having information on incidents involving arson and the suspected criminal misuse of explosives may report the information voluntarily to ATF and should contact the AENRB at the toll free number mentioned above in order to arrange a method to submit the data.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

We have determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities because it only requires Federal agencies to report information on arson and explosives incidents to the Secretary. State and local authorities voluntarily may report such information to ATF. Accordingly, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collections of information in this proposed regulation are in 27 CFR 55.233, 55.234, 55.235, and 55.236. This information is required to implement the provisions of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, relating to a national repository for arson and explosives information. The likely respondents are State or local governments.

Estimated total annual reporting and/or recordkeeping burden: 67 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .67 hours (40 minutes).

Estimated number of respondents and/or recordkeepers: 100. This represents only those State and local authorities reporting information concerning arson and explosives incidents directly to ATF.

Estimated annual frequency of responses: 4.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Public Participation

We are requesting comments on the proposed regulations from all interested persons. We are also specifically requesting comments on the clarity of

this proposed rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

You may submit written comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the comments received will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Arson, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR Part 55 as follows:

PART 55—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 55 is revised to read as follows:

Authority: 18 U.S.C. 846, 847.

Par. 2. Section 55.1 is amended by revising paragraph (a), by removing the word ''and'' at the end of paragraph (b)(8), by removing the period at the end of paragraph (b)(9) and adding in its place ''; and'', and by adding new paragraph (b)(10) to read as follows:

§ 55.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), Public Law 103–322 (108 Stat. 1796), Public Law 104–132 (110 Stat. 1214), and Public Law 104–208, (110 Stat. 3009).

(b) * * *

(10) The arson and explosives national repository.

Par. 3. Part 55 is amended by adding a new Subpart L immediately following § 55.224 to read as follows:

Subpart L—Arson and Explosives National Repository

Sec.

55.231 What is the arson and explosives national repository?
55.232 What do the terms mean that are used in this subpart?
55.233 Who must report information on arson and explosives incidents to ATF?
55.234 What is the minimal information that must be reported to ATF?
55.235 How will an agency report arson and explosives incident information to ATF?
55.236 How often will an agency report arson and explosives incident information to ATF?

§ 55.231 What is the arson and explosives national repository?

Under section 846(b) of the Act, the Secretary of the Treasury is authorized to establish a national repository, or storehouse, of information on incidents involving arson and the suspected criminal misuse of explosives. The Secretary tasked ATF with establishing the repository and maintaining it.

§ 55.232 What do the terms mean that are used in this subpart?

For purposes of this subpart, the terms ''agency,'' ''arson,'' ''device component(s),'' ''explosive(s),'' ''incident,'' and ''suspected criminal misuse'' are defined in this section. Terms not defined below will have the same meaning specified in section 55.11.

(a) *Agency.* Each of the executive agencies and military departments (as defined in 5 U.S.C. 105 and 102, respectively) and the United States Postal Service.

(b) *Arson.* The crime of maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.

(c) *Device component(s).* Items or materials used to assemble or to construct any type of an improvised explosive or incendiary device, such as containers, explosives, fuels, propellants, and materials used to cause the device to function or to cause the fire to occur.

(d) *Explosive(s).* (1) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters;

(2) Any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible unit, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion;

(3) Gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and other explosive or incendiary devices. ''Explosive or incendiary device'' means—

(i) Dynamite and all other forms of high explosives;

(ii) Any explosive bomb, grenade, missile, or similar device; and

(iii) Any incendiary bomb or grenade, fire bomb, or similar device, including any device which—

(A) Consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound; and

(B) Can be carried or thrown by one individual acting alone; and

(4) Blasting agents, water gels, and all items in the ''List of Explosive Materials'' provided for in § 55.23.

(e) *Incident.* An event or occurrence, other than accidental, resulting in the response of an emergency service, fire service or law enforcement agency which results in the recording of certain action(s) or reportable event(s) in an official report.

(f) *Suspected criminal misuse.* Any activity triggering an official report of an explosives incident.

§ 55.233 Who must report information on arson and explosives incidents to ATF?

Any agency (as defined in § 55.232) having information on incidents involving arson and the suspected criminal misuse of explosives, from whatever source, must report the information to ATF in the format arranged with ATF. State and local authorities having information concerning such incidents voluntarily may report the information to ATF by telephoning 1–800–461–8841 (nationwide toll free number).

§ 55.234 What is the minimal information that must be reported to ATF?

(a) General information about the arson/explosives incident, including—

(1) The incident/case number;

(2) The agency name; and

(3) The date;

(b) Basic information about the arson/explosives incident, including—

(1) The location of the incident;

(2) The date and time of the incident; and

(3) The type of incident (e.g., fire, explosion, bombing);

(c) A complete list of all stolen explosives;

(d) A complete list of all recovered explosives;

(e) Estimated property value and loss;

(f) Casualties (e.g., fire service, law enforcement, civilian);

(g) Any narrative summary regarding the arson/explosives incident and information on all device components;

(h) Suspect(s) or arrested or convicted person(s) full name and identifiers (e.g., date of birth, race, nationality, sex, social security number, law enforcement identifying number);

(i) Disposition of the case (i.e., court and date of conviction, statutory provisions violated, and the length of sentence imposed, if any), if available; and

(j) Information, if any, to assist in evaluating similarities with other arson and explosives incidents, such as features specific to the incident that are unique, highly distinctive, or sufficiently idiosyncratic to merit inclusion.

§ 55.235 How will an agency report arson and explosives incident information to ATF?

Arson and Explosives incident information must be reported to ATF in a manner that is authorized by the Director.

§ 55.236 How often will an agency report arson and explosives incident information to ATF?

An agency must report arson and explosives incident information to ATF on a quarterly basis (i.e., January–March; April–June; July–September; October–December), and no later than 15 days after the quarter ends, but may report any incident as soon as it happens. If an incident is reported prior to the end of the quarter it should not be reported again as part of a quarterly report.

Signed: August 23, 2001.

Bradley A. Buckles,

Director.

Approved: October 15, 2001.

Timothy E. Skud,

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

[FR Doc. 01–28597 Filed 11–14–01; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 0137–1137; FRL–7103–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri which provides for the attainment and maintenance of the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in St. Joseph, Missouri. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received in writing by December 17, 2001.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 2, 2001.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 01–28520 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0039b & MT–001–0041b; FRL–7086–4]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Montana; Revisions to the Missoula City-County Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation the State implementation plan (SIP) revisions regarding the Missoula City-County Air Pollution Control Program, as submitted by the Governor of Montana with a letter dated April 30, 2001. On November 17, 2000, the Montana Board

of Environmental Review (MBER) adopted the revisions to the Missoula program rules regarding program authority and administration, definitions, failure to attain standards, emergency episode planning, general provisions, standards for stationary sources (including air quality permit program), outdoor burning, fugitive particulate, solid fuel burning devices, fuels, motor vehicles, enforcement and administrative procedures, and penalties. EPA's approval would make these revisions federally enforceable. In addition, the State requested that rules of the Missoula program that are not appropriate for incorporation into the SIP be removed from the federally approved plan. Finally, the Governor's April 30, 2001 submittal consists of several other revisions to Montana regulations, which will be handled separately.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before December 17, 2001.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: October 5, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–28190 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD120–3071b ; FRL–7100–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOC RACT Determinations for the Thomas Manufacturing Corporation in the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing and requiring reasonably available control technology (RACT) for the Thomas Manufacturing Corporation, a major source of volatile organic compounds (VOC) in the State of Maryland. This source is located in the Baltimore ozone nonattainment area. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period.

DATES: Comments must be received in writing by December 17, 2001.

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

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti at (215) 814–2174, the EPA Region III address above or by e-mail at *magliocchetti.catherine@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOC RACT Determinations for the Thomas Manufacturing Corporation in the Baltimore Ozone Nonattainment Area, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: October 31, 2001.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–28188 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[IB Docket No. 01–185, ET Docket No. 95–18, DA 01–2548]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Commission gives notice that it extended the period for reply comment in the proceeding that it initiated to explore proposals to bring flexibility to the delivery of communications by Mobile Satellite Service (''MSS'') providers. The Commission extended the period for reply comment at the request of the Cellular Telecommunications & Internet Association (CTIA) and Motient Services, Inc. (Motient) in order to allow sufficient time to establish the most complete and well-developed record possible on which to base a decision.

DATES: Reply Comments were due November 12, 2001.

FOR FURTHER INFORMATION CONTACT: Breck Blalock, 202–418–8191.

SUPPLEMENTARY INFORMATION: This is a summary of the Order Extending Comment Period in IB Docket No. 01–185, ET Docket No. 95–18, DA 01–2314, adopted October 4, 2001. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC 20554 and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

1. The Commission extended the reply comment period deadlines established in the Notice of Proposed Rulemaking in this proceeding (66 FR 47621, August 20, 2001) from November 5, 2001, to November 12, 2001.

Ordering Clause

2. The requests of CTIA and Motient to extend the deadline for filing reply comments in this proceeding is granted to the extent indicated, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46.

Federal Communications Commission.

J. Breck Blalock,

Deputy Chief, Planning & Negotiations Division, International Bureau.

[FR Doc. 01–28682 Filed 11–14–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 011029263–1263–01; I.D. 010201A]

RIN 0648–AO93

Atlantic Highly Migratory Species; Quotas and Fishing Areas; Trade Monitoring

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

ACTION: Propose rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the Atlantic highly migratory species (HMS) fisheries to implement recommendations adopted at the 2000 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Specifically, NMFS proposes measures that would set a reserve quota for North Atlantic swordfish, maintain the status quo South Atlantic swordfish quota for 2001, and prohibit imports of Atlantic bigeye tuna harvested by certain countries. NMFS also proposes to reinstate regulations inadvertently removed during regulatory consolidation that would prohibit persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT. Finally, NMFS proposes certain corrections to existing trade restrictions to facilitate enforcement of the swordfish dead discard allowance and import of swordfish from designated countries. The intent of these actions is to improve conservation of the Atlantic highly migratory species and to improve management of these fisheries, while allowing harvest and trade consistent with recommendations of ICCAT. NMFS will hold public hearings to receive comments from fishery participants, importers, and other members of the public regarding these proposed regulations.

DATES: Written comments on the proposed rule must be received by 5 p.m. on December 31, 2001.

The hearing dates are:

1. November 26, 2001, from 7 to 9 p.m., Fort Lauderdale, FL.
2. November 26, 2001, from 7 to 9 p.m., Fairhaven, MA.
3. December 10, 2001, from 7 to 9 p.m., Barnegat Light, NJ.

ADDRESSES: The meeting locations are:

1. Fort Lauderdale–Broward County Main Library, Bienes Center, 6th Floor, 100 South Andrews Avenue, Fort Lauderdale, FL, 33301
2. Fairhaven–Holiday Inn Express, 110 Middle Street, Fairhaven, MA, 02719
3. Barnegat Light–Barnegat Light First Aid Squad, West Tenth Street, Barnegat Light, NJ, 08006

Comments on the proposed rule should be sent to, and copies of the Draft Environmental Assessment/ Regulatory Impact Review (EA/RIR) may be obtained from Chris Rogers, Chief, Highly Migra Proposed rule; public hearings; request for comments. tory Species Division,1315 East-West Highway F/SF1, Silver Spring, MD, 20910. These documents are also available from the Highly Migratory Species Division website at *www.nmfs.noaa.gov/sfa/hmspg.html* . Comments also may be sent via facsimile (fax) to 727–570–5656. Comments will not be accepted if submitted via e-mail or on the Internet.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347 or e-mail at *jill.stevenson@noaa.gov* or Pat Scida, 978–281–9260 or email at *pasquale.scida@noaa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic HMS fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

North Atlantic Swordfish Quota

At the 2000 meeting of ICCAT, Japan indicated that it had exceeded its North Atlantic swordfish quota, due to higher than anticipated incidental catch rates of swordfish in its bigeye tuna fishery. The overharvest has forced Japan to require its fishermen to release all swordfish, regardless of whether such swordfish are retrieved dead. By its nature, this incidental catch problem is difficult to address, and Japan will continue to monitor the number of swordfish discarded dead. In the interests of supporting the ICCAT swordfish stock rebuilding program and accounting for all sources of mortality, the United States agreed to assist Japan with a one-time transfer of North Atlantic swordfish quota (400 mt whole weight (ww); 301 mt dressed weight (dw)) in 2001. The quota transfer agreement had the full support of the U.S. ICCAT Commissioners and representatives of the U.S. longline industry.

For the purposes of the transfer agreement, NMFS proposes to amend the HMS regulations to establish a reserve quota for swordfish, in part to provide for the reservation of quota to transfer to Japan, and to amend the procedures by which any additional reserve quota shall be apportioned to other fishing categories. Recently, NMFS published a notice adjusting the 2001 quotas for North Atlantic swordfish by carrying forward the unharvested amount from the 1999 fishing year (66 FR 46401, September 5, 2001). It is anticipated, based on

preliminary landings data, that some unharvested U.S. swordfish quota from the 2000 fishing year will also be available for carryover to the 2001 fishing year. NMFS proposes to allocate a portion of the carryover amounts from 1999 and/or 2000 to the reserve, with the remainder to be allocated to the fishing categories for the 2001 fishing year. The reserve amount could then be used to effect the proposed transfer to cover excess dead discards by Japanese vessels. Any additional quota shall be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives.

South Atlantic Swordfish Quota

Consistent with the 2000 ICCAT recommendation, NMFS proposes to maintain the current U.S. South Atlantic swordfish quota at 384 mt ww (289 mt dw) for the 2001 fishing year. NMFS estimates that in the 2000 fishing year, only 11 percent of the U.S. South Atlantic Swordfish quota was harvested (based on preliminary landings data). However, the ICCAT recommendation does not authorize carryover of unharvested South Atlantic swordfish quota.

Authorized Fishing Areas

Prior to the publication of the HMS FMP and consolidation of Atlantic HMS regulations under new part 635 of the Code of Federal Regulations (CFR) (64 FR 29090, May 28,1999), regulations governing the Atlantic tunas fisheries existed under 50 CFR part 285. Regulatory text at 50 CFR 285.3 (b) and (g) prohibited persons and vessels subject to the jurisdiction of the United States from possessing fish taken in violation of regulations implementing ICCAT recommendations or from violating another country's fisheries regulations pertaining to species managed by ICCAT. These prohibitions were necessary to enforce U.S. regulations for all persons and vessels subject to U.S. jurisdiction, regardless of fishing area.

While those specific prohibitions were included in the initial proposed consolidated HMS regulations (61 FR 57361, November 6, 1996), they were inadvertently excluded when the consolidated regulations were re-proposed to implement the new requirements of the HMS FMP (64 FR 3486, January 20, 1999). The regulatory consolidation was not intended to make substantive changes to existing regulations, other than those specifically noted as necessary to achieve consistency or to implement new requirements of the HMS FMP. The exclusion of the prohibitions at 50 CFR 285.3 (b) and (g) from the consolidated regulatory text under 50 CFR part 635 was a drafting error and requires the correction contained in this proposed rule. Therefore, NMFS proposes to amend §§ 735.71 (a)(24), (a)(29), and (a)(36) to add these provisions.

Additionally, at the 2000 ICCAT meeting, the United States was notified that a U.S.-flagged vessel landed Atlantic bluefin tuna caught in the Mediterranean Sea. U.S. fishermen may not harvest east Atlantic bluefin tuna because ICCAT recommendations supporting the rebuilding program for west Atlantic bluefin tuna prohibit transfer of fishing effort from the western Atlantic to the eastern Atlantic and, further, the U.S. is not a participant in the east Atlantic bluefin tuna allocation scheme. The Atlantic HMS regulations specifically note the authorized fishing areas and management units of stocks for which the United States is party to ICCAT allocation schemes. However, there are no specific regulations pertaining to unauthorized fishing areas with respect to those stock management units for which the United States does not have an allocation. Therefore, NMFS proposes to amend § 635.25 to designate those areas where U.S. fishermen may not harvest certain Atlantic HMS. One such unauthorized fishing area is the eastern Atlantic Ocean (generally, east of 45° W. long. above 10° N. lat. and west of 25° W. long. below the equator), which is closed to U.S. vessels for the harvest of bluefin tuna.

Operators of U.S. commercial fishing vessels wishing to fish for species regulated under the authority of ATCA in unauthorized areas may operate under contract with another nation, provided such activities are consistent with applicable U.S. and foreign nation laws and regulations, ICCAT recommendations and international agreements. In such cases, however, these vessel owners must have an exempted fishing permit issued by NMFS to ensure they are not fishing in violation of U.S. regulations. Additionally, U.S. citizens may fish recreationally for such species in such areas from a vessel under foreign jurisdiction, provided the vessel is authorized by its flag nation to undertake such fishing activity and is operating consistent with ICCAT recommendations.

Bigeye Tuna Trade Restrictions

At its 2000 meeting, ICCAT identified Contracting Parties and non-Contracting parties/entities whose large-scale longline vessels have been fishing for bigeye tuna in a manner that diminishes the effectiveness of ICCAT measures. Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines were identified as such entities; vessels registered to these countries are fishing in the Atlantic Ocean and have bigeye tuna as their primary target, yet catches are largely unreported and unregulated. Following the procedures established in the bluefin tuna and swordfish action plans to ensure the effectiveness of those conservation programs, the above mentioned Parties/entities were notified and given the opportunity to rectify the situation. Having received no satisfactory responses, ICCAT recommended trade restrictive measures for bigeye tuna.

Therefore, NMFS proposes to ban the import of Atlantic bigeye tuna harvested by vessels flagged by Belize, Cambodia, Equatorial Guinea, Honduras, and St. Vincent and the Grenadines. Consistent with the ICCAT recommendation, NMFS would not make the restriction on Honduras effective until ICCAT has determined at its 2001 meeting that Honduran vessels are fishing for Atlantic bigeye tuna in a manner that diminishes the effectiveness of ICCAT's conservation and management measures. If such a determination is made, NMFS would make effective as soon as possible the trade restrictions as they would apply to Honduras.

In order to monitor trade of bigeye tuna and enforce the proposed import restrictions, NMFS considered requiring that all bigeye tuna shipments, regardless of their origin, be accompanied by a Certificate of Eligibility (COE) as a condition of entry into the United States. This document would contain information about the ocean of origin and the flag of the harvesting vessel: data that are not available from existing sources (e.g., Customs entry summary data, shipping invoices). However, ICCAT also recommended at its 2000 meeting that statistical documentation programs be developed for swordfish and bigeye tuna, similar to the existing bluefin tuna statistical document. NMFS has initiated internal discussions on this topic and has hosted a public scoping meeting (June 2001) to solicit comments from U.S. industry members and a Technical Workshop (July 2001) for ICCAT counterparts. At the 2001 meeting, NMFS will continue to work with other ICCAT members to adopt a recommendation for swordfish and bigeye statistical documentation programs.

Given the expectation of a more comprehensive ICCAT trade monitoring program in the near future, NMFS concludes that a domestic COE program for bigeye tuna implemented only for the short term and replaced by a more comprehensive program in the future is impractical. Instead, NMFS proposes regulations whereby any bigeye tuna imported into the United States would be assumed to be caught by vessels of the exporting nation. Importers buying bigeye tuna or its products from the restricted countries listed above would need to show that the product was harvested by flag vessels of another country in order to clear U.S. Customs. Further, NMFS proposes to amend the regulations regarding restricted ports of entry, codified at § 635.47, to include bigeye tuna, if such port of entry designations become necessary to avoid circumvention of the bigeye tuna trade restrictions.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 2000 meeting that do not presently require rulemaking but will require management action on the part of NMFS. These include recommendations regarding South Atlantic swordfish and North and South Atlantic albacore. ICCAT's 2000 recommendation on blue and white marlin will be addressed in a separate rulemaking.

ICCAT adopted a status quo target total allowable catch (TAC) for South Atlantic swordfish and contracting parties agreed to establish unilateral catch limits for 2001 consistent with that target TAC. In December, 2000, the United States informed ICCAT of its intention to restrict harvest of South Atlantic swordfish by U.S. vessels to its previously established annual catch limit of 384 mt ww. As this annual quota is currently established by regulation, no further action is required at this time.

Additionally, ICCAT adopted a recommendation for South Atlantic albacore that establishes a 2001 TAC and specifies that countries having caught less than 100 mt ww of southern albacore per year during 1992–96 are subject to an annual catch limit of 100 mt ww. The United States does not have a directed fishery for South Atlantic albacore, but does take albacore as bycatch in its directed swordfish fishery. Because U.S. annual South Atlantic albacore landings were well below the 100–mt ww limit in the specified reference years and are not anticipated to increase significantly, no changes to the regulations are proposed at this time.

ICCAT also adopted a recommendation that sets a 2001 TAC for North Atlantic albacore and establishes the U.S. share as 607 mt ww for the year 2001. Since average recent harvests have not exceeded this level, no regulations to establish a quota are proposed at this time. The 2001 recommendation provides for rollover/deduction of over/underharvest of this annual catch limit for quotas yet to be established for years 2002 and/or 2003. Depending on the requirements of any subsequent ICCAT recommendations for North Atlantic albacore, NMFS may need to undertake rulemaking to establish commercial and recreational harvest quotas and to adjust for any overharvest or underharvest during the 2001 fishing year.

Other Amendments

NMFS proposes an amendment to the regulations to correct the dates specified for phasing out the North Atlantic swordfish dead discard allowances. In a Federal Register notice published December 12, 2000 (65 FR 77523), NMFS inadvertently stated that the dead discard allowance of 160 mt ww would apply to the fishing year beginning May 1, 2001. The ICCAT recommendation and the supporting rulemaking documents indicate that the 160 mt ww swordfish dead discard allowance applies to the fishing year that begins June 1, 2002.

NMFS also proposes an amendment to the regulations published December 12, 2000 (65 FR 77523) to implement the 1999 ICCAT recommendation to prohibit swordfish imports from designated countries. NMFS inadvertently omitted the relevant prohibition that should have accompanied that trade restriction rule and proposes to add it to facilitate enforcement. NMFS also proposes a change to those swordfish trade restrictions to conform to the 1999 ICCAT recommendation. The recommendation indicated that trade restrictions should apply only to Atlantic swordfish (not Indian Ocean or Pacific Ocean swordfish), and such a distinction was stated in the preamble to the final rule. However, the regulatory text prohibits the import of swordfish of any stock harvested by vessels of Belize and Honduras. The swordfish COE program collects information regarding the ocean area of origin of imported swordfish. NMFS does not anticipate an enforcement problem associated with restricting trade only of Atlantic swordfish. Therefore, NMFS proposes to change the import prohibition to apply only to Atlantic swordfish harvested by vessels of Belize and Honduras.

Public Hearings and Special Accommodations

NMFS will hold public hearings (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding these proposed amendments. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jill Stevenson at (301) 713–2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA, has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Although the reserve quota would be established with the initial intent of implementing a transfer to Japan, the reserve of 301 mt dw of North Atlantic swordfish would be obtained from unharvested quota from prior fishing years. Because the North Atlantic swordfish fishery has not been closed in recent years and a significant amount of the available quota has been carried over for several years, the reservation and subsequent transfer of quota for Japan is not expected to result in a closure of the domestic fishery or diminish fishing opportunities for U.S. vessels. Likewise, the other alternatives considered in the proposed rule would not have economic impacts: the south Atlantic swordfish quota is unchanged; there are no significant imports of Atlantic bigeye tuna from the designated countries; and the other amendments serve only to clarify and facilitate enforcement of existing regulations. These changes would not have an impact on a substantial number of small entities. For example, correcting the date that applies to the swordfish dead discard allowance clarifies and reflects the intent of the relevant ICCAT recommendation. This change would not have an economic impact since it neither changes the fishing year nor the intent of the dead discard allowance that ICCAT recommended. The amendment which relates to the scope of swordfish

import restrictions would lessen the impact on affected importers if they were to import from those countries because this revision would reduce the scope of the restrictions to include only Atlantic swordfish, instead of applying to swordfish from all ocean areas. However, this amendment does not have a significant impact on a substantial number of importers since swordfish have not recently been imported from those countries. In addition, NMFS inadvertently omitted a prohibition on swordfish imports. Prohibitions are a portion of Federal regulations that succinctly summarize the regulations and are utilized often by enforcement personnel. Including a prohibition does not change the nature of the regulatory requirements but adds support to prosecution of cases related to such regulatory measures. Accordingly, these proposed actions, considered separately or in aggregate, are not expected to have a significant economic impact.

Because of this certification, an initial regulatory flexibility analysis was not prepared.

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

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. None of the actions in this proposed rule would have any additional impact on sea turtles as these actions are not likely to increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: November 9, 2001.

Rebecca Lent,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. A new § 635.25 is added to read as follows:

§ 635.25 Fishing areas.

(a) *General.* Persons on board fishing vessels subject to the jurisdiction of the United States are authorized to fish for, catch, retain, or land species governed by an international catch sharing agreement implemented under this part only in or from those management areas for which the United States has received an allocation.

(b) *Exemptions.* Persons and vessels subject to the jurisdiction of the United States intending to fish for regulated species in fishing areas not otherwise authorized under this part, whether for the purposes of scientific research, or commercial fishing under a chartering arrangement, must have a permit from NMFS issued under § 635.32.

(c) *Atlantic bluefin tuna.* No person aboard a U.S. fishing vessel shall fish for bluefin tuna in or possess on board that fishing vessel, a bluefin tuna taken from, the Atlantic Ocean east of 45° W. long. north of 10° N. lat., east of 35° W. long. between 10° N. lat. and 5° N. lat., east of 30° W. long. between 5° N. lat. and the equator, and east of 25° W. long. south of the equator.

3–4. In § 635.27, paragraph (c) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish.* (1) *Categories.* Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species and, as needed, a reserve category. In addition, a dead discard allowance is established for the North Atlantic swordfish stock.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. The annual directed fishery quota for the North Atlantic swordfish stock is 1,919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed by fishermen without swordfish permits consequent to recreational fishing, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(C) The dead discard allowance for the North Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning June 1, 2002. All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the allowance.

(D) A portion of the total allowable catch of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives.

(ii) *South Atlantic swordfish.* The annual directed fishery quota for the south Atlantic swordfish stock is 289 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for pelagic longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments.* (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the June 1 through November 30 semiannual period.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated

to the directed fishery quota or to the reserve.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota or the reserve as necessary to maintain landings and discards within the required annual limits.

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under this paragraph (c)(2) of this section.

(3) *Annual adjustments*. (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication notification of any adjustment or apportionment made under this paragraph (c)(3)(ii).

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph (c)(3)(iii).

5. Section 635.45 is revised to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of Atlantic swordfish, or its products in any form, harvested by a vessel under the jurisdiction of Belize or Honduras will be denied entry into the United States.

(b) All shipments of Atlantic bluefin tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Belize, Honduras, or Equatorial Guinea will be denied entry into the United States.

(c) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Belize, Cambodia, Equatorial Guinea, Honduras or St. Vincent and the Grenadines will be denied entry into the United States. It is a presumption that any shipment containing bigeye tuna or its products offered for entry or imported into the United States has been harvested by a vessel or vessels of the exporting nation.

6. Section 635.47 is revised to read as follows:

§ 635.47 Ports of entry.

NMFS shall monitor imported shipments of bluefin tuna, bigeye tuna, and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which any of these species is being imported into the United States allows for circumvention of the bluefin tuna statistical document, swordfish Certificate of Eligibility requirements, or trade restrictions for these species or for Atlantic bigeye tuna, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which these species may be lawfully imported into the United States. NMFS shall announce the names of such designated ports and the effective dates of entry restrictions through publication of a notice in the **Federal Register**.

7. In § 635.71,paragraphs (a)(24) and (a)(29) are revised, and a new paragraph (a)(36) is added, to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at §§ 635.40, 635.41, 635.45, and 635.46, or at other than an authorized port of entry designated by NMFS under § 635.47.

* * * * *

(29) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any fish of a species regulated pursuant to a recommendation of ICCAT that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

* * * * *

(36) Fish for, or possess on board a fishing vessel, species regulated under this part in unauthorized fishing areas as specified in § 635.25.

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[FR Doc. 01–28646 Filed 11–9–01; 4:32 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 221

Thursday, November 15, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Forest Product Removal Permits and Contracts

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of an information collection associated with forest product removal permits and contracts. This information collection will help the Forest Service administer the small forest products program. Information will be collected from permit applicants for free use of forest products as well as for contractors for competitive and noncompetitive purchase of forest products.

The collected information is necessary to ensure that applicants who request free use of forest products qualify for the free-use program; that applicants who purchase noncompetitive contracts to harvest forest products do not exceed the authorized limit of products that may be removed in a given fiscal year; and that permittees and contractors can be readily identified in the field by Forest Service compliance personnel.

DATES: Comments must be received in writing on or before January 14, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All comments should be addressed to the Director, Forest and Rangeland Management. Comments may be sent via U.S. Postal Service to the Director at Mail Stop 1105, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

Comments also may be submitted to the Director's attention via facsimile to (202) 205–1045 or by e-mail to fm@fs.fed.us.

The public may inspect comments received at the Forest and Rangeland Management Office, 14th & Independence, SW., 3SW, Washington, DC. Visitors are encouraged to call ahead at (202) 205–0855 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest Management Staff, at (202) 205–0855 or Mary Ann Ball, Forest Service Information Collection Coordinator, at (703) 605–4572. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Individuals and other Federal agencies planning to remove timber and other forest products, such as mushrooms or boughs, from the National Forests for commercial or personal use purposes must obtain authorization from the Forest Service. To obtain a permit or contract, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5 through 223.13 for free use or purchase of timber or other forest products. The terms of the permit or contract designate the specific forest products that can be harvested or removed and under what conditions, such as limiting the harvest of forest products to a designated area or permitting harvest of only material specifically marked for removal.

When applying for forest products removal permits or contracts, applicants, depending on what timber or forest products they intend to remove, must answer questions on one of the following documents:

Contract 2400–4, Forest Products Sale Contract and Cash Receipt, is used to sell timber products, such as sawtimber, or other forest products, such as fuelwood; and

Permit 2400–8, Forest Products Free Use Permit, is used to allow free use of timber or other forest products (36 CFR 223.5 through 223.13).

Permit 2400–1, Forest Products Removal Permit and Cash Receipt, previously included in this information collection, is being combined with the Department of Interior, Bureau of Land Management; permit BLM–5510–1, Free Use Application and Permit. These information collection requirements will be described in a separate joint notice.

Each format implements different regulations and has different provisions for compliance, but both Contract 2400–4 and Contract 2400–8, collect similar information from the applicant for related purposes. OMB authorization for both information collections expire January 31, 2002. The Forest Service is requesting an extension of this information collection.

The Forest Service will use the information collected to ensure that permittees obtaining free use of timber or other forest products qualify for the free-use program and do not receive product value in excess of the $20 amount that District Rangers or $100 amount that Forest Supervisors are authorized to approve in a fiscal year (36 CFR 223.8); to ensure that applicants purchasing non-competitive contracts to harvest timber or other forest products do not exceed the authorized $10,000 limit in a fiscal year (16 U.S.C. 472(a)); and to ensure that permittees and contractors can be identified in the field by Forest Service compliance personnel.

An applicant is not restricted to one permit or contract. An applicant may apply for as many product removal permits or contracts as they deem necessary to meet their needs. For example, an applicant may obtain free use of a timber product, such as pinecones, using Permit 2400–8, Forest Products Free Use Permit, and still purchase firewood using Contract 2400–4, Forest Products Sale Contract and Cash Receipt.

Title: Forest Products Removal Permits and Contracts.

OMB Number: 0596–0085.

Expiration Date of Approval: January 31, 2002.

Type of Request: Extend this information collection.

Abstract: Individuals and persons representing small businesses usually request permits or contracts in person at the Forest Service issuing office. Forest Service personnel ask applicants to respond to questions that include their name, address, and identification number. The identification number can be a tax identification number, social security number, driver's license number, or other unique number identifying the applicant. Forest Service personnel enter the information into a

computerized database for easy retrieval for subsequent requests for permits or contracts by the same individual. The database generates a printed hardcopy of a permit or contract, which the applicant signs and dates. Forest Service personnel issuing the permit or contract discuss the terms and conditions with the applicant. Permittees and contractors may be required to maintain a product removal record on the face of the permit or contract.

Data gathered in this information collection are not available from other sources.

The agency uses the collected data to ensure that applicants for free use meet the criteria for free use of timber or forest products authorized by regulations at 36 CFR 223.5 through 223.13, that applicants seeking to purchase and remove timber or forest products from National Forest System lands meet the criteria under which sale of timber or forest products is authorized by the regulations at 36 CFR 223.80, and to ensure that permittees and contractors comply with regulations and terms at 36 CFR 261.6.

Estimate of Annual Burden:
Permit 2400–8: 4.5 minutes.
Contract 2400–4: 5.5 minutes.
Type of Respondents:
Permit 2400–8: Individuals.
Contract 2400–4: Individuals and small businesses.
Estimated Annual Number of Respondents:
Permit 2400–8: 4,000.
Contract 2400–4: 500.
Estimated Annual Number of Responses per Respondent:
Permit 2400–8: 4.
Contract 2400–4: 5.
Estimated Total Annual Burden on Respondents:
Permit 2400–8: 1,140 hours.
Contract 2400–4: 225 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: October 30, 2001.

Abigail Kimbell,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 01–28598 Filed 11–14–01; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Performance Review Board Members

AGENCY: Broadcasting Board of Governors.

ACTION: Notice of membership.

SUMMARY: This Notice is issued to announce the membership of the Broadcasting Board of Governors (BBG) Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Ms. Linda C. Beard (Executive Secretary), Office of Personnel, Broadcasting Board of Governors, 330 Independence Avenue SW., Washington, DC 20237, Telephone: (202) 619–1523.

SUPPLEMENTARY INFORMATION: In accordance with sections 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following is a list of members of the 2001 Performance Review Board for the Broadcasting Board of Governors.

Chairperson: Director for International Broadcasting Bureau, Brian Conniff (Acting). Panel 1—International Broadcasting Bureau SES Members.

Chairperson: Board Member, Broadcasting Board of Governors, Robert M. Ledbetter. Panel 2—Broadcasting Board of Governors SES Members.

Career SES Members

Ms. Janice Brambilla, Senior Advisor, Director General of the Foreign Service and Director of Human Resources, Department of State.

Mr. John Dunkin Jr., Special Coordinator (Designate) Office of the Under Secretary for Economic and Agricultural Affairs Department, Department of State.

Dated: November 6, 2001.

John S. Welch,

Director, Office of Personnel, International Broadcasting Bureau.

[FR Doc. 01–28581 Filed 11–14–01; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Initiation and preliminary results of changed circumstances review.

SUMMARY: In a response to a request by petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC, collectively ''petitioners'') that the Department of Commerce (the Department) revoke the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands, the Department is initiating a changed circumstances administrative review and, given that producers accounting for substantially all of the production of the domestic like product have apparently expressed a lack of interest in the order, the Department is issuing this notice of preliminary results and intent to revoke the antidumping duty order, retroactive to August 18, 1993 for unliquidated entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1131.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION

Background

On August 19, 1993, the Department published in the **Federal Register** the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (*see Antidumping Duty*

Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58 FR 44172 (August 19, 1993)). On December 15, 2000, the Department published in the **Federal Register** a revocation of the order effective January 1, 2000 (*see Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden,* 65 FR 78467 (December 15, 2000)). On September 18, 2001, Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (collectively, ''petitioners'') requested that the order be revoked retroactively to August 18, 1993. In this letter, petitioners indicated that their revocation request applies to all unliquidated entries for consumption of the subject merchandise made from August 18, 1993 through January 1, 2000, and that domestic producers accounting for at least 85 percent of production have expressed a lack of interest in the order with respect to this period prior to January 1, 2000.

Initiation and Preliminary Results of Changed-Circumstances Reviews and Intent To Revoke the Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''{[p]roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part * * * '' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Revocation of Orders, and Recission of Administrative Reviews,* 65 FR 13713, 13714 (March 14, 2000)).

Petitioners are domestic interested parties as defined by section 771(9)(C) of the Act and 19 CFR 351.102(b). Petitioners indicate that they, along with other domestic producers that have expressed a lack of interest in the order retroactive to August 18, 1993, represent at least 85 percent of the domestic production of the domestic like product to which this order pertains, and thus account for ''substantially all'' of the production of the domestic like product.

Based on the submission by the petitioners, the Department has preliminarily determined that domestic producers expressing a lack of interest in the order account for at least 85 percent of domestic production of the like product and, therefore, that revocation of the order in part, retroactive to August 18, 1993 for unliquidated entries, is warranted. We are hereby notifying the public of our intent to revoke in whole the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands retroactive to August 18, 1993.

If final revocation of the order occurs, we intend to instruct the Customs Service to refund any estimated antidumping duties collected for all unliquidated entries of certain cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after August 18, 1993. We will also instruct the Customs Service to pay interest on any refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 18, 1993, in accordance with section 778 of the Act.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 21 days after the date of publication of this notice, or, if that day is not a workday, the first workday thereafter. Case briefs may be submitted by interested parties not later than 7 days after the publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 12 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing, should one be requested, should contact the Department for the date and time of the hearing.

In accordance with 19 CFR 351.216(e), and barring any legal prohibition, the Department will issue its final results of review within 270 days after the date on which the changed circumstance review was initiated (*i.e.,* within 270 days after the publication of this **Federal Register** notice serving as both initiation and preliminary results).

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: November 5, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–28640 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Administrative Review

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

SUMMARY: The Department of Commerce is extending the time limit for the final results of the seventh administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 1999 through September 30, 2000.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1778, respectively.

SUPPLEMENTAL INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On July 11, 2001, the Department published in the **Federal Register** the preliminary results of its administrative review of helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC'') (*Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 36251 (July 11, 2001) (''*Preliminary Results*''). The final results are currently due on November 8, 2001.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department to issue the final results within 120 days of the publication of the preliminary results of the review. However, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Postponement

Because additional time is necessary to analyze data used in the calculation of normal value, the Department has determined that it is not practicable to issue the final results within the original time period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are postponing the final results of this administrative review for 180 days, until no later than May 7, 2002.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 8, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–28650 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On July 10, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (66 FR 35933). The review covers three manufacturers/exporters of the subject merchandise to the United States: H.S. Industries (HSI), Hyosung Corporation (Hyosung) and SKC Limited (SKC). The review covers the period June 1, 1999 through May 31, 2000. We gave interested parties an opportunity to comment on the preliminary results.

The final weighted-average dumping margins for the reviewed firms are listed in the section entitled Final Results of Review. As a result of comments received, we have made changes to the final margin calculations for HSI and SKC.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4475 or (202) 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2001, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on PET film from Korea. E.I. DuPont de Nemours & Company and Mitsubishi Polyester Film, LLC (collectively Petitioners) submitted their case brief on August 8, 2001. SKC Co., Ltd. and SKC America, Inc. (collectively SKC) filed their case brief on August 9, 2001. Petitioners and SKC submitted rebuttal comments on August 24, 2001. HSI filed rebuttal comments on August 13, 2001 and August 24, 2001. The Department has conducted this administrative review in accordance with section 751 of the Act.

Revocation in Part

In its submission of June 30, 2000, HSI requested, pursuant to 19 CFR 351.222(e)(1), partial revocation of the order with respect to its sales of PET film. HSI certified that (1) it sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years, (2) in the future it will not sell the subject merchandise at less than NV; and (3) it agreed to immediate reinstatement of the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

Based upon the final results in this review and the final results of the two proceeding reviews (*see Polyethylene Terephthalate, Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 65 FR 55003 (September 12, 2000), and *Polyethylene Terephthalate, Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty New Shipper Review,* 64 FR 42670 (August 5, 1999)), HSI has demonstrated three consecutive years of sales at not less than normal value. Furthermore, we have determined that HSI's aggregate sales to the United States have been made in commercial quantities during three consecutive segments of this proceeding. The company also agreed in writing to immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that subsequent to the partial revocation, HSI sold the subject merchandise at less than normal value. Based on the above facts, and absent a determination that the continued application of the antidumping order is otherwise necessary to offset dumping, the Department determines that continued application of the order to HSI is not necessary to offset dumping. Therefore, we are revoking the order in part with respect to merchandise produced and exported by HSI. In accordance with 19 CFR § 351.222(f), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption after May 31, 2000.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at

least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1999 through May 31, 2000. The Department has conducted this review in accordance with section 751 of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 7, 2001 which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Commerce building. In addition a complete version of the Decision Memorandum can be accessed directly on the Web at www.ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results of Review

We have revised SKC's calculation of the general expense ratio making allowances for offsets for ''miscellaneous income,'' ''rental income,'' ''gain on disposal of fixed asset'' and the portion of SKC's ''gain on foreign currency transaction'' and ''gain on foreign currency translation'' that do not relate to accounts receivable. Additionally, we have recalculated the CEP profit ratio for SKC by adding to the gross price the U.S. interest revenue, duty drawback and billing adjustments realized by SKC. (Further details regarding these changes can be found in the Decision Memorandum and the SKC November 7, 2001 Final Results Analysis Memorandum, both of which are on file in room B–099 of the main Commerce building.) Finally, we have classified HSI's U.S. sales as CEP transactions. *See* the Decision Memorandum and HSI November 7, 2001 Final Results Analysis Memorandum (which is also on file in room B–099 of the main Commerce building).

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period June 1, 1999 through May 31, 2000:

Company	Margin (percent)
HSI	0
Hyosung	0
SKC	1.91

The U.S. Customs Service will assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. We have calculated an importer-specific assessment rate for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit for SKC shall be 1.91 percent; (2) since the rate for Hyosung is zero no cash deposit shall be required for that firm, (3) because we are revoking the order with respect to HSI, no cash deposit will be required for that firm and suspension of liquidation will be lifted for merchandise produced and exported by HSI, (4) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (5) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review or the LTFV investigation; and (6) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.50 percent, the ''all others'' rate established in the LTFV investigation. (*See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Notice of Final Court Decision and Amended Final Determination,* 62 FR 50557, (September 26, 1997).)

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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 351.305(a). Timely written 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 sanctionable violation.

This notice of administrative review and revocation in part is in accordance with section 751(a)(1) of the Act.

Dated: November 7, 2001.

Faryar Shirzad,

Assistant Secretary, for Import Administration.

Appendix—Issues in the Decision Memorandum

1. Exclusion of Non-Operating Income in Calculation of SKC's General Expense Ratio
2. Accounting for SKC's B-grade Film Costs
3. Whether HSI's sales are CEP or EP transactions
4. Revocation of Order with respect to HSI
5. Calculation of SKC's CEP and CV profit ratios.

[FR Doc. 01–28643 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the 1999–2000 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 8, 2001, we published the preliminary results of this administrative review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 41523. Currently, the final determination in this administrative review is due on December 6, 2001. Petitioners' and respondent's case and rebuttal briefs raise complicated issues such as major inputs purchased from affiliated and unaffiliated suppliers and the use of downstream sales. Because it is not practicable to complete this review within the normal statutory time limit, the Department is extending the time limits for completion of the final results until February 4, 2002 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: November 8, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–28641 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany: Notice of Court Decision and Suspension of Liquidation

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

ACTION: Notice of Court Decision and Suspension of Liquidation.

EFFECTIVE DATE: November 15, 2001.

SUMMARY: On October 19, 2001, the Court of International Trade (the Court) affirmed the redetermination made by the Department of Commerce (the Department) pursuant to the Court's remand of the final determination of sales at less than fair value of stainless steel sheet and strip in coils (stainless sheet) from Germany. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc.* v. *United States,* Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). In the redetermination the Department (i) used neutral facts available for the purpose of calculating U.S. Reseller's margin rate and any other calculation predicated on U.S. Reseller's cost and sales data[1]; and, (ii) calculated facts available for the reseller in a way that enabled the facts available rate and the sales prices to which it is applied to be adjusted to be net of movement and selling expenses. The results of the remand redetermination are shown below. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James at (202) 482–1121, or (202) 482–0649, respectively, 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.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** a notice of amended final determination of sales at less than fair value and antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 40557 (July 27, 1999) (*Amended Final Determination*).

Following publication of the amended final determination, KTN and Krupp Hoesch Steel Products, Inc. (KHSP) filed a lawsuit with the Court challenging certain aspects of the Department's findings in the antidumping investigation of stainless steel sheet and strip in coils from Germany.

On July 31, 2000, the Court remanded eight issues from the *Amended Final Determination,* ordering the Department i) to explain why its choice of adverse facts available for the German resellers was ''rationally related to KTN's sales and indicative of its customary selling practices,'' and why these facts available were not unduly harsh or punitive; ii) to explain which data fields in the U.S. Reseller's U.S. cost database were verified or verifiable; iii) to explain whether, and to what extent, errors in the U.S. Reseller's cost response tainted its attendant sales database; iv) to adduce substantial evidence that KTN had the ability to check the U.S. Reseller's database for errors prior to verification; v) to point to additional evidence, aside from computer programming errors, for assigning adverse facts available to the U.S. Reseller; vi) to explain why the Department's allocation methodology for the U.S. Reseller's sales of unknown origin was not unduly harsh or punitive; vii) to explain its refusal to deduct movement and selling expenses from the U.S. Reseller's gross unit price prior to applying adverse facts available; and viii) to exclude the U.S. Reseller's sales of non-subject merchandise (*i.e.,* cut-to-length sheet and strip) from the margin calculation. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc.* v. *United States,* Court No. 99–08–0050, Slip Op. 00–89 (CIT 2000) (*Krupp I*).

Furthermore, with respect to points (ii) and (iii), the Court ordered the Department to use the U.S. Reseller's data if it found the information was verified or verifiable, ''subject to filling any gaps, as noted in the [C]ourt's opinion, with facts available.'' *Krupp I* at 19. The Court further held, with respect to points (iv) and (v), that if the Department could not produce evidence of KTN's ability to check its data prior to verification, and evidence of errors

[1] ''U.S. Reseller'' refers to an affiliate of respondent Krupp Thyssen Nirosta, GmbH (KTN). The firm's name is considered proprietary.

aside from computer programming errors, the Department could not use an adverse inference in selecting among the facts otherwise available. *Id.*

On October 30, 2000 the Department issued its *Results of Redetermination Pursuant to Court Remand Stainless Steel Sheet and Strip in Coils from Germany (Remand Determination I*) addressing the concerns of the Court stated above.

On July 9, 2001 the Court issued a second order remanding the Department's *Remand Determination I.* In *Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc.* v. *United States,* Court No. 99–08–0050, Slip Op. 01–84 (CIT 2001) (*Krupp II*), the Court sustained (i) the use of adverse facts for German Resellers' downstream sales; (ii) the Department's rejection of U.S. Reseller's entire database; and (iii) the adverse facts the Department selected with respect to the allocation of sales of unidentified origin. The Court directed the Department (i) to use neutral facts available for the purpose of calculating U.S. Reseller's margin rate and any other calculation predicated on U.S. Reseller's cost and sales data; and, (ii) to calculate facts available for the reseller in a way that enables the facts available rate and the sales prices to which it is applied to be adjusted to be net of movement and selling expenses.

On September 7, 2001 the Department issued its Draft Results of Redetermination to the plaintiffs and defendant-intervenors to comment. In the Draft Results of Redetermination, the Department, for purposes of the remand, used neutral facts available to calculate U.S. Reseller's margin rate and any other calculation predicated on U.S. Reseller's cost and sales data, and calculated facts available for the reseller in a way that enabled the facts available rate and the sales prices to which it is applied to be adjusted for movement and selling expenses. Neither party submitted comments on the Department's Draft Results of Redetermination. Pursuant to *Krupp II* the Department filed its redetermination on remand on September 14, 2001. The Department's Results of Redetermination were identical to the Draft Results of Redetermination.

On October 19, 2001, the Court affirmed the Department's remand determination. *See Krupp Thyssen Nirosta GmbH and Krupp Hoesch Steel Products, Inc.* v. *United States,* Court No. 99–08–0050, Slip Op. 01–123 (CIT October 19, 2001). As a result of the remand determination, the final dumping margins are as follows:

Exporter/manufacturer	Weighted-Average Margin (percent)
Krupp Thyssen Nirosta GmbH	13.48
All Others	13.48

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit in *Timken* held that the Department must publish notice of a decision of the Court or the Federal Circuit which is not in harmony with the Department's determination. Publication of this notice fulfills this obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''final and conclusive'' decision on the case. Therefore, pursuant to *Timken,* the Department must continue to suspend liquidation of the subject merchandise pending the expiration of the period to appeal the Court's October 19, 2001 decision, or if that decision is appealed, pending a final decision by the Federal Circuit. However, because entries of the subject merchandise continue to be suspended pursuant to the antidumping duty order in effect (the Department is conducting administrative reviews for the 1999–2000 and 2000–2001 periods), the Department need not send additional instructions to the Customs Service to suspend liquidation. Further, consistent with *Timken,* the Department will order the Customs Service to change the relevant cash deposit rates in the event that the Court's ruling is not appealed or the Federal Circuit issues a final decision affirming the Court's ruling.

Dated: November 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–28642 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part

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

ACTION: Notice of final results of 1999–2000 administrative review, partial rescission of the review, and determination not to revoke the order in part.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1999, through May 31, 2000. Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled ''Final Results of the Review.'' Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

Weihai Machinery Holding (Group) Co., China National Machinery Import & Export Corporation, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we find that none of these companies qualify for revocation. Accordingly, we are not revoking the order with respect to the subject merchandise produced and exported by these four companies.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Melani Miller, Jarrod Goldfedder, Anthony Grasso, or Andrew McAllister, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0116, (202) 482–0189, (202) 482–3853, and (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (2001).

Background

On July 10, 2001, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not to Revoke Order in Part*, 66 FR 35937 (July 10, 2001) (''*Preliminary Results*''). The period of review (''POR'') is June 1, 1999, through May 31, 2000. This review covers the following exporters (referred to collectively as ''the respondents''): Wanxiang Group Corporation (''Wanxiang''), China National Machinery Import & Export Corporation (''CMC''), Liaoning MEC Group Co. Ltd. (''Liaoning''), Premier Bearing & Equipment Ltd. (''Premier''), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (''Hailin''), Weihai Machinery Holding (Group) Co., Ltd. (''Weihai''), Wafangdian Bearing Group Corp. Import & Export Company (''Wafangdian''), Luoyang Bearing Corporation (Group) (''Luoyang''), Zhejiang Machinery Import & Export Corp. (''ZMC''), Zhejiang Changshan Changhe Bearing Corp. (''ZCCBC''), Chin Jun Industrial Ltd. (''Chin Jun'').

We invited parties to comment on the *Preliminary Results*. On September 7, 2001, we received case briefs from the Timken Company (''the petitioner''), as well as a combined case brief from CMC, Luoyang, Wanxiang, Hailin, Weihai, and ZMC. On September 17, 2001, each of these parties also submitted rebuttal briefs. Because the combined rebuttal brief filed by CMC, Luoyang, Wanxiang, Hailin, and Weihai contained unsolicited new information, we returned that submission to the counsel for these companies. A revised rebuttal brief from these companies was filed on September 24, 2001. At the request of certain interested parties, we held a hearing on October 10, 2001.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, on September 22 and November 3, 2000, ZCCBC and Liaoning, respectively, requested that the Department rescind the review with respect to these companies. Pursuant to 19 CFR 351.213(d)(1), because ZCCBC and Liaoning withdrew their requests for reviews within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we rescinded the review with respect to ZCCBC and Liaoning.

Also, with respect to Chin Jun, as stated in the *Preliminary Results,* Chin Jun reported no shipments of subject merchandise to the United States during the POR. Entry data provided by the Customs Service confirms that there were no POR entries from Chin Jun of TRBs. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Chin Jun. (*See* 19 CFR 351.213(d)(3); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Finally, as noted in the *Preliminary Results*, because the order with respect to Wafangdian was revoked in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (''*TRBs XII Amended Final*''), we terminated this review with respect to Wafangdian.

Determination Not To Revoke Order, In Part

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

As noted in the *Preliminary Results*, pursuant to 19 CFR 351.222(e)(1), Weihai, CMC, Wanxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for each company for at least three consecutive years. Wafangdian also requested revocation of the antidumping duty order with respect to its sales. However, because the order with respect to Wafangdian was revoked in the *TRBs XII Amended Final*, we do not need to address Wafangdian's request for revocation in this review.

In accordance with 19 CFR 351.222(e), Weihai, CMC, Wanxiang, and ZMC's requests were accompanied by certifications that they had sold the subject merchandise at not less than normal value during the current period of review and would not sell the subject merchandise at less than normal value in the future. They further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The companies also agreed to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the revocation, the companies sold the subject merchandise at less than normal value.

In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review,*

and Notice of Intent to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and the *TRBs XII Amended Final* (collectively, ''*TRBs XII*''), CMC and ZMC were found to have made sales below normal value. Moreover, as noted in the ''Final Results of the Review'' section, below, CMC was found to have made sales below normal value in the instant review. Because CMC and ZMC do not have three consecutive years of sales at not less than normal value, CMC and ZMC do not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

As for Weihai, as noted in the *Preliminary Results*, Weihai first participated in this proceeding as a new shipper. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 45511 (August 20, 1999); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837 (November 15, 1999) (''*TRBs XI and NSR*''). *TRBs XI and NSR* covered the period June 1, 1998 through November 30, 1998. Subsequently, Weihai participated in *TRBs XII*, which covered the period June 1, 1998 through May 31, 1999. *See TRBs XII*. Finally, Weihai is participating in the instant review, which covers the period June 1, 1999 through May 31, 2000. Since the time period covered by *TRBs XI and NSR* is included in the time period covered by *TRBs XII*, the Department has reviewed only two years of Weihai's shipments. Thus, Weihai has not sold the subject merchandise at not less than normal value for a period of at least three consecutive years and, accordingly, does not qualify for revocation in this review.

Finally, with respect to Wanxiang, in *TRBs XII* we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation. Based on our determination that Wanxiang did not make sales in commercial quantities during the PORs of *TRBs XII* and *TRBs XI and NSR*, we do not need to examine whether Wanxiang made sales in commercial quantities during the instant review. Because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, Wanxiang does not qualify for revocation pursuant to19 CFR 351.222(b).

Use of Facts Otherwise Available

As noted in the *Preliminary Results*, pursuant to section 776(a)(2) of the Act, we have determined that the use of facts available is warranted with respect to Premier. As explained in the *Preliminary Results*, and discussed in section 776(a)(2)(B) of the Act, Premier failed to provide information requested by the Department by the deadlines for submission of this information. Moreover, as Premier did not provide a response to the Department's questionnaire by the deadlines for submission of this information, we have determined that Premier failed to cooperate by not acting to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, we have determined that the use of an adverse inference is appropriate in choosing from among the facts available for Premier. Additionally, as discussed in the *Preliminary Results*, we have determined that companies which did not respond to the questionnaire, including Premier, should not receive separate rates. No party in this proceeding has commented on this issue since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 33.18 percent to Premier.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memo*'') from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 7, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memo* or in the referenced final calculation memoranda for particular companies:

All Companies

Valuation of Certain Steel Inputs; Comments 3 through 6

Inflation Adjustment; Comment 8

CMC

We revised CMC's calculations to take into account a minor reporting error made by CMC for one of its reported factors that it discovered after the *Preliminary Results*.

Luoyang

We valued certain TRBs components that we were not able to value in the *Preliminary Results* due to insufficient information. *See* Comment 16.

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 1999, through May 31, 2000:

Exporter/manufacturer	Weighted-average margin percentage
Weihai Machinery Holding (Group) Co	0.00
China National Machinery Import & Export Corporation	4.64
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	[1] 0.49
Zhejiang Machinery Import & Export Corp	[1] 0.03

Exporter/manufacturer	Weighted-average margin percentage
PRC-wide rate (including Premier Bearing & Equipment Ltd.)	33.18

[1] de minimus.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Because certain importer-specific assessment rates calculated in these final results are above de minimis (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with de minimis rates (i.e., less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: November 7, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Market Economy Steel Values
Comment 2: Addition of Inventory Carrying Costs to Market Economy Steel Values
Comment 3: Steel Used to Value Cups and Cones
Comment 4: Adding Ocean Freight and Marine Insurance to the Japanese Exports to India Data
Comment 5: Use of Indonesian Steel Import Statistics for Valuing Rollers
Comment 6: Steel Input Used to Value Cages
Comment 7: Labor Costs
Comment 8: Inflation Adjustment
Comment 9: Revocations
Comment 10: Rescinding Reviews of Hailin and Weihai
Comment 11: CMC's Market Economy Steel Values
Comment 12: Use of Adverse Facts Available for Products Sourced from Unaffiliated CMC Suppliers
Comment 13: CMC's U.S. Inventory Carrying Costs
Comment 14: CMC's U.S. Duty and U.S. Inland Freight Expenses
Comment 15: Hailin's Scrap Offset
Comment 16: Valuation of Certain Luoyang TRB Components
Comment 17: Luoyang Energy Factors
Comment 18: Wanxiang's Transport Distances
Comment 19: Wanxiang's Energy Factors
Comment 20: Weihai SG&A and Labor
Comment 21: ZMC's Financial Statements
Comment 22: ZMC's Energy Factors

[FR Doc. 01–28651 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Extension of Time Limit for Final Results of Antidumping Administrative Review

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

ACTION: Notice of extension of time limit for final results of administrative review.

EFFECTIVE DATE: November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

The Department published in the **Federal Register** an antidumping duty

order on certain hot-rolled, flat-rolled, carbon-quality steel products (hot-rolled steel) from Japan on June 29, 1999 (64 FR 34778). On June 30, 2000, the Department received a timely request from Kawasaki Steel Corporation to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on hot-rolled steel on July 31, 2000 (64 FR 46687). On July 10, 2001, the Department published the preliminary results of this antidumping administrative review. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Preliminary Results of Antidumping Administrative Review,* 66 FR 35928 (July 10, 2001). The final results of this review are currently due November 7, 2001.

Extension of Time Limits for Final Results

Due to extensive arguments on cost issues, and the complexities involved in analyzing the level of trade issue in this review, it is not practicable to complete the review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are extending the due date for the final results of this review until January 7, 2002.

Dated: November 5, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–28639 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration by phone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice in writing to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail to *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–5A003.''

The Association for the Administration of Rice Quotas, Inc. (''AARQ'') original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998) and last amended on April 5, 2001, (66 FR 21368, April 30, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Association for the Allocation of Rice Quotas, Inc. (''AARQ''), c/o Ludovico Manfredi, Newfieldrice, Inc., PO Box 310518, Miami, Florida 33231–0578.

Contact: M. Jean Anderson, Esquire, Telephone: (202) 682–7217.

Application No.: 97–5A003.

Date Deemed Submitted: November 7, 2001.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the regulations (15 CFR 325.2(1)): Rickmers Rice USA, Inc., St. Louis, Missouri (Controlling Entity: Rickmers Reismuhb GMBH, Bremen, Germany;) Commodity Specialists Company, Minneapolis, Minnesota;

2. Delete the following companies as ''Members'' of the Certificate within the meaning of § 325.2(1) of the regulations (15 CFR 325.2(1)): Affiliated Rice Milling, Inc., Alvin, Texas; Garnac Grain Co., Inc., Overland Park, Kansas;

3. Change the listings of the names of the current Members as follows: ''AFE (USA), Inc., Houston, Texas'' to ''AFE (USA), Inc., Portland, Oregon;'' ''California Pacific Rice Milling, Ltd., Arbuckle, California'' to ''CAL PAC Investments, LLC dba California Pacific Rice Milling, Woodland, California; '' ''Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division and Glencore Ltd.''s subsidiary, LaGrain International Inc., Baton Rouge, Louisiana;'' should be amended to read ''Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division.''

Dated: November 9, 2001.

Vanessa M. Bachman,

Acting Office Director.

[FR Doc. 01–28606 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110201D]

Atlantic Highly Migratory Species; Advisory Panels

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

ACTION: Notice of intent; request for nominations; request for comments.

SUMMARY: NMFS solicits nominations for the Highly Migratory Species (HMS) advisory panel (AP) and the Billfish AP. The purpose of the AP's will be to assist NMFS in the collection and evaluation

of information relevant to modification or amendment of the fisheries management plan for Atlantic tunas, swordfish, and sharks (HMS FMP) and to modification of the Billfish FMP Amendment. The AP's will include representatives from all interests in HMS fisheries and billfish fisheries, respectively. Modifications are considered for the Statement of Organization, Practices and Procedures (SOPP) of each AP.

DATES: Nominations or comments must be submitted on or before December 31, 2001.

ADDRESSES: Nominations and comments on SOPPs revision recommendations should be submitted in writing to Chris Rogers, Chief, Highly Migratory Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; 301–713–1917. SOPPs revision recommendations will not be accepted by fax.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Carol Douglas (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq., as amended by the Sustainable Fisheries Act, Public Law 104-297, Advisory Panels (AP's) have been established to consult with NMFS in the collection and evaluation of information relevant to the HMS FMP (April 1999) and the Billfish FMP Amendment (April 1999). Nominations are being sought to fill all posts in both AP's. In addition, NMFS is considering a modification to the Statement of Organization, Practices and Procedures (SOPP) for each AP.

The purpose of the HMS AP is to advise and assist the Secretary of Commerce (Secretary) in the collection and evaluation of information relevant to any amendment to the HMS FMP (April 1999). The HMS AP evaluates future management options for Atlantic tunas, swordfish and sharks under the requirements of the Magnuson-Stevens Act.

The purpose of the Billfish AP is to advise and assist the Secretary in the collection and evaluation of information relevant to any amendment to the Billfish FMP. The Billfish AP evaluates future management options for Atlantic billfish under the requirements of the Magnuson-Stevens Act.

Procedures and Guidelines

A. Procedures for Appointing the Advisory Panels.

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental entities and non-governmental organizations will be considered for membership in the AP.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in highly migratory species (HMS) or one species in particular from among sharks, swordfish, tunas and billfish;
2. A statement of background and/or qualifications;
3. The AP to which the applicant seeks appointment;
4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

Tenure for the HMS AP:

Member tenure will be for 3 years, with one third of the members' terms expiring on the last day of each calendar year. Current terms for existing members expire for one-half of the panel members on December 31, 2001, and one-half on April 6, 2002. Appointments in January 2002, will be for 1, 2, or 3 years, and appointments in April 2002, will be for 9 months, 21 months, and 33 months, apportioned equally among the posts for the then expired terms. All subsequent appointments will be for 3 years (36 months). Posts for terms of varying tenure in 2002 will be randomly selected.

Tenure for the Billfish AP:

Member tenure will be for 2 years, with one half of the terms expiring on the last day of each calendar year. Current terms for existing posts all expire on December 31, 2001. Appointments in January 2002 will be for 1 or 2 years apportioned equally among the posts for the then expired terms. Posts for terms of 1 or 2 years tenure will be randomly selected.

B. Participants

The HMS AP shall consist of not less than twenty-two (22) members who are knowledgeable about the pelagic fisheries for all Atlantic HMS species. The Billfish AP shall consist of not less than eight (8) members who are knowledgeable about the pelagic fisheries for all billfish species. Nominations for each AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each area of interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of each AP. Criteria for membership include one or more of the following: (a) Experience in the recreational fishing industry involved in catching swordfish, tunas, billfish,or sharks; (b) experience in the commercial fishing industry for HMS; (c) experience in fishery-related industries (marinas, bait and tackle shops); (d) experience in the scientific community working with HMS; (e) representation of a private, non-governmental, regional, (non-Federal) state, national, or international organization representing marine fisheries, environmental, governmental or academic interests dealing with HMS.

Five (5) additional members of the AP include one voting representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes twenty-two (22) ex-officio participants: twenty (20) representatives of the constituent states and two (2) representatives of the constituent interstate commissions; the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will not compensate participants with monetary support of any kind. Members are expected to pay for travel costs related to the AP.

C. Tentative Schedule

Meetings of each AP will be held as frequently as necessary but are routinely held once each year in the spring. Often the meetings are held jointly, and may be held in conjunction with other advisory panel meetings or public hearings.

D. Consideration of SOPP Revisions

SOPP's for each AP are under consideration for revision. Member tenure for existing posts on each AP are under consideration to be changed. The HMS AP appointment will change from

two years to three years, with one third of the posts being filled each year. The Billfish AP appointment will change from two years with all the posts changing every two years, to half of the posts being filled each year. Any recommendations for other changes may be made to the Chief, Highly Migratory Species Division (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 9, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–28662 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 9, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2002 through December 31, 2002 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the third stage of the integration of textile and apparel products into the General Agreement on Tariffs and Trade 1994 will take place on January 1, 2002 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2002 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Information regarding the 2002 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 9, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2002, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 2002 and extending through December 31, 2002, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit	
200–221, 224–227, 237, 239pt. [1], 300–326, 331pt. [2], 332–348, 351, 352, 359pt. [3], 360–363, 369pt. [4], 400–430, 433–438, 440–448, 459pt. [5], 469pt. [6], 601–605, 608-620, 623-629, 631pt. [7], 633–648, 651-652, 659pt. [8], 666pt. [9], as a group	666,232,724 square meters equivalent.
Sublevels within the aggregate	
218	8,873,092 square meters.
219	32,394,670 square meters.
225	15,527,913 square meters.
300/301	12,033,955 kilograms.
313	74,518,221 square meters.
314	12,200,505 square meters.
315	36,601,514 square meters.
317/326	33,274,100 square meters.
334/335	238,772 dozen.
336	132,654 dozen.
338/339/638/639	2,387,731 dozen.
342/642	703,052 dozen.
347/348	1,724,472 dozen.
361	1,804,062 numbers.
363	38,503,041 numbers.
410/624	17,746,188 square meters of which not more than 2,867,356 square meters shall be in Category 410.
433	19,904 dozen.
445/446	77,974 dozen.
604	842,377 kilograms of which not more than 643,818 kilograms shall be in Category 604–A [10].
647/648	795,912 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9905, 6307.90.9982, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[7] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9984, 9404.90.8522 and 9404.90.9522.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated October 27, 2000) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products to be integrated into the General Agreement on Tariffs and Trade 1994 on January 1, 2002 (listed in the Federal Register notice published on May 1, 1995, 60 FR 21075) which are exported during 2001 shall be charged to the applicable 2001 limits to the extent of any unfilled balances. After January 1, 2002, should those 2001 limits be filled, such products shall no longer be charged to any limit.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–28638 Filed 11–14–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee; First Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its Technology Advisory Committee. The Commission has determined that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The purpose of the Technology Advisory Committee is to advise the Commission on the impact and implications of technological innovation in the financial services and commodity markets. Meetings of the Technology Advisory Committees are public. Commissioner Thomas J. Erickson serves as Chairman and Designated Federal Official of the Technology Advisory Committee.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on November 8, 2001, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–28654 Filed 11–14–01; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Robert Bush, at (202) 606–5000, extension 338. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Corporation is soliciting comments concerning its proposed renewal of its AmeriCorps*VISTA Project Progress Report, OMB Control Number 3045–0043. This form is due to expire on October 31, 2001.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Progress Report Form.

OMB Number: 3045–0043.

Agency Number: CNCS Form 1433.

Affected Public: AmeriCorps*VISTA sponsoring organizations, site supervisors, and members.

Total Respondents: 1,200.

Frequency: Quarterly, with exceptions.

Average Time Per Response: Three hours.

Estimated Total Burden Hours: 9,600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description

The Corporation proposes to distribute the AmeriCorps*VISTA Project Progress Report form to AmeriCorps*VISTA sponsoring organizations upon project approval. Sponsoring organizations are required to submit a completed form to the Corporation on a quarterly basis. Corporation personnel will use the form to track project accomplishments, problems, resources generated, project sustainability, and support provided to AmeriCorps*VISTA members. Information from the form is also used to fulfill requests for substantive project information. The purpose of the form is to evaluate a sponsor's progress towards meeting project goals and objectives, assess risk, and document qualitative and quantitative information about project accomplishments for a given reporting period.

The Corporation also proposes to revise the AmeriCorps*VISTA Project Progress Report by deleting unused information from the existing version of the form, incorporating plain language, and collecting the following project information:

- Activities that contribute to building permanent infrastructure.
- Outcomes that demonstrate helping people out of poverty.

Further, the Corporation proposes to revise the AmeriCorps*VISTA Project Progress Report by requesting the ''e-mail address'' of project supervisors to provide a more inexpensive and faster way to communicate and share information, and by asking sponsoring organizations if they have technical assistance needs.

Dated: November 8, 2001.

Robert L. Bush,

*Acting Director, AmeriCorps*VISTA.*

[FR Doc. 01–28549 Filed 11–14–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability Draft Environmental Impact Statement (DEIS) for the Greers Ferry Lake Shoreline Management Plan, Arkansas

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (USACE), Little Rock District, has prepared a Draft Environmental Impact Statement (DEIS) for the proposed implementation of a revised Shoreline Management Plan (SMP) at Greers Ferry Lake, Heber Springs, Arkansas. This DEIS is being made available for a 60-day public comment period.

DATES: A public meeting for receiving comments on the DEIS will be held on December 4, 2001, at the Brighton Park Hotel Conference Center in Heber Springs, Arkansas. Written comments on the DEIS should be submitted on or before January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the DEIS should be addressed to Ms. Tricia Anslow, Project Manager, Planning Branch, PO Box 867, Little Rock, Arkansas 72203–0867, telephone 501–324–5032, E-mail: *patricia.anslow@sw102.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Setting

The Greers Ferry Lake Project area is in the foothills of the Ozard Mountains in north-central Arkansas. The project area is approximately 65 miles from Little Rock, Arkansas, and 130 miles from Memphis, Tennessee. The lake lies within Cleburne and Van Buren Counties. Large portions of Stone and Searcy Counties and small portions of Pope and Conway counties also fall within the lake's watershed. The area around the lake is principally rural in character. More than 80 percent of the land in the watershed is forested, and 12 percent is agricultural. Greers Ferry Lake was constructed between March 1959 and July 1964. The project area includes 45,548 acres (slightly more than 71 square miles). Within the project area, the government owns flowage easements over 4,634 acres. The lake's waters cover 31,500 acres when measured at the ''conservation pool'' level of 461 feet above mean sea level. When waters must be held to prevent flooding of areas below the dam, the surface of the lake may rise to 487 feet above mean sea level. When this happens, the lake's surface area increases to 40,500 acres, and adjacent lands subject to the flowage easements become inundated.

Background

The Department of the Army, Corps of Engineers, published a Notice of Intent in the **Federal Register** (65 FR 51299–51300, Aug. 23, 2000) stating its intent to prepare an EIS for a proposed revision of the Greers Ferry Lake Shoreline Management Plan (SMP). The SMP is a comprehensive plan for managing the shoreline at Greers Ferry Lake. The SMP is required by Federal regulations found at Title 36 of the Code of Federal Regulations (CFR), § 327.30, which contain a set of requirements for a periodic SMP review. The current version of the Greers Ferry Lake SMP became effective on November 21, 1994. The proposed SMP would revise various elements of the 1994 SMP. These elements include zoning of limited development area, vegetation modification, provisions for grandfathered docks, and restrictions on boats with sleeping quarters and/or marine sanitation devices. As part of its decision-making process, the Corps is preparing an Environmental Impact Statement (EIS) to determine the potential environmental effects of implementing a revised SMP.

Proposed Action and Alternatives

The Corps policy at Greers Ferry Lake is to protect and manage project shorelines in a manner that promotes safe and healthful use by the public while maintaining environmental safeguards to ensure a quality resource. Consistent with Corps policy and the purpose and need for the proposed action, the Little Rock District and the Greers Ferry Project Office propose to implement a revision of the Greers Ferry Lake SMP following review of pubic comments and appropriate environmental impact analysis. The SMP would adhere to Corps policy and Title 36 of the CFR, cited previously. The DEIS examines four action alternatives for revising the SMP and a no action alternative. These alternatives are described in the following paragraphs.

- Alternative 1 (No Action Alternative). Under the No Action Alternative, the Little Rock District would make no changes to the existing 1994 Greers Ferry Lake SMP. No new management elements would be adopted, and no existing management elements would be modified. Rezoning applications received during the current

SMP review would not be allowed but would be returned to the applicants at the completion of the current review. Applicants would be advised that they could reapply during the next review. Permit applications for placement of private floating facilities within present Limited Development Areas (LDA's) could be approved. Treatment of applications concerning grandfathered docks would proceed based on the 1994 SMP, which would mean no changes or enlargements. The allowance for vegetation modification would permit mowing up to a maximum of 50 feet from habitable structures, as currently allowed under the 1994 SMP. Restrictions on locations for boats with sleeping quarters and/or marine sanitation devices would remain in effect.

It should be noted that if the No. Action Alternative were adopted, no new rezoning requests would be approved during the period that would commence following issuance of the ROD upon completion of this EIS. However, during future reviews of the SMP, rezoning applications could be approved to the extent of the level described in Alternative 5 (Maximum Modification). It is expected that under No Action, some level of growth would occur over a much longer period of time than that described under Alternative 3 (No Growth).

• Alternative 2 (Preferred Alternative, Approval of Rezoning Requests Meeting the 80 Percent Criteria). Under this alternative, no future rezoning requests would be accepted. The 93 rezoning requests that met the 80 percent criteria during the 1999 review of the 1994 SMP would be allowed. A minimum 50-foot buffer would be established; that is, mowing would be prohibited from the vegetated edge of the shoreline for 50 feet. This buffer requirement would affect only Corps property. Authorization for mowing from habitable structures would be increased from 50 to 100 feet, except where is would conflict with the vegetated buffer. The project rules on use of boats with sleeping quarters and/or marine sanitation devices would defer to State and Federal regulations, except that the requirement that such boats be moored at commercial docks would remain in effect. Grandfathered docks would be allowed to be reconstructed to alternative dimensions, or the locations of existing grandfathered docks would be reallocated outside the buffer zones or prohibited areas to limited development.

In designating Alternative 2 as the preferred configuration of key SMP elements for incorporation into and implementation through a revised SMP, the Little Rock District is guided by Corps regulations and policy governing shoreline management plans, the District's objectives for the Greers Ferry Lake SMP, public input to the SMP and EIS development processes, and court-ordered mandates. The District views the Preferred Alternative as the alternative that conforms with existing laws and regulations and best balances public uses of lake shoreline for recreational opportunity, public safety, and environmental protection.

• Alternative 3 (No Growth Alternative). This alternative, which is the most restrictive to lake access and recreational use, would seek to maintain the Corps land around the lake as it currently exists, at least until the next review. Rezoning applications would not be accepted. No new shoreline use permits would be allowed. Expiring permits could be renewed, but only according to the permit's current terms. For example, a two-slip dock permit could be renewed only as a two-slip dock permit. It could not be changed to a permit for a community dock.) No new permits for vegetation modification would be issued, and expiring permits would not be renewed. Restrictions on locations for boats with sleeping quarters and/or marine sanitation devices would remain in effect.

• Alternative 4 (Approval of Rezoning Requests Meeting the 90 Percent Criteria). This alternative would implement the same measures as described under Alternative 2 (Preferred Alternative); however, only rezoning requests that met 90 percent of the rezoning criteria would be approved. A minimum 100-foot buffer would be established; that is, mowing would be prohibited from the vegetated edge of the shoreline for 100 feet.

• Alternative 5 (Maximum Modification). This alternative would allow the maximum rezoning from ''protected'' to ''limited development.'' The shoreline would be rezoned to increase the LDA's from 7 to 33 percent. Rezoning would be based on suitable topography (shoreline with a 20 to 49 percent slope). No rezoning requests would be accepted or approved at future SMP reviews. Authorization for mowing would be increased from 50 to 200 feet from habitable structures. Restrictions on use of boats with sleeping quarters and/or marine sanitation devices would be abolished, but the requirement for such boats to be moored at commercial docks would remain in effect. Grandfathered docks would be allowed to be reconstructed to alternative dimensions, or the locations of existing grandfathered docks would be reallocated outside the buffer zones or published areas.

DEIS Availability

The DEIS will be available for public review at the following locations:

1. Cleburne County Library, 1010 West Searcy, Heber Springs, AR 72543.

2. Greers Ferry Public Library, 8743 Edgemont Road, Greers Ferry, AR 72067.

3. Central Arkansas Main Library, 100 Rock Street, Little Rock, AR 72203.

4. U.S. Army Corps of Engineers, 700 West Capital, ATTN: CESWL–PR–P, Little Rock, AR 72203.

5. Van Buren County Library, ATTN: Ms. Karla Fultz, 110 Page Street, Clinton, AR 72031.

6. Laman Library, 2801 N Orange, North Little Rock, AR 72114.

7. U.S. Army Corps of Engineers, 700 Heber Springs Rd. North, Greers Ferry Project Office, Heber Springs, AR 72543.

Commenting

Comments received in response to this DEIS, including names and addresses of those who comment, will be considered part of the public record. Comments submitted anonymously will also be accepted and considered. Pursuant to Title 7 of the CFR 1.27(d), any person may request that the Corps withhold a submission from the public record if he or she can demonstrate that the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as toe protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the Corps will return the submission with notification that the comments may be resubmitted either with or without the commentor's name and address. Affected local, State, or Federal agencies, affected American Indian tribes, and other interested private organizations and parties may participate in the review process by forwarding written comments to the address given previously or by attending the pubic meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–28674 Filed 11–14–01; 8:45 am]

BILLING CODE 3710–57–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 14, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 8, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of the Undersecretary

Type of Review: New.

Title: The National Evaluation of Smaller Learning Communities.

Frequency: Annually.

Affected Public: Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,436.

Burden Hours: 2,565.

Abstract: The National Evaluation of Smaller Learning Communities is a study to assess the implementation and estimate the impact of creating smaller learning communities in high schools. The study will address how schools are implementing smaller learning communities (e.g. variety of strategies, approaches, and models; characteristics and needs of the population served; intensity, variety and quality of services); whether smaller learning communities improve student outcomes; and whether program implementation and outcomes vary by types of strategies and approaches and by types of schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her Internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–28574 Filed 11–14–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, December 6, 2001, 6 p.m. to 9:30 p.m.

ADDRESSES: Arvada Center for the Art and Humanities, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Quarterly update by representative from the Colorado Department of Public Health and Environment
2. Update on safety issues and recent safety incidents at the Rocky Flats site
3. Presentation by the Rocky Flats History Project on the proposed Cold War Museum
4. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 9:00 a.m. to 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be

made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on November 9, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–28602 Filed 11–14–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Monday, December 10, 2001, 6 p.m.–9:30 p.m.

ADDRESS: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Safeguard and Security Measures for the Oak Ridge Reservation presented by Bobby Davis, DOE/ORO and Steve Wyatt, DOE/ORO

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on November 9, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–28601 Filed 11–14–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–306–000]

Arcata Energica S.A.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

November 8, 2001.

Take notice that on September 24, 2001, Arcata Energica S.A. (Arcata) tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to its Application for Determination of Exempt Wholesale Generator Status filed with the Commission on September 7, 2001.

Any person desiring to be heard concerning the amended 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 amended application. All such motions and comments should be filed on or before November 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28591 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–304–000]

Cementos Norte Pacasmayo Energia S.A.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

November 8, 2001.

Take notice that on September 24, 2001, Cementos Norte Pacasmayo Energia S.A.(CNPE) tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to its Application for Determination of Exempt Wholesale Generator Status filed with the Commission on September 7, 2001.

Any person desiring to be heard concerning the amended 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 amended application. All such motions and comments should be filed on or before November 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. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28590 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–035]

Columbia Gulf Transmission Co.; Notice of Negotiated Rate Filing

November 8, 2001.

Take notice that on November 5, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 20A
Original Sheet No. 20B
Original Sheet No. 21

Columbia Gulf states that it is filing the tariff sheets to comply with the Commission's October 24, 2001 orders approving negotiated rate agreements in Docket Nos. RP96–389–031, and –032.

Columbia Gulf states further that copies of the filing served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28596 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–18–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

November 8, 2001.

Take notice that on November 1, 2001, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP02–18–000 a request pursuant to sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to uprate the maximum allowable operating pressure (MAOP) of Line 257–S from 940 psig to 1100 psig, located in Potter County, Pennsylvania, under DTI's blanket certificate issued in Docket No. CP82–537–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

DTI proposes to uprate the MAOP of Line 257–S from 940 psig to 1100 psig, which is part of DTI's Sharon Storage Complex, and is located in Potter County, Pennsylvania. DTI indicates that the diameter of Line 257–S is mostly 12-inch with a small portion of the line being 16-inch pipe. On April 30, 1987, Consolidated Natural Gas Transmission Corporation (Consolidated), predecessor of DTI, indicates that it filed an application in Docket No. CP 87–314–000, seeking a certificate of public convenience and necessity, authorizing it to develop additional underground capacity in the Sharon Storage Pools. In the filing, DTI states that Consolidated proposed to install compression, increase the base gas level, and replace certain of the gathering system lines within the pool. DTI avers that Line 257–S was not replaced. DTI declares that at that time, the station discharge pressure was anticipated to be 940 psig, the MAOP of Line 257–S.

DTI states that in 1995, Line 257–S was hydro-tested, resulting in the ability to increase the MAOP from 940 psig to 1100 psig. DTI asserts that it would now like to utilize Line 257–S at an increased MAOP. DTI indicates that the requested MAOP of 1100 psig is below both the 2200 psig MAOP of the gathering system and the 1900 psig surface pressure at discovery of the Sharon Storage Complex.

DTI avers that the uprating of this storage pipeline will have no effect on the design capacity of the Sharon Storage Complex nor on the design capacity of the DTI system. DTI states that no new facilities are required. Therefore, DTI declares that there is no cost to DTI, or its customers, associated with increasing the certificated MAOP of this storage pipeline to 1100 psig.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc. 445 West Main Street, Clarksburg, West Virginia 26301, at (304) 627–3462 or Fax: (304) 627–3305.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act. 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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28589 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2830–001]

Roseburg Forest Products Company; Notice of Filing

November 8, 2001.

Take notice that on October 18, 2001, Roseburg Forest Products Company (RFP), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Substitute FERC Electric Rate Schedule No. 1 to include a prohibition on certain affiliate transactions. RFP is filing this Substitute Rate Schedule to comply with the Commission's letter dated October 11, 2001.

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, 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). All such motions and protests should be filed on or before November 19, 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 Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–28592 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–4–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 8, 2001.

Take notice that on November 5, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective November 1, 2001:

Fifth Revised Sheet No. 373

Williston Basin states that it has revised the above-referenced tariff sheet found in section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), to add a new receipt point, Point ID No. 00885 (Bowdoin), to Williston Basin's Bowdoin Pool. Point ID No. 00885 (Bowdoin) is a new receipt point to allow Williston Basin to receive natural gas for its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–28593 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedures for Relicensing, and a Deadline for Submission of Final Amendments

November 8, 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.:* 469–013.

c. *Date Filed:* October 30, 2001.

d. *Applicant:* Minnesota Power Inc., d.b.a. ALLETE, Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River near the City of Ely, in Lake and St. Louis Counties, MN. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Paulson, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com,* 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* 202–219–2778.

j. *Deadline for filing comments:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

k. *Description of the Project:* The project consists of the following two developments:

The Winton Development consists of the following existing facilities: (1) The Winton Dam comprising: (a) a 227-foot-long earth dike; (b) a 29-foot-high, 176-foot-long spillway section; (c) an 84-foot-long Taintor gate and log sluice section; (d) an 80-foot-long stop-log gate section; (e) an 111-foot-long and a 120-foot-long non-over-flow section; (f) a 161-foot-long intake section; and (g) a 1,250-foot-long earth dike; (3) a 2,982-acre reservoir comprising the Garden, Farm, South Farm, and Friday Lakes at

a normal water surface elevation of 1,385.67 feet USGS; (4) two 250-foot-long, 9-foot-diameter underground penstocks extending to; (5) a powerhouse containing two generating units with a total installed capacity of 4,000 kW; and (6) other appurtenances.

The Birch Lake Reservoir Development consists of: (1) A 7-foot high, 227-foot-long dam comprising; (a) a 72-foot-long Taintor gate section; and (b) an 85-foot-long sluice gate section; and (2) the 7,624-acre Birch Lake reservoir at normal water surface elevation of 1,420.5 feet USGS. This development provides water storage for the Winton Development.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

m. *Alternative procedures schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing: Notice of application has been accepted for filing; Notice soliciting final terms and conditions; Notice of the availability of the draft NEPA document; Notice of the availability of the final NEPA document; and Order issuing the Commission's decision on the application.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

David P. Boergers,

Secretary.

[FR Doc. 01–28594 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 8, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2056–016.

c. *Date filed:* December 21, 1998.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* St. Anthony Falls Project.

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401; (612) 330–6568.

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail: *monte.terhaar@ferc.fed.us*, or telephone (202) 219–2768.

j. *Deadline Date:* 60 days from the date of 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, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a draft and a final Environmental Assessment.

l. *Description of the Project:* The St. Anthony Falls Project currently consists of two developments on the Mississippi River, the Upper Development and the Lower Development.

The Upper Development consists of the following existing facilities located across from the U.S. Army Corps of Engineers Upper Saint Anthony Lock: (1) Horseshoe Dam, a 1,952-foot-long concrete, timber, and rock structure topped with 1.6-foot-high wooden flashboards; (2) the main spillway, a concrete, timber and rock structure 425 feet wide and 150 feet-long; (3) a 340-foot-long roll dam; (4) a 358-acre reservoir with a normal pool water surface elevation of 799.2 feet NGVD, and a total storage capacity of 967 acre-feet; (5) a concrete and masonry powerhouse, 133 feet long by 92 feet wide; (6) 5 turbines with a total installed capacity of 12,400 kilowatts, and a maximum hydraulic capacity of 4,025 cfs, producing an average of 79,518 megawatt-hours annually; and (7) four 115-kilovolt primary transmission lines; and other appurtenances.

The Lower Development consists of an upstream closure dam, a downstream closure dam, and left retaining wall which encompass approximately 3.53 acres of land owned by Northern States Power Company (NSP). There are currently no hydropower facilities at the Lower Development. In November of 1987, the St. Anthony Falls Lower Dam Hydro Plant experienced an undermining failure. On August 19, 1988, the Commission issued an order authorizing complete demolition and removal of the lower facility. Demolition of the powerhouse was completed by the end of 1988. As of August 2001, all necessary remedial work necessary to ensure dam safety at the Lower Development has been completed to the Commission's satisfaction.

As part of the application for re-license of St. Anthony Falls Project, the applicant proposes to remove the lower development from the project. The Commission will discuss this alternative in its Environmental Assessment.

m. *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, Washington, DC 20246. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item ''h'' above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 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. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. 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. 01–28595 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD 02–5–000, et al.]

Notice of Hydro Licensing Status Workshop

November 8, 2001.

Hydro Licensing Status Workshop	Docket No. AD02–5–000
Arizona Public Service Company	Project No. 2069–003.
Calaveras County Water District	Project Nos. 2019–017 and 2699–001.
Cascade River Hydro	Project No. 10100–002.
Central Maine Power Company	Project No. 2283–005.
Central Vermont Public Service Corporation	Project Nos. 2205–006, 11475–000 and 11478–000.
Citizens Utilities Company	Project No. 2306–008.
City of Escondido, California	Project No. 176–018.
City of Harrisburg, Pennsylvania	Project No. 10418–000.
City of St. Louis, Michigan	Project No. 11428–000.
Commonwealth Power Company	Project Nos. 11120–002, 11300–000 and 11516–000.
Erie Boulevard Hydropower, L.P	Project Nos. 2318–002, 2320–005, 2330–007, 2474–004, 2482–014, 2539–003, 2554–003, 2616–004, 10461–002 and 10462–002.
Finch, Pruyn & Company, Inc	Project No. 2385–002.
FPL Energy Maine, LLC	Project No. 2612–005.
Idaho Power Company	Project Nos. 1975–014, 2061–004 and 2777–007.
Nooksack River Hydro, Inc.	Project No. 11495–000.
Northern States Power Company	Project No. 1982–017.
Pacific Gas and Electric Company	Project Nos. 1354–005 and 2687–014.
PacifiCorp	Project Nos. 1927–008 and 2342–005.
Puget Sound Energy, Inc.	Project No. 2493–006.
Ridgewood Maine Hydro Partners, L.P	Project Nos. 11472–000 and 11566–003.
Rochester Gas and Electric Corporation	Project No. 2596–002.
Skagit River Hydro	Project No. 10311–007.
Skykomish River Hydro, Inc	Project No. 10942–001.
Southern California Edison Company	Project Nos. 1932–004, 1933–010 and 1934–010.
Upper Peninsula Power Company	Project Nos. 1864–005 and 10855–002.
Warm Creek Hydro, Inc	Project No. 10865–001.
Washington Hydro Development Company	Project No. 10416–003.
Wisconsin Power & Light Company	Project No. 11162–002.
Wisconsin River Power Company	Project No. 1984–056.

A two-day, Commissioner-led workshop will be held on December 10 and 11, 2001, beginning at 10:00 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The workshop will focus on the above listed 51 pending license applications filed at the Commission. The workshop is open to the public and all interested persons are invited to attend and participate.

The goals of the workshop are to: (1) Review and discuss the pending license applications; (2) identify unresolved issues; (3) determine next steps; (4) agree on who will take the next step; and (5) focus on solutions. The workshop will concentrate on identifying the unresolved issues associated with each project, and determining the best course of action to resolve or remove obstacles to final action on each pending license application.

A transcript of the discussions will be placed in the public record for Docket No. AD02–5–000 and in the record for each of the pending license applications.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. Those filing

electronically do not need to make a paper filing.

For paper filings, the original and 8 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Paper filings should, at the top of the first page, refer to Docket No. AD02–5–000 and reference the specific project name(s) and project number(s) that the comments concern. The deadline to file comments is January 11, 2002.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Website at *www.ferc.gov*, click on ''e-Filing'' and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us*.

Opportunities for Listening, Participating, and Viewing the Workshop Offsite and Obtaining a Transcript

The workshop will be transcribed. Those interested in obtaining transcripts should contact Ace Federal Reporters at 202–347–3700.

The Capitol Connection will broadcast the workshop live via the Internet and by telephone. To find out more about The Capitol Connection's Internet and telephone bridge, contact David Reininger at 703–993–3100 or go to *www.capitolconnection.gmu.edu*.

Live and archived audio of the workshop will also available for a fee via National Narrowcast Network. Live audio is available by telephone at 202–966–2211 and by subscription on the Internet at *www.hearings.com*. The Internet audio will be archived and available for listening after the event is completed. Billing is based on listening time.

Anyone interested in purchasing videotapes of the workshop should call VISCOM at 703–715–7999.

Anyone wishing to participate via teleconference should call or E-mail Tom Dean at 202–219–2778 or *thomas.dean@ferc.fed.us* to receive the toll free telephone number to join the teleconference.

Anyone interested in participating in the workshop via video teleconference from one of the Commission's regional offices should call or E-mail the following staff to make arrangements. Sitting capacity is limited.

Regional office	Staff contact	Telephone No.	E-mail address
Atlanta	Charles Wagner	770–452–3765	charles.wagner@ferc.fed.us
Chicago	Dave Simon	312–353–6701	david.smon@ferc.fed.us
New York	Chuck Goggins	212–273–5910	charles.goggins@ferc.fed.us
Portland	Pat Regan	503–944–6741	patrick.regan@ferc.fed.us
San Francisco	John Wiegel	415–369–3336	john.wiegel@ferc.us

By December 3, 2001, an agenda for the workshop and information about the pending license applications will be posted on the Commission's web site under Hydro Licensing Status Workshop. Anyone without access to information on the Commission's web site, or who have questions should contact Tom Dean at 202–219–2778, *thomas.dean@ferc.fed.us* or Alan Mitchnick at 202–219–2826, *alan.mitchnick@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–28588 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Order Providing Guidance

Issued November 7, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order providing guidance.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is providing guidance to the electric industry with respect to its goals for the next phase of regional transmission organization (RTO) implementation. The action is needed to clarify the Commission's goals for resolving issues relating to scope and governance of qualifying RTOs across the nation and for addressing business and process issues needed for organizations to accomplish the functions of Order No. 2000. It also states some of the Commission's specific plans for moving the RTO development process forward.

FOR FURTHER INFORMATION CONTACT: David D. Withnell, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2063.

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission

Before Commissioners: Pat Wood III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell

Electricity Market Design and Structure

[Docket No. RM01–12–000]

Order Providing Guidance on Continued Processing of RTO Filings

Issued November 7, 2001.

It is a fundamental objective of the Commission, in exercising its responsibilities under Part II of the Federal Power Act, to create a seamless, national, competitive marketplace for wholesale sales of electric energy and adequate generation and transmission infrastructure to support that marketplace. Such a marketplace will provide customers with more reliable and efficiently priced electric energy than wholesale markets with unnecessary variation in market rules and business practices. As a cornerstone of support for this national marketplace, we have endeavored for several years to create regional transmission organizations (RTOs) to capture the benefits and efficiencies of a competitive power marketplace for the nation's electricity customers. The FERC has before it numerous ongoing proceedings involving RTO proposals, and it has recently assessed the status of these proceedings and the ongoing

changes in the electricity marketplace. Taking into account the various stages of RTO efforts in the country, and the industry and state comments we have received in recent weeks (discussed below), in this order we state some of our goals and provide general guidance on how we intend to proceed on RTO filings and other related efforts. Our decision is in the public interest because it will provide direction for the electric industry and information to the public as we continue to move the RTO process forward.

The Commission held a public conference on RTO issues (RTO Week) during the week of October 15 through 19, 2001. RTO Week consisted of 10 sessions on various topics involving RTOs and the need for clear, appropriately standardized transmission tariff design and market rules. These sessions included participants from a wide range of affected interests and, significantly, included extensive comments from state commissioners. In addition, at our open meeting on October 24, 2001, we received status reports on RTO efforts in various regions of the country, including the Southeast, Northeast and Midwest. In association with the Western Governors' Committee on Regional Electricity Power Cooperation (CREPC) and the Commission's Western Regional Infrastructure Workshop in Seattle, Washington on November 1–2, 2001, the Commission also had the opportunity to hear updates on RTO efforts in the Western Interconnection. We now need to determine an expeditious, yet carefully deliberated, way to complete the development of RTOs, taking into account the need for further industry and state comments.

The Commission intends to complete the RTO effort using two parallel tracks. The first track will be to resolve issues relating to geographic scope and governance of qualifying RTOs across the nation; these will be addressed in pending RT dockets following consultation with state commissioners, as discussed below.

The second track for resolving RTO issues will be in the transmission tariff and market design rulemaking for public utilities, including RTOs, in Docket No. RM01–12–000. This will help address business and process issues needed for organizations to accomplish the functions of Order No. 2000.

The FERC will take several immediate steps to move the RTO process along these tracks: (1) A broader definition of how certain RTO functions will be fulfilled; (2) better state/federal dialogue; (3) further cost/benefit studies; (4) identification of areas where standardization is called for; and (5) creation of a time line for RTO implementation.

Statement of Policy Goals

A. Fulfillment of RTO Functions

The Commission must ensure that the RTO not only efficiently operates a transmission grid, but also undertakes certain activities to enable and sustain a vibrant and fair wholesale marketplace. For both aspects of an RTO to be successful, broad stakeholder support is important. In a number of proceedings, parties have proposed the development of a separate organization to perform some of the wholesale market activities, some of which were specified as RTO functions under Order No. 2000, and some of which have been raised as additional activities to enable vibrant and efficient wholesale markets. These wholesale market activities include: (1) Congestion management; (2) ancillary services; (3) administration of a balancing market; (4) OASIS administration, including total transmission capacity and available transmission capacity calculations; (5) security coordination; (6) market monitoring; (7) regional transmission facility planning; and (8) tariff administration and design.

In Order No. 2000, the Commission contemplated that an ITC or an ISO may develop as a stand-alone RTO. In addition, however, the Commission will be seeking comments on other ways wholesale market activities might be fulfilled. For example, Midwest ISO, Alliance and Southwest Power Pool have already agreed to have a single market monitoring unit. In addition, the newly-formed Western Electric Coordinating Council handles both security coordination (reliability) and transmission planning duties. In order to phase in the progress toward comprehensive and geographically-large RTOs, these basic wholesale market activities could first be placed under the control or oversight of the broader organization. Other functions could be integrated into the broader organization later.

In written submissions in various pending dockets and in the discussions during RTO week, particularly from state commissions and public power entities, parties seek assurance that critical wholesale market operations are being administered as objectively as possible. A number of reasonable models have been offered for this function both in the mediation dockets and in pending RTO dockets. The FERC will address these issues in the pending RT dockets.

B. State Participation; Other Outreach

The invaluable participation of state commissioners in RTO Week confirms and reinforces our belief that we must work closely with state commissions to create a seamless national market. To that end, we plan to create and institute state-federal RTO panels as a forum for constructive dialogue between the Commission and state commissions with respect to RTO development.

We have asked our staff to provide recommendations on panel structure and propose a timeline for the work of the panels to begin. We invite state commissioners to participate in this process, and we look forward to working with them to address the ongoing needs of regional markets.

As the first matter of business, we intend to ask state commissioners to provide their advice to the Commission about the make-up of regional markets. Specifically, the Commission will ask them for comments on the allocation of wholesale market activities, as set forth in section A above. For example, in the West, it is now apparent that the presence of three sub-regional organizations (bound by a workable seams agreement) under a larger umbrella organization has the potential to succeed.

The Commission will institute additional outreach efforts with stakeholders and other interested persons on the status of, and obstacles to, RTO formation. For example, the Commission intends to meet with investor representatives to help us better understand the financing of independent transmission companies and of transmission construction.[1] The Commission seeks to support development of a pro-investment marketplace that is flexible enough, under Order No. 2000, to include both for-profit transcos and not-for-profit ISOs and any reasonable combinations of the two.

C. Cost/Benefit Studies

On a parallel track to the organizational efforts listed above, the Commission will perform additional cost-benefit analyses on RTOs to guide our further efforts. These analyses are intended to demonstrate whether and, if so, how RTOs will yield customer savings and to provide a quantitative basis for the appropriate number of RTOs.

[1] These meetings will be publicly noticed, and we will invite subsequent comments on their content.

The Commission has established a working group with state commission participation to work with FERC staff and the study consultant in framing these further analyses.

D. Standardization of Market Rules

As recently announced, we intend to issue a notice of proposed rulemaking in this docket that will reform the open access tariffs to standardize market design rules, as appropriate. Our task in this rulemaking will be to balance the need to remove undue discrimination and excessive costs in transmission services with the need to permit regional differences and market innovation. The reformed tariff will be required to be filed by RTOs and other public utilities that own, operate or control interstate transmission facilities.

During RTO Week we received many comments about the need for transmission tariff reform, and we also heard many views about the need for flexibility and market creativity in certain areas. RTO Week provided some concrete suggestions as to where flexibility is needed and where it will be a disadvantage. We look forward to receiving additional comments from the public on these issues.[2] It is important not to compromise the benefits that transmission organizations have already conferred upon the public, and we are committed to making sure that transmission customers and the electric customers they serve will benefit as a result of this effort. We do not believe that the best way to create a national marketplace is to begin with the lowest common denominator, but instead intend to build on successful concepts here and in other countries.

The Commission recently issued an advance notice of proposed rulemaking in Docket No. RM02–1–000 on standardizing generation interconnection agreements and procedures. The first phase of our interconnection rulemaking process will be a Notice of Proposed Rulemaking (NOPR) on terms and conditions of interconnection services to be published in January, 2002. The second phase will be a separate NOPR on pricing issues associated with interconnections, to be published in April 2002. Interconnection rules are a critical piece of open access transmission services and RTOs initially will be required to follow the same interconnection policies that we set forth for other public utilities in the new rules. These rules will help support appropriately sited generation and appropriately priced infrastructure for new generation. It is clear that resolution of the pricing issue early in this process will allow for swifter consensus on broader RTO issues.

E. Timeline/Status

As noted above, numerous filings are pending involving RTO development. The Commission intends to issue future orders addressing the pending filings and providing specific guidance once it has received comments from the state regional panels as discussed above.

In recognition of the fact that RTO development is in very different stages in various parts of the country and that it is not possible for all RTOs to be in operation by the December 15, 2001 deadline established in Order No. 2000, we intend to address in our future orders the establishment of a progressive, but appropriately measured, timeline for continuing RTO progress in each general region. The Commission is particularly cognizant of the critical importance of keeping parties focused on performing RTO functions now while positioning for future, more regional integration. In particular, information systems are especially challenging to coordinate and must be handled with diligence and care. Any timetable ultimately adopted for regional integration must be based on a sound business plan with substantive buy-in from a cross-section of market participants.

Conclusion

This effort to create a seamless, national electricity marketplace is similar to that led by the Commission in the natural gas industry a decade ago. In that regard, the Commission calls upon all interested parties to commit the necessary time and resources to a thorough and expedient completion of the industry transition.

This order is not intended to provide final rulings with respect to creation of RTOs, but to lay out our goals and process for their creation. We have invited public comments subsequent to RTO Week, and we reiterate our willingness to consider the opinions of market participants, state commissions and the general public as we move to complete this transition. Although we strive for consensus where it can be reached, we are aware that the long-term success of regional electric markets will require the Commission to make timely and clear policy decisions. For that reason, we are committed to a broad and open process that will allow for the most developed record possible.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 01–28573 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

[2] We encourage parties to view and file electronic comments at *www.ferc.gov/electric/rto/mrkt-strct-comments/rm01-12-comments.htm.* We will be holding staff follow-up conferences.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00750; FRL–6811–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to the applicability of the Up and Down Procedure Methodology in acute oral toxicity testing. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on December 12, 2001, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate 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, your request must identify docket control number OPP–00750 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy (7202), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@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 who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. 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**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. A meeting agenda and several background documents relevant to this meeting are now available. EPA's primary position paper and questions to the FIFRA SAP should be available as soon as possible, but no later than mid November. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an administrative record for this meeting under docket control number OPP–00750. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be 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 Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00750 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail*. You may submit a request 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*. 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 request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00750. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The purpose of this meeting is to seek comments of the FIFRA SAP on the regulatory applicability of the Up and Down Procedure for acute oral toxicity testing. Acute oral toxicity testing constitutes the adverse health effects that occur within a short time of administration of a single dose of a chemical and provides information on its potential health and environmental hazards and risks. Acute oral toxicity is a basic requirement for registration and reregistration of pesticide active ingredients and products. An improved version of the Up and Down Procedure has been developed as an alternative method for use by member nations of the Organization for Economic Cooperation and Development to meet regulatory needs for acute toxicity. Accordingly, this method will replace the traditional acute oral toxicity test in EPA, Office of Prevention, Pesticides and Toxic Substances (OPPTS) test guideline 870.1100. The test procedure in this guideline is of value in minimizing the number of animals required to determine the acute oral toxicity testing of a chemical. In addition to the estimation of LD_{50} and confidence intervals, the test allows the observation of signs of toxicity. Moreover, use of guidance for humane endpoints should reduce the overall suffering of animals in this type of test. The Up and Down Procedure is to be used for acute oral toxicity testing.

B. Panel Report

The Panel will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: November 6, 2001.

Vanessa Vu,

Director, Office of Science Coordination and Policy.

[FR Doc. 01–28636 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225I; FRL–6809–5]

Diazinon; Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the product and use cancellations as requested by companies (hereafter collectively referred to as the ''EUP Registrants'') that hold the registrations of pesticide End-Use Products (EUPs) containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 13, 2001, notice of receipt from the EUP Registrants, of requests for cancellations and or amendments of their diazinon product registrations to terminate all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. In the September 13, 2001 notice, EPA indicated that it would issue an order granting the voluntary product and use registration cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. The Agency did receive one request from an EUP registrant revoking its voluntary cancellation requests for two products. No other comments were received. Accordingly, EPA hereby issues in this notice a cancellation order granting the remaining requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective November 15, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: John Hebert, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6249; fax number: (703) 308–7042; e-mail address: hebert.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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**.

B. 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 that might be available electronically, 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 risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP 34225I. 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 electronic comments 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.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

Certain registrants requested in letters dated May, June and August 2001, that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon EUP registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. EPA announced its receipt of these above-mentioned cancellation requests in a **Federal Register** notice dated September 13, 2001.

These requested cancellations and amendments are consistent with the requests in December 2000, by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children, associated with diazinon containing products. The indoor uses and agricultural uses subject to cancellation are identified in the following List.

List — Uses Requested for Termination

1. *Indoor uses*: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses*: Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

In today's Cancellation Order, EPA is approving the registrants' requested cancellations and amendments of the their diazinon end-use products registrations to terminate all uses identified in the List.

B. Requests for Voluntary Cancellation of End-Use Products

The end-use product registrations for which cancellation was requested are identified in the following Table 1.

TABLE 1. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Value Garden Supply, LLC	70–177	Kill-Ko Diazinon 2E Insect Spray
	70–249	Rigo Diazinon AG 500 Insecticide
	70–252	Rigo Diazinon 5% Granules
	192–145	Dexol Diazinon 25% Insect Spray
	192–165	Dexol Diazinon 2% Granules
	192–194	Dexol Ant & Roach Killer
	192–208	Dexol Diazinon Insect Spray
	769–569	Stephenson Chemicals D.P.S. Roach Powder
	769–571	Suregard Diazinon Spray
	769–630	SMCP Special Residual Insect Spray
	769–750	PCE Diazinon-Pyrethrum Residual Spray
	769–754	PCE Diazinon DDVP Residual Spray
	769–755	X-It Formula 120
	769–768	PCE Diazinon Roach Dust
	769–769	Formulation 050
	769–784	Di-Azz Ready-to-Use
	769–791	Superior Dy-All
	769–824	PCO Crack & Crevice
	769–861	Pratt Diazinon 25E Insect Spray
	769–862	Pratt Diazinon 5% Granular Lawn Insect Control
	769–863	Pratt Diazinon 2% Granular Lawn Insect Control
	769–890	Agrisect Diazinon 5% Granular
	769–891	Agrisect Brand Insecticide Diazinon 2% Dust for Military Use
	769–-922	Science 5% Diazinon Dust
	769–930	Warner Enterprises Ant, Roach & Spider Spray
	769–956	Pratt 14% Diazinon
	769–974	Diazinon 22.4% Lawn & Garden Water Based Insecticide
	5887–104	Black Leaf 5% Diazinon Dust
	5887–124	Black Leaf 5% Diazinon Granules
	5887–132	Black Leaf 25% Diazinon
Whitmire Micro-Gen Research Laboratories, Inc.	499–228	PT 265 - A Knox Out Microencapsulated Diazinon
	499–330	Whitmire TKO Microencapsulated Diazinon (PT 265)
	499–422	TC 132 (TKO PT 265-Greenhouse)
Prentiss Incorporated	655–462	Prentox Diazinon 4S Insecticide
	655–465	Prentox Diazinon 2D Insecticide Dust
	655–645	Prentox Diazinon Emulsifiable Concentrate
	655–799	Prentox Diazinon Lawn & Garden Insecticide
Green Light Company	869–219	Green Light Diazinon 25
PBI Gordon Corporation	2217–496	Gordon's Wasp & Hornet Bomb

TABLE 1. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
Sergeant's Pet Products, Inc.	2517–24	Double Duty Plus Flea & Tick Collar with Nutrisorb for Dogs
	2517–25	Double Duty Plus Flea & Tick Collar with Nutrisorb for Cats
	2517–29	Double Duty Reflecting Flea & Tick Collar for Cats
	2517–30	Double Duty Reflecting Flea & Tick Collar
Cerexagri, Inc.	4581-379	KNOX OUT GH
Helena Chemical Company	5905–441	Omni-Diazinon
	5905–444	Helena Diazinon 40W
	5905–525	Diazinon 4EC
Chemical Packaging Corp.	7405–2	Chemi-Cap Roach and Ant Killer
Pursell Industries, Inc.	8660–46	VertaGreen Household Insecticide
	8660–59	VertaGreen Sod Webworm Spray
	8660–79	VertaGreen Diazinon 12.5% Insect Spray
	8660–89	VertaGreen Diazinon 500 Insecticide
	8660–91	VertaGreen Diazinon Insecticide 25 Emulsifiable Concentrate
	8660–95	VertaGreen for Pro Use Diazinon 14G
	8660–103	VertaGreen Lawn Food & Insecticide
	8660–124	VertaGreen Diazinon AG 500 Insecticide
	8660–206	Koos Nature's Best Lawn & Garden Insect Control
	8660–233	Vigro 5% Diazinon Granules Lawn & Garden Insect Control
Spectrum Group, Division of United Industries Corp.	8845–94	Sprectracide Crawling Insect Control Granules
	8845–124	Sprectracide Granules Formula 2
Safeguard Chemical Corp.	8848–4	5–11 Roach and Bug Killer
	8848–55	Black Jack Roach & Ant Killer IV
	8848–56	707 Residual Formula-4 Roach Bomb
	8848–57	707 Landlord's Formula Two
	8848–58	707 Residual Formula #2
Sunniland Corporation	9404–65	25% Diazinon Liquid Concentrate
Chemsico, Division of United Industries Corp.	9688–92	Chemsico Granules Formula 1
	9688–128	Chemsico Diazinon Insect Spray
	9688–132	Chemsico Insecticide PD
Agriliance	9779–212	Diazinon 4E
The Sherman Williams Co.	10900–96	Rescue Ant & Roach
Sungro Chemicals, Inc.	11474–31	Sungro Residual Roach Dope
	11474–34	Sunbugger Residual Ant & Roach Aqueous
	11474–72	Power Residual Spray
Speer Products Incorporated	11715–3	Speer Bug Killer
	11715–16	Speer Professional Formulation Diazion Bug Killer
	11715–51	Speer Insecticide Diazinon
	11715–90	Speer Professional Home Pest Control

TABLE 1. — END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	11715–124	Better World Multi-Purpose Aqueous Spray
	11715–216	Sudbury Diazinon Insect Spray
	11715–296	5% Diazinon Granules Lawn & Garden Insect Control
Louisiana Chemical U.S.A., Incorporated	11746–32	Davis Kill-A-Bug III
	11746–33	Davis Kill-A-Bug IV
	11746–42	Davis Kill-A-Bug 4E
Drexel Chemical Company	19713–92	Drexel D–264 4E
Unicorn Laboratories	28293–229	Unicorn Diazinon 4E
	28293–240	Unicorn Diazinon Granular Lawn Insect Control
	28293–241	Unicorn Diazinon 1/2% EW Insecticide
	28293–242	Unicorn Diazinon Home Pest Control Insecticide
	28293–243	Unicorn Diazinon Home Pest Control Insecticide II
	28293–244	Unicorn Diazinon Home Pest Control Pressurized Insecticide
	28293–245	Unicorn Diazinon 1% ME Insecticide
	28293–246	Unicorn Diazinon 0.5 RTU Insecticide
	28293–247	Unicorn Diazinon 2.0 Insecticide
	28293–248	Unicorn Diazinon 1/2% ME Insecticide
	28293–249	Unicorn Diazinon 1% EW Insecticide
	28293–250	Unicorn Diazinon 5.0 EW Insecticide
	28293–251	Unicorn Diazinon 2D Insecticide Dust
Professional Supply, Inc.	37915–4	Professional Brand Pest Control Formula D 4E
Quest Chemical Corp.	44446–7	CS 101 Roach and Ant Spray
	44446–44	Double Trouble Water Base Diazinon Roach and Ant Spray
Celex, Division of United Industries Corp.	46515–17	Super K-GRO Fruit & Vegetable Insect Control
Marman USA, Inc.	48273–24	Marman Diazinon 48 EC
Alljack, Division of United Industries Corp.	49585–3	Diazinon Granules
	49585–5	Diazinon Soil & Turf
MicroFlo Company	51036–64	Diazinon 4E
	51036–197	Diazinon 4E AG
ProGuard, Inc.	58866–10	Master Nurseyman Diazinon-25 Insect Control
PM Resources, Inc.	67517–18	Diazinon Insecticide 25E
	67517–29	Diazinon Granules 5%
	67517–62	Diazinon Lawn & Garden WBC
Contract Packaging, Inc.	67572–79	CP Diazinon Lawn & Garden WB Concentrate

The Agency received a request from the EUP registrant Prentiss Incorporated (EPA company number 655), revoking its voluntary cancellation requests for two products that were included in the September 13, 2001 notice. As a result, Prentox Liquid Household Spray #1 (EPA registration no. 655–419) and Prentox Diazinon 4E (EPA registration no. 655–457) are not included in this cancellation order. EPA did not receive any substantive comments that would merit further review expressing a need of diazinon products for indoor use. Accordingly, the Agency is issuing an

order in this notice canceling the registrations identified in Table 1, as requested by the EUP registrants.

C. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses

Pursuant to section 6(f)(1)(A) of FIFRA, many EUP registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in the List, or any other uses as specified for each product in the September 13, 2001 Diazinon 6(f) notice and reiterated in Table 2 below. EPA did not receive any comments expressing a need for any of the canceled uses. The registrations for which amendments to terminate specific uses were requested are identified in the following Table 2.

TABLE 2. — END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Reg. No.	Product Name	Use Deletions
The Scotts Company	239–2479	Ortho Diazinon Soil and Turf Insect Control	Celery
Prentiss, Inc.	655–556	Diazinon 5G Insecticide	Celery
	655–557	Prentox Diazinon 14G	Beans (lima, pole, snap; succulent varieties only), celery, cucumbers, parsley, peas (succulent varieties only), peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, and turnips.
Southern Agricultural Insecticides, Inc.	829–262	SA–50 Diazinon AG 500 Insecticide	Cucumbers, peppers, potatoes, squash (summer and winter), Swiss chard, lawns, grasslands insects, and nuisance pests in outside areas.
Green Light Home Garden	869–139	Green Light Diazinon 5 Granules	Celery
	869–231	Green Light Diazinon	Almonds
Lebanon Seaboard Corporation	961–358	Lebanon Lawn and Garden Insecticide with Diazinon 5G	Celery
Wilbur-Ellis Company	2935–388	Diazinon 4 Spray	Beans, cucumbers, parsley, parsnips, peas, peppers, potatoes, squash, sweet potatoes, Swiss chard, turnips, grasslands, ditch banks, roadsides, wasteland, non-crop areas, barrier strips, ornamentals, (not grown outdoor in nurseries), lawn pest control, and nuisance pests in outside areas.
	2935–408	Diazinon 14G	Beans, celery, cucumbers, parsley, peas, peppers, potatoes, squash, sweet potatoes, Swiss chard, and turnips.
Cerexagri, Inc.	4581–392	KNOX OUT NL	Commercial landscape uses (ornamentals in landscaped, mulched, or plant bed areas of commercial properties).
Helena Chemical Company	5905–248	Diazinon AG 500 Insecticide	Beans (lima, snap, and pole; succulent only), parsley, parsnips, peas (succulent only), peppers, potatoes (Irish), squash (summer and winter), sweet potatoes, Swiss chard, ornamentals (except outdoor nurseries only), lawns, and nuisance pests in outdoor areas.
	5905–262	Diazinon 14G	Beans (lima, snap, and pole; succulent only), parsley, peas (succulent only), peppers, potatoes, squash (summer and winter), sweet potatoes, and Swiss chard.
	5905–474	Helena Diazinon 7E Insecticide	Beans (lima, snap, and pole; succulent only), parsley, parsnips, peas (succulent only), peppers, potatoes (Irish), squash (summer and winter), sweet potatoes, Swiss chard, ornamentals (except outdoor nurseries only), lawns, grassland insects, and nuisance pests in outside areas.
	5905–526	Diazinon 50 WP Insecticide	Beans (lima, snap, and pole; succulent only), parsley, parsnips, peas (succulent only), peppers, potatoes (Irish), squash (summer and winter), sweet potatoes, Swiss chard, ornamentals (except outdoor nurseries only), lawns, livestock insects, fly control in livestock structures, lawns, and nuisance pests in outside areas.
Chemsico, Division of United Industries Corporation	8845–92	Spectracide Lawn & Garden Insect Control Concentrate	Almonds

TABLE 2. — END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product Name	Use Deletions
	8845–95	Spectracide 6000 Lawn & Garden Insect Control	Celery
The Andersons, Inc.	9198–62	The Andersons Lawn and Garden Insecticide 5% Diazinon	Celery
Lesco	10404–23	LESCO Diazinon 5G Granular Insecticide	Celery
Howard Johnson's Enterprises, Inc.	32802–5	All Season Diazinon 5G Insecticide	Celery
PBI Gordon Corporation	33955-556	Acme Diazinon 25% Emulsifiable Concentrate	Almonds
	33955–557	Acme Diazinon 5G Lawn & Garden Insect Control	Celery
Platte Chemical Co.	34704–41	Clean Crop Diazinon AG 500 Insecticide	Cucumbers, parsley, parsnips, peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, turnips, grassland insects, lawns, and nusiance pests in outside areas.
	34704–57	Clean Crop Diazinon 5 Lawn & Garden	Celery
	34704–230	Diazinon G-14	Celery, cucumbers, parsley, peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, and turnips.
	34704–231	Diazinon 500 AG	Cucumbers, parsley, parsnips, peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, turnips, grassland insects, lawn pest control, and nuisance pests in outside areas.
	34704–435	Clean Crop Diazinon 50WP Insecticide	Cucumbers, parsley, parsnips, peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, turnips, grassland insects, livestock insects, fly control in livestock structures, lawns, and nusiance pests in outside areas.
	34704–493	Diazinon 5 Granules	Celery, collards, cucumbers, parsley, peppers, potatoes, squash (summer and winter), sweet potatoes, Swiss chard, turnips, lawns, and band treatment around house foundation.
Professional Supply, Inc.	37915–6	Professional Brand Pest Control Formula DC-500	Pole beans
Enforcer Products, a Division of National Service Industries, Inc.	40849–30	Enforcer Ant Kill Granules II	Pole beans and celery
Morgro, Inc.	42057–90	Morgro Diazinon 25% Spray	Oranges
	42057–107	Morgro 5% Diazinon Granules	Celery
Walla Walla Environmental	47332–4	CPF 2D	Farm buildings including dairy barns and milk parlors warehouses, office buildings, theaters, schools, motels, hotels, factories, and out buildings.
Mircro Flo Company	51036–97	Diazinon 5G Homeowner	Celery
Gro Tec, Inc.	59144–2	5% Diazinon Granules	Pole beans and celery
	59144–28	Diazinon Lawn & Garden Insecticide	Almonds and pole beans

TABLE 2. — END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product Name	Use Deletions
Hacco, Inc.	61282–25	Diazinon Lawn & Garden WBC	Almonds
Guardsman Products, Inc.	62366–2	Bug Stuff	Office buildings, schools, hotels, motels, warehouses, theaters, barns, farm buildings (including dairy barns and milk parlors), factories, and out buildings.
Contract Packaging, Inc.	67572–1	CP Diazinon Lawn & Garden WB Ready-to-Use	Almonds and pole beans

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product and use registrations identified in Tables 1 and 2 of this notice. Accordingly, the Agency orders that the diazinon end-use product registrations identified in Table 1 are hereby canceled. The Agency, also orders that all of the uses identified in the List and all other uses (including specific outdoor non-agricultural uses) identified for deletion in Table 2 are hereby canceled from the end-use product registrations identified in Table 2. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or sale of products bearing instructions for use on agricultural crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in the List, will not be lawful under FIFRA 1 year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 2 that bears instructions for any of the agricultural uses identified in the List after the effective date of the cancellation order.

2. *Distribution or sale of products bearing instructions for use on outdoor non-agricultural sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites, will not be lawful under FIFRA 1 year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order.

3. *Distribution or sale of products bearing instructions for use on indoor sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

4. *Retail and other distribution or sale of existing stock of products for indoor use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002 except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

Lists of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: November 2, 2001.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–28635 Filed 11–14–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1054; FRL–6809–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1054, must be received on or before December 17, 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.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1054, in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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 that might be available electronically, 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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1054. 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 electronic comments 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 Highway, 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 PF–1054, 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 Highway, 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 above. 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 PF–1054. 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**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket 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 has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency

of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 30, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 1F6250

EPA has received a pesticide petition (PP 1F6250) from BASF Corporation, P. O. Box 13528, Research Triangle Park, NC 27709–3528 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the plant growth regulator mepiquat resulting from the use of mepiquat chloride (N,N-dimethylpiperdinium chloride) or mepiquat pentaborate (N,N-dimethylpiperidinium pentaborate hemi-hydrate) in or on the following raw agricultural and processed commodities: Cottonseed at 2.0 parts per million (ppm); cotton, gin by-products at 6.0 ppm, and meat byproducts of cattle, goat, hog, horse, and sheep at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of mepiquat chloride in plants and animals is well understood. Based on the identical dissociation behavior of mepiquat pentaborate and mepiquat chloride, the nature of the residue for mepiquat pentaborate would be the same as that for mepiquat chloride (based on analysis of the mepiquat cation). Thus, the nature of residue for mepiquat pentaborate in cotton is supported by the mepiquat chloride studies available in cotton. The residue of concern from mepiquat pentaborate use in cotton consists only of the parent compound.

2. *Analytical method.* An adequate analytical method for enforcement of the tolerances exists. The analytical method used for quantitative determinations was designed to measure mepiquat chloride or mepiquat pentaborate residues present as mepiquat cation. The metabolism of mepiquat chloride in plants and animals is well understood. Based on the identical dissociation behavior of mepiquat pentaborate and mepiquat chloride, the nature of the residue for mepiquat pentaborate would be the same as that for mepiquat chloride (based on analysis of the mepiquat cation). Thus, the nature of residue for mepiquat pentaborate in cotton is supported by the mepiquat chloride studies available in cotton. The residue of concern from mepiquat pentaborate use in cotton consists only of the parent compound.

3. *Magnitude of residues.* Adequate field trial data are available to support the established tolerance of 2 ppm mepiquat for cottonseed. The field trials supporting mepiquat chloride will adequately support the establishment of the tolerance for mepiquat pentaborate (as mepiquat).

B. Toxicological Profile

Since the tolerance for mepiquat pentaborate is based on an expression as mepiquat, BASF is relying on the data for mepiquat chloride to support the requirement for all toxicological studies except for the acute studies. Acute toxicology studies were conducted with mepiquat pentaborate technical in support of the end use product. The mepiquat chloride data base is also used in support of the risk assessments presented in this document.

1. *Acute toxicity.* Based on the acute toxicity data, mepiquat pentaborate does not pose any acute toxicity risks. The acute toxicology studies place mepiquat pentaborate in toxicity category III for acute oral toxicity, acute dermal, acute inhalation toxicity, and primary eye irritation. The primary dermal irritation for mepiquat pentaborate is in toxicity category IV and mepiquat pentaborate is not a skin sensitizer.

2. *Genotoxicty.* An Ames assay using mepiquat chloride was negative for genotoxicity. A chromosome aberration assay in Chinese Hamster Ovary cells was performed up to the limit dose of 5.0 milligrams/milliliter (mg/mL) without seeing evidence of genotoxicity. An Unscheduled DNA Synthesis assay was performed using primary rat hepatocyte cultures up to a limit dose of 5.0 mg/ml without seeing evidence of genotoxicity.

3. *Reproductive and developmental toxicity.* In a 2–generation reproductive toxicity study, Wistar rats were fed mepiquat chloride in their diets at concentrations of 0, 500, 1,500, or 5,000 parts per million (ppm) for 10 weeks (F0) or 14 weeks (F1) before mating, and during mating, gestation, and lactation. The F0 parents were mated a second time 2 weeks after weaning the first litter. The doses corresponding to the dietary concentrations are 51.2 and 48.6, 153.1 and 146.6, and 499.3 and 574.5 milligrams/kilograms/day (mg/kg/day), respectively for F0 and F1 males and 54.0 and 53.3, 163.6 and 162.0, and 530.0 and 626.5 mg/kg/day, respectively for F0 and F1 females. The lowest observed adverse effect level (LOAEL) for systemic toxicity is 5,000 ppm (499 mg/kg/day) for male and female rats based on neurological impairment, decreased body weight and body weight gain in the adults, and retarded growth of F0 and F1 pups. The corresponding no observed adverse effect level (NOAEL) is 1,500 ppm (147 mg/kg/day). The OPP's Reference Dose (RfD)/Peer Review Committee concluded on May 2, 1996, that, because of the retarded growth of the pups in the 5,000 ppm (499 mg/kg/day) group, the systemic NOAEL of 1,500 ppm (147 mg/kg/day) would also be regarded as the reproductive NOAEL.

4. *Subchronic toxicity.* Two 90–day feeding studies in the rat and a 90–day feeding study in the dog are available. The first rat study saw no compound-related adverse effects at the high dose tested (HDT) of 4,632 ppm (330 mg/kg/day). Thus, a second study was performed with only a control and 12,000 ppm (889 mg/kg/day) dose group. Adverse effects were seen in this study and so the rodent subchronic LOAEL/NOAEL is 12,000/4,632 ppm (889/330 mg/kg/day). A subchronic dog study found a LOAEL/NOAEL of 3,000/1,000 ppm (95.3/32.4 mg/kg/day).

5. *Chronic toxicity.* On May 2, 1996, the OPP's RfD/Peer Review Committee recommended that the RfD for mepiquat chloride be established at 0.6 mg/kg/day. This value was based on the systemic NOAEL of 1,800 ppm (58.4 mg/kg/day) from the 1–year dog feeding

study and the uncertainty factor (UF) of 100.

i. *Chronic feeding—nonrodent.* In a chronic toxicity study, mepiquat chloride (99.5%) was administered to beagle dogs in the diet at dose levels of 0, 200, 600 or 1,800 ppm (0, 6.3, 19.9 or 58.4 mg/kg/day, respectively) for 12 months. There were no significant treatment-related effects. In order to establish a LOAEL, a second chronic toxicity study was conducted at dose levels of 0 or 6,000 ppm (170 mg/kg/day) for 12 months. Based on the results of the two chronic dog studies, the NOAEL is 1,800 ppm (58.4 mg/kg/day) and the LOAEL is 6,000 ppm (170 mg/kg/day). This endpoint is used for the acute dietary and chronic RfD.

ii. *Chronic feeding—rats.* In a chronic feeding study, mepiquat chloride (58%) was administered for 24 months in the diet to Wistar rats at concentrations of 0, 290, 2,316, or 5,790 ppm (active ingredient), equivalent to doses of 0, 13, 106, 268 mg/kg/day for males and 0, 18, 146, or 371 mg/kg/day for females, respectively. The NOAEL is 2,316 ppm (105 mg/kg/day). The LOAEL is 5,790 ppm (268 mg/kg/day).

iii. *Carcinogenic effects.* The carcinogenic potential of mepiquat chloride was evaluated by the OPP's RfD/Peer Review Committee on May 2, 1996. The Committee classified mepiquat chloride into Group E (evidence of noncarcinogenicity for humans), based on a lack of carcinogenicity in acceptable studies with two animal species, rat and mouse.

6. *Animal metabolism.* In a metabolism study, mepiquat chloride, labeled with C^{14} (radiochemical purity: 98%), was administered to young adult Sprague-Dawley rats either intravenously or orally. Mepiquat chloride was absorbed rapidly from the stomach, distributed evenly in the intra- and extracellular compartments of the blood, demonstrated high bioavailability via the oral route, was excreted mostly in urine, and did not accumulate in tissues. Urine, feces and bile samples from various treatments were used for studies of the metabolic fate of mepiquat chloride. In all cases, only the unchanged compound could be detected. Therefore, there was no biotransformation of mepiquat chloride *in vivo.* The potential metabolites, such as 1-methylpiperidine or piperidine, were not detected.

7. *Metabolite toxicology.* No additional studies were required for metabolite toxicology.

8. *Endocrine disruption.* No specific tests have been conducted with mepiquat to determine whether the chemical may have an endocrine like effect in humans. However, there were no significant findings in other relevant tests (developmental and reproductive toxicity tests) which would suggest that mepiquat produces endocrine like effects.

C. Aggregate Exposure

1. *Dietary exposure.* The mepiquat chloride RED indicates that EPA has found no dietary risks of concern for mepiquat chloride for the general U.S. population nor any subgroup. Pursuant to the requirements under the Food Quality Protection Act (FQPA) of 1996, the Agency has determined that the use of mepiquat will not pose dietary risks to infants and children due primarily to the chemical's low toxicity and its low usage rate.

i. *Food—a. Chronic dietary exposure.* A Dietary Risk Evaluation System (DRES) chronic exposure analysis was conducted by EPA for the RED. The analysis was performed using tolerance level residues and the three expired grape and raisin temporary tolerances previously established for an Experimental Use Permit and an assumption of 100% crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. No Anticipated Residue (AR) information was used in this analysis. Existing tolerances result in a Theoretical Maximum Residue Contribution (TMRC) which represents less than 1% of the RfD for the U.S. general population and each of the 22 subgroups, including non-nursing infants (< 1–year old). The TMRC calculation results in a significant overestimate of human dietary exposure.

Another dietary assessment was performed, by the Agency, for mepiquat chloride assuming tolerance levels residues and 100% crop treared on cotton, grape, meat, fat, and meat by-products (D260557, November 1, 1999, W. Cutchin). Risk estimates for exposure to mepiquat chloride were below HED's level of concern.

These chronic analyses for mepiquat are worst case estimates of dietary exposure with all residues at tolerance level and 100% of the commodities assumed to be treated with mepiquat. Based on the risk estimates calculated in these analyses, it has been concluded that dietary exposure to mepiquat does not pose any risk concerns.

b. *Acute dietary exposure.* The margin of exposure (MOE) is a ratio of the NOAEL to the exposure. Generally, the Agency concludes that there is no dietary concern when the acute dietary margins of exposure are greater than 100. The results of the acute analysis conducted for the RED indicate that mepiquat in the diet represents no serious risk concern for acute exposure. All MOEs were well above the Agency's level of concern for acute dietary risk (ranging from a low of 3,893 for infants to a high of 29,200 for females 13+ years old).

ii. *Drinking water.* Neither a Maximum Contaminant Level (MCL) nor a Hazard Advisory (HA) has been established for mepiquat. According to the EPA's Pesticides in Ground Water Database, there have been no mepiquatchloride detections reported in monitoring wells. Based on its low application rate, relatively rapid degradation rate, and soil binding ability, the Agency does not expect mepiquat to contaminate ground water or surface water. Consequently neither a chronic or acute drinking water assessment was performed.

2. *Non-dietary exposure.* Mepiquat has no residential or other non-occupational uses that might result in exposures to humans.

D. Cumulative Effects

EPA has addressed the issue of the potential risk from the cumulative effects of mepiquat chloride and other pesticides with a common mechanism of toxicity in the RED document. In assessing the potential risks, the Agency first considered structural similarities and common effects that exist between mepiquat chloride and other related compounds such as paraquat, diquat and difenzoquat. The Agency then considered other compounds which could potentially result in neurotoxic effects similar to mepiquat chloride.

With one substance, difenzoquat, there appears to be similar neurotoxic effects. The Agency has concluded that the cumulative effects from the combined dietary exposure to mepiquat and difenzoquat would be virtually nil because the chronic dietary exposure for all population subgroups is less than 1% of the RfD for both difenzoquat and mepiquat chloride. The acute dietary MOE range for difenzoquat is 16,000 to 50,000 while the acute dietary MOE range for mepiquat chloride is 3,900 to 29,000.

In evaluating other chemicals with neurotoxic effects similar to mepiquat chloride, the Agency determined that it is unlikely that these other chemicals share a common mode/mechanism of toxicity with mepiquat chloride, or that cumulative risk assessment would be required. Although the mode/mechanism of toxicity of mepiquat chloride has not been well defined, the effects noted on the nervous system

appear to be secondary to general systemic toxicity that occurs at high dose levels. Based on available data and structure-activity relationship analyses, mepiquat chloride would be considered to have minimal neurotoxic activity.

E. Safety Determination

1. *U.S. population.* In the mepiquat chloride RED, EPA has determined that the established tolerances for mepiquat chloride meet the safety standards under the FQPA amendments to section 408(b)(2)(D) for the general population. In reaching this determination, EPA has considered the available information on the aggregate exposures (both acute and chronic) from the feed use on cotton, as well as the possibility of cumulative effects from mepiquat chloride and other chemicals with a similar mode/mechanism of toxicity. BASF does not believe that the use of mepiquat pentaborate on cotton alters these conclusions.

Since there are no residential or lawn uses of mepiquat, no dermal or inhalation exposure is expected in and around the home. No acute toxicity endpoints of concern have been identified for mepiquat.

In assessing chronic dietary risk, EPA estimates that mepiquat residues in food account for <1% of the RfD and residues in drinking water are not expected. Thus, the aggregate exposures from all sources of mepiquat (in this case, only dietary is relevant) account for <1% of the RfD for the general population. Therefore, the Agency concludes that aggregate risks for the general population resulting from mepiquat uses are not of concern.

In evaluating the potential for cumulative effects, EPA compared structural similarities and toxic effects seen in mepiquat chloride studies with other related compounds. With one substance, difenzoquat, there appears to be similar neurotoxic effects. However, the Agency has concluded that the cumulative effects from the combined dietary exposure to mepiquat chloride and difenzoquat would be virtually nil because the chronic dietary exposure for all population subgroups is less than 1% of the RfD for both difenzoquat and mepiquat chloride.

2. *Infants and children.* In the RED, EPA has determined that the established tolerances for mepiquat chloride (including the previously established temporary tolerances for grapes) meet the safety standard under the FQPA amendment to section 408(b)(2)(C) for infants and children. The safety determination for infants and children considers the factors noted above for the general population, but also, takes into account the possibility of increased dietary exposure due to the specific consumption patterns of infants and children, as well as the possibility of increased susceptibility to the toxic effects of mepiquat chloride residues in this population subgroup.

In the developmental studies, effects were seen in the fetuses only at the same or higher dose levels than effects on the mothers. In the reproduction study, no effects on reproductive performance were seen. Also, because the NOAELs from the developmental and reproduction studies were equal to or greater than the NOAEL used for establishing the RfD, EPA concludes that it is unlikely that there is additional risk concern for immature or developing organisms. Finally, the Agency has no epidemiological information suggesting special sensitivity of infants and children to mepiquat chloride. Therefore, EPA finds that the uncertainty factor (100X) routinely used in RfD calculations is adequately protective of infants and children, and an additional uncertainty factor is not warranted for mepiquat.

EPA estimates that mepiquat residues in the diet of infants and children account for less than 1% of the RfD and residues in drinking water are not expected. Thus, the chronic aggregate exposure from all sources of mepiquat account for less than 1% for infants and children. The acute dietary MOE for infants and children exposed to mepiquat is 3,893. Therefore, the Agency concludes that aggregate risks for infants and children resulting from mepiquat uses are not of concern.

F. International Tolerances

There are no Codex, Canadian, or Mexican tolerances established for mepiquat on cotton. Thus, international harmonization is not an issue for these tolerances.

[FR Doc. 01–28637 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1051; FRL–6808–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1051, must be received on or before December 17, 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.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1051 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get 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 that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulation 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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1051. 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 electronic comments 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 Highway, 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 PF–1051 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 Highway, 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 above. 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 PF–1051. 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**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket 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 has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous information, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

C. P. Hall Company

PP 1E6257

EPA has received a pesticide petition (1E6257) from The C.P. Hall Company, 311 S. Wacker, Suite 4700, Chicago, IL

60606 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for *N,N*-dimethyloctanamide, CAS Reg. No. 1118–92–9 and *N,N*-dimethyldecanamide, CAS Reg. No. 14433–76–2, when used as an inert ingredient as an emulsifier, soluvent and cosoluvent in pesticide formulations applied only to growing crops at less than 15% of the total formulation by weight. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Since this petition is for an exemption from the requirement of a tolerance, an analytical method is not required.

B. Toxicological Profile

1. *Acute toxicity*—i. *Daphnia magna.* The acute toxicity of *daphnia magna* was conducted for 48 hours with results as follows: 24–hour LC_{50} (lethal concentration) estimated to be >4.0 milligram/liter (mg/L) (95% C.I. (confidence interval) could not be determined). 48—hour LC_{50} = 7.7 mg/L (95% C.I. = 6.2 and 10 mg/L). 24–hour NOEC (no observed effect concentration) = 4.0 mg/L, 48–hour NOEC = 4.0 mg/L, 48–hour Dose Response Slope was 6.0.

ii. *Rainbow trout.* The acute toxicity to rainbow trout was determined in a static 96–hour test according to OECD (Organization for Economic Cooperation and Development) guideline 203. In this test, 5 groups of 10 fish were exposed to nominal concentrations of 5.00, 8.89, 15.8, 28.1 and 50.0 mg/L. During test duration the test concentration in the mean were higher than 80% of nominal values. The test revealed the following results: LC_{50} = 21.1 mg test substance/l, LLC (lowest lethal concentration)= 28.1 test substance/l, LT (lethal threshold) = 21.2 mg/L, NOLEC (no observed lethal effect concentration = 15.8 mg/L, LOEC (lowest observed effect concentration) = 8.89 mg/L, effect threshold (geometric mean of LOEC and NOEC)= 6.67 mg and NOEC = 5.00 mg/L.

iii. *Bobwhite quail.* The acute oral toxicity to the Bobwhite Quail was conducted. LD_{50} (lethal dose) = 1,600 mg/kg (95% confidence level)= 1,600–3,200 milligram/kilogram (mg/kg), lowest lethal dose = 1,600 mg/kg, LT = 1,130 mg/kg, highest dose without lethal effects = 800 mg/kg, LOEC = 800 mg/kg, threshold for effects = 570 mg/kg, NOEC = 400 mg/kg.

iv. *Rat dermal.* An acute dermal toxicity study was conducted on the male rat with a result of approximately 2,000 mg/kg and the female rat with a result of 400–200 mg/kg using method OECD guideline 402. The test substance was of moderate toxicity to female rats and of low toxicity to male rats following acute dermal application.

v. *Rat inhalation.* An acute inhalation study was performed using OECD guideline 403 on the male and female rat with a result of > 3,551 mg/m^3 air; aerosol, exposition of 4 hours. The results of this study show that the respirable test article aerosol had a relatively low acute inhalative toxic effect on the rat. The acute potential hazard of the respiratory tract is attributed to the potency of the test substance aerosol as a mucosa irritant.

vi. *Corrosivity.* The corrosivity potential of the compound was evaluated in general compliance with the conditions specified by the Department of Transportation Hazardous Materials Regulation. No evidence of corrosion (necrosis) was found. The test material is not classified as a corrosive by dermal application, as defined by the Department of Transportation Hazardous Material Regulation.

vii. *Guinea pig sensitization.* The potential of the test substance as a 5% w/v formulation in 80% ethanol/20% distilled water, to produce delayed contact hypersensitivity in guinea pigs was evaluated. Following primary challenge, there were no grades of one produced in the test or control animals. The incidence and severity of these responses in the test group were essentially comparable to those produced by the naive control group indicating that sensitization had not been induced.

viii. *Minnow.* The acute toxicity of the compound to the fathead minnow was assessed. The results of the 4–day static fish toxicity study: 96–hour LC_{50} (95% C.I.) 19 mg/L, (10 to 32 mg/L). The slope of the 96–hour dose response line was 9.2. The 32 mg/L concentrations resulted in 100% mortality within 24 hours.

ix. *Eye irritation.* Acute eye irritation was evaluated. Although the eye study was not allowed to progress to a point where formal classification could be applied, the eye irritation which resulted from exposure to this test material strongly suggests classification in Toxicity Category I.

x. *Rat-oral.* The acute oral LD_{50} value was estimated to be 1.77 g/kg in male and female Sprague-Dawley rats, which is Toxicity Category III.

xi. *Skin irritation-rabbit.* Due to the suspected irritation potential of this test material, a single animal was initiated on this primary skin irritation study. Due to the effects exhibited in this single animal, this study was ultimately terminated without testing in additional animals. Critical changes noted in the coloration and/or texture of the skin included necrosis, slight fissures, coriaceousness (leather-like), and light and dark brown discoloration. Evidence of corrosion was also found.

2. *Genotoxicity.* The *Salmonella*/microsome test for point mutagenic effects in doses of up to 5,000 µg per plate. Evidence of mutagenic activity was not seen. No biologically relevant increase in the mutant count in comparison with the negative controls, was observed. The compound was evaluated for mutagenic effects at the HGPRT locus in V79 cell cultures. There was no significant dose-related or reproducible increase in mutant frequency above that of the negative controls. Based on results, the test substance, is considered to be nonmutagenic in the V79-HGPRT Forward Mutation Assay, both with and without metabolic activation. The clastogenic potential of the compound was evaluated in a chromosome aberration test *in vitro.* Based on this test, the compound is not considered to be clastogenic for mammalian cells with and without metabolic activation *in vitro.* The compound was evaluated for genotoxicity in the *In Vitro* Rat Primary Hepatocyte Unscheduled DNA Synthesis (UDS) Assay. Based on the results, the test article was evaluated as inactive in the *In Vitro* Rat Primary Hepatocyte UDS Assay.

3. *Reproductive and developmental toxicity*— i. In pregnant Chinchilla rabbits, at 100 mg/kg body weight/day, reduced food consumption and body weight gain were noted during the dosing period. No effects on the dams were ascertained at 100 or 300 mg/kg of body weight/day. The fetal parameters were not affected up to and including the highest dose level of 1,000 mg/kg body weight/day. The maternal NOAEL 300 mg/kg and the developmental NOAEL is 1,000 mg/kg body weight/day. The test substance did not reveal any teratogenic potential up to and including the highest dose level of 1,000 mg/kg body weight/day.

ii. An embryo toxicity study including teratogenicity was performed on the rat.

Based on the results, the maternal NOAEL is 50 mg/kg body weight/day and the developmental NOAEL is 150 mg/kg body weight/day. This study did not reveal any teratogenic potential up to and including the highest dose level of 450 mg/kg body weight /day.

4. *Subchronic toxicity*— i. *Rat inhalation.* An orientation study for subacute inhalation toxicity was conducted with an aerosol of the test substance on the Wister rat. 111.2 mg of the test substance air was tolerated without specific effects occurring with regard to all parameters determined.

ii. *Rat oral.* The test substance was administrated in feed to 10 male and 10 female Wister rats for 13 weeks at 0, 400, 2,000, and 10,000 ppm. Clinical chemistry, gross pathological and histological examination revealed no evidence of test article-related liver lesions up to and including 2,000 ppm. Increased plasma cholesterol values following 10,000 ppm indicate slightly impaired fat metabolism in the liver. This finding was not correlated histopathologically. There were no unusual findings among the clinical parameters measured at the end of the recovery period.

iii. *Dog.* In a subacute toxicity study group of two male and two female beagle dogs treated with the test substance, there was no difference exhibited between the control group and the treatment group either in the hematological parameters or in the clinical chemistry.

C. Other Information

1. The toxicity of green algae was conducted using OECD guideline method 201. The results show the *Selenastrum capricornutum* growth rate (72 h) EC_{50} (effective concentration) =16.06 mg/L. The 95% confidence limits: 7.95-32.45 mg/L. The effect threshold was 2.40 mg/L. The toxicity of bacteria was conducted using OECD guideline 209 with results of: EC_{50} = 212 mg/L.

2. A Tier I seed germination, seedling emergence, and vegetative vigor phytotoxicity study was conducted.

The results from the analysis of the substance Tier I germination test for lettuce and radishes indicated that a significant difference did exist. No germination was present for the lettuce in treatment (100 ppm). Radish had a low germination of 26% for 100 ppm treatment, a detrimental effect greater than 25% compared to the control. The emergence test indicated a significant difference for lettuce in the substance at 113 ppm treatment, showing a detrimental effect greater than 25% compared to the control. Radish in the emergence test indicated no significant difference between treatments. The vegetative vigor test indicated the dicot species lettuce and radish had no significant effects from the exposure to the test compound 113 ppm treatment level.

D. Aggregate Exposure

1. *Dietary exposure.* For the purpose of assessing the potential dietary exposure, the C.P. Hall Company considers that the compound could be present in all raw and processed agricultural commodities.

i. *Food.* Both constituents are neither permitted nor prohibited in food, animal feeding stuffs, medicines or cosmetics under European directives. The material is listed in the ''comprehensive list'' of pesticide product inert ingredients and categories in ''List 3'' (inerts of unknown toxicity). No concerns for risk associated with any potential exposure scenarios are reasonably foreseeable given the available data.

ii. *Drinking water.* The lack of observed toxicity would indicate that the presence of trace amounts of the compound in drinking water would pose no appreciable risk to humans. The test substance is relatively insoluble in water (0.17% in water at 25 °C) and is not expected to create any drinking water toxicity. The rate of hydrolysis and its degradation pattern in aqueous buffer solutions showed that the compound was hydrolyzed to negligible extent at pH 5, 7, and 9 at 25 °C within 30 days. The adsorption and desorption of the compound was determined in four soils. Based on the study the compound is of low or medium to low mobility in the soils used in this study. The direct photolysis of the compound showed that it was stable against direct photolysis at pH 5.0 during illumination at 25 °C for 30 days. The half-life was much greater than 30 days. A study was conducted to determine the rate of photolysis and degradation. During illumination on soil thin layer plates the material was degraded and mineralized. No specific photodegradation product with more than 4.2% of the applied radioactivity was found.

E. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that when considering whether to establish, modify, or revoke a tolerance, or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of the chemicals residues. This compound has been used in European pesticides for a number of decades without any signs of acute or chronic exposure toxicity.

F. Safety Determination

1. *U.S. population.* Since the material may be used in a European formulation of a pesticide and no toxicological effects have been shown, no risks are anticipated for the U.S. population.

2. *Infants and children.* Due to the extensive available toxicological data base and the expected low toxicity of this compound, C.P. Hall Company does not believe a safety factor analysis is necessary in assessing the risk of this compound.

G. International Tolerances

To C. P. Hall's knowledge no international tolerances exist for this compound.

[FR Doc. 01–28634 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7102–2]

Recent Posting of Agency Regulatory Interpretations Pertaining to Applicability and Monitoring for Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants to the Applicability Determination Index (ADI) Database System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: In accordance with the Administrative Procedure Act (5 U.S.C. 552(a)), and the Clean Air Act provisions for judicial review (42 U.S.C. 7607(b)), this notice announces interpretations of applicability and alternative monitoring decisions that have been made by the EPA under the New Source Performance Standards (NSPS), and the National Emission Standards for Hazardous Air Pollutants (NESHAP).

DATES: Comments on any of the documents posted on the ADI database system must be submitted on or before January 14, 2002.

ADDRESSES: Comments may be submitted to the attention of Maria Malave; Mail Code 2223A; Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or send via E-mail to *malave.maria@epa.gov.*

FOR FURTHER INFORMATION CONTACT: An electronic copy of the complete document posted on the ADI database system is available on the Internet through the Applicability Determination Index (ADI) at: *http://es.epa.gov/oeca/eptdd/adi.html.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epamail.epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The NSPS (40 CFR part 60) and the NESHAP (40 CFR parts 61 and 63) provide that a source owner or operator may request a determination of whether certain actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written response to these inquiries are broadly termed alternative monitoring. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources for which a regulation is applicable, or clarification of the applicable testing, monitoring, recordkeeping or reporting requirements.

EPA currently compiles EPA-issued NSPS and NESHAP regulatory interpretations pertaining to applicability determinations and alternative monitoring, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, or by string word searches.

Today's notice comprises a summary of 24 of such documents added to the ADI on August 31, 2001. The subject, author, recipient, and date (header) of each letter and memoranda is listed in this notice, as well as a brief abstract of the letter or memoranda. Complete copies of these documents may be obtained from the ADI at: *http://es.epa.gov/oeca/eptdd/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on August 31, 2001, the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document which provides a brief description of the subject matter. We have also included a summary of each abstract identified with its control number after the table.

ADI DETERMINATIONS UPLOADED ON AUGUST 31, 2001

Control No.	Category	Subpart	Title
A010001	Asbestos	M	Single family house with asbestos containing floor tile.
A010002	Asbestos	M	State authority regarding single-family house with asbestos.
M010012	MACT	N	Applicability to process without chromic acid use.
M010013	MACT	S	Alternative monitoring for pulp & paper closed vent systems.
M010014	MACT	S, A	Alternative monitoring/inspection for closed vent systems.
M010015	MACT	T	Halogenated solvent cleaning alternative method of compliance.
M010016	MACT	S	Alternative monitoring for pulp & paper closed vent systems.
M010017	MACT	B	Circumvention & case-by-case MACT determinations.
Z010003	NESHAP	H, I	Application of Subpart H to DOE owned, NRC licensed facility.
Z010004	NESHAP	H	Alternative method of determining compliance under Subpart H.
0100039	NSPS	Kb	Subpart Kb application to wastewater detoxification tanks.
0100040	NSPS	A, B, Ce	Alternative monitoring of HCI emissions-hospital incinerator.
0100052	NSPS	Db	Alternative monitoring for burning pulp mill stripper off gases.
0100041	NSPS	RR	Subpart RR testing/waiver exemption.
0100042	NSPS	GG	Subpart GG alternative monitoring plan.
0100043	NSPS	A, Dc	Shorter sampling time for initial performance testing.
0100044	NSPS	A	Modification issues for dense pack turbine project.
0100045	NSPS	Da	Approval of RATA schedule for Subpart Da boiler.
0100046	NSPS	GG	Approval of alternative monitoring plan under Subpart GG.
0100047	NSPS	WWW	Use of a natural attenuation factor.
0100048	NSPS	GG	Request for alternative monitoring under Subpart GG.
0100049	NSPS	A, Db	Commencement of construction.
0100050	NSPS	Dc, A	Request for alternative fuel usage recordkeeping plan.
0100051	NSPS	GG	Request for custom fuel monitoring schedule under Subpart GG.

Abstracts

Abstract for (A010001):

Q1. Does the asbestos NESHAP regulation apply to single family homes?

A1. The asbestos NESHAP program applies to ''facilities'' which include, institutional, commercial, public, industrial, or residential structures, i.e., apartments, condominiums, cooperatives. A single family residence or a residential building having four or fewer dwelling units is not subject to the asbestos NESHAP requirements.

Q2. If asbestos containing floor tile and mastic were removed by a jackhammer, would the resulting friable asbestos waste material be subject to the asbestos NESHAP regulations?

A2. If a contractor removes greater than 160 square feet of asbestos

containing material (ACM) by using a jackhammer, the resulting waste material is subject to the asbestos NESHAP. However, in your situation, the asbestos NESHAP would not apply. The ''All Other Asbestos Projects'' citation from the COMAR may apply to your situation.

Q3. What is the definition of ''hand pressure''?

A3. There is no definition for ''hand pressure'' in the asbestos NESHAP regulations. There is a reference to ''hand pressure'' under the definition for regulated asbestos containing material. In a July 1992 applicability determination, the Agency wrote that vinyl asbestos tile in good condition, if subject to certain forces, i.e., mechanical, weather or aging can be weakened to the point where it can become friable because it can be crumbled, pulverized or reduced to powder by hand pressure. Using the jackhammer on asbestos containing tile has a high probability for significant fiber release. The tile becomes regulated asbestos containing material and subject to the asbestos NESHAP because using a jackhammer grinds or abrades the normally non-friable material.

Abstract for (A0100020):

Q: Why would a State and not the EPA have jurisdiction over asbestos in the case of a single-family home?

A: Single-family homes are not considered ''facilities'' under the asbestos NESHAP, thus no Federal laws or regulations are implicated. In addition, the State in this case has an equivalent asbestos NESHAP program, to which EPA generally defers. Thus, the State takes the lead in implementing the asbestos NESHAP program in the State. The determination letter provides further guidance on technical issues.

Abstract for (M010012):

Q. A facility operates a tank to produce a protective conversion coating on magnesium parts using an anodic process but no chromic acid is added to the tank. Is the tank subject to the Chromium NESHAP?

A. No. Chromium anodizing is defined under Subpart N 40 CFR 63.341 as the electrolytic process by which an oxide layer is produced on the surface of a base metal for functional purposes using a chromic acid solution. Because the facility does not use a chromic acid solution in the tank, EPA has concluded that this process is not an anodizing process that is regulated by the Chromium NESHAP.

Abstract for (M010013):

Q. Can continuous monitoring of vacuum indication on the negative pressure sections for both the Low Volume High Concentration (LVHC) and High Volume Low Concentration (HVLC) gas collection systems be used instead of conducting the 30-day inspections required by MACT for closed vent systems specified in 40 CFR 63.453(k)(2)?

A. Yes. EPA will approve an alternative monitoring method proposed to continuously monitor vacuum indication on the negative pressure sections for both the LVHC and HVLC collection systems with an additional requirement to perform a visual area survey once a quarter after loss of vacuum.

Abstract for (M010014):

Q. Will EPA approve a proposal to inspect the closed-vent and closed collection systems once every calendar month, with at least 14 days elapsed time between inspections, instead of once every 30 days as specified in 40 CFR 63.453(k) and (l)?

A. Yes.

Abstract for (M010015):

Q. Will EPA approve an ''alternative standard'' in accordance with 40 CFR 63.464(d) for measuring compliance with 40 CFR Part 63, subpart T?

A. Yes. EPA will approve an alternative method of compliance that includes additional monitoring parameters.

Abstract for (M010016):

Q. Can amperage loading on the scrubber fan be used instead of gas scrubber vent gas inlet flow rate measurements to ensure compliance with the HAP removal requirements of 40 CFR 63.445?

A. Yes, provided the appropriate monitoring values for the vent gas motor amperage established during the initial performance test are approved by the designated regulatory agency.

Abstract for (M010017):

Q: What is the time period that EPA considers when acting on an application for a new synthetic minor permit or a change to an existing synthetic minor permit for purposes of circumvention of 112(g)?

A: The EPA views any new construction, any proposal for new construction, or any relaxation of synthetic minor limits within 5 years of the initial permit as evidence of a potential phased construction for a source.

Abstract for (Z010003):

Q: Will a facility which is both owned by the Department of Energy (DOE) and licensed and regulated by the Nuclear Regulatory Commission (NRC) be subject to 40 CFR part 61, subpart H?

A: Yes. Subpart H applies to any facility which is owned or operated by the DOE.

Abstract for (Z010004):

Q: Are high-volume air samplers an acceptable alternative to continuous stack monitoring for demonstrating compliance with 40 CFR Part 61, subpart H?

A: Yes. The proposal meets the criteria specified in 40 CFR 61.93(b)(5).

Abstract for (0100039):

Q. Is NSPS subpart Kb applicable to three existing 100,000 gallon wastewater detoxification tanks?

A. No. For reasons other than those submitted by the company, EPA agrees that NSPS subpart Kb does not apply to the tanks. See the letter below for EPA's discussion of all pertinent and specific information used in this determination. The letter also addresses and discusses why the reasons submitted by the company to try to support this decision were not used.

Abstract for (0100040):

Q1: Does the Federal hospital/medical/infectious waste incinerator (HMIWI) section 111(d)/129 plan, subpart HHH, allow the use of continuous emission monitoring systems (CEMS) for determining compliance with the HCl emissions limitation instead of the stipulated methods—monitoring sorbent flow rates and use of EPA Reference Test Method 26?

A1: Yes, 40 CFR 62.14452(l) allows use of CEMS to demonstrate compliance with the HCl emissions limitation, providing the HMIWI owner/operator: (1) Determines compliance using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours (not including startup, shutdown, or malfunction); (2) determines the measured HCl concentrations on an adjusted basis, 7 percent oxygen, dry; and (3) operates the CEMS in accordance with applicable EPA performance specifications, quality assurance and quality control requirements under appendices B and F of 40 CFR part 60.

Q2: Because EPA has not promulgated performance specifications, quality assurance and quality control requirements for hydrogen chloride CEMS, can EPA now approve a request for use of CEMS to determine HCl emission rates and compliance with subpart HHH?

A2: Yes, providing the alternative HCl monitoring request includes or references acceptable performance specifications (PS), and quality assurance/quality control (QA/QC) requirements. EPA has determined that the proposed use of the Pennsylvania Department of Environmental Protection (PADEP) CEMS manual, Revision No. 6, January 1996 will provide acceptable PS and QA/QC requirements.

Abstract for (0100041):

Q: Will EPA grant a facility a testing waiver/extension for its reconstructed 3L coating line and associated thermal oxidizer where the facility would be required to test the same line to show compliance with other State and federal regulations within a ''short'' period of time?

A: No. EPA will not grant a testing waiver/extension because the eighteen months between the required subpart RR compliance test and the deadline date for the MPCA test is too long.

Abstract for (0100042):

Q1: Will monitoring of fuel nitrogen content be required if natural gas is the only fuel fired in each turbine?

A1: No.

Q2: Will daily monitoring of sulfur be required if only pipeline quality natural gas is fired?

A2: No. The monitoring schedule from U.S. EPA's national guidance for subpart GG, dated August 14, 1987, should be used for sulfur monitoring when natural gas is fired.

Abstract for (0100043):

Q: May the sampling time for Method 9 opacity testing while burning fuel oil in a boiler be reduced to one hour per boiler?

A: Yes. In this particular case, the shorter test sampling time may be reduced to one hour for Boilers 4 and 5 while burning fuel oil because the construction permit is so restrictive that 3 hours of initial performance testing would consume a significant portion of the annual operating time allowed for these boilers while burning fuel oil.

Abstract for (0100044):

Q: Does the installation of Dense Pack turbine blades constitute a modification?

A: Probably not. Although such a project would constitute a nonroutine physical change under PSD, it would not be a modification under PSD (as well as NSPS) if there were not an associated emissions increase as defined under the respective PSD and NSPS rules.

Abstract for (0100045):

Q: Will EPA allow a reduced frequency of Relative Accuracy Test Audits (RATAs) for an infrequently operated boiler?

A: Yes. In this particular case, the boiler is operated only 8 days per year as a peaking unit. EPA believes that it is reasonable to provide for some reduction in quality assurance testing for the continuous emissions monitors, as long as the boiler meets acid rain program requirements at 40 CFR Part 75, and operates as a peaker.

Abstract for (0100046):

Q: Will EPA relieve a facility that uses only pipeline quality natural gas of the nitrogen monitoring requirements?

A: Yes.

Q: May a facility use the sulfur monitoring requirements in sections 2.3.1.4 and 2.3.3.1 of Appendix D to Part 75 in lieu of 40 CFR 60.334(b) and 60.335(a)?

A: Yes.

Q: Is a nitrogen CEM a permissible alternative to the monitoring requirements at 40 CFR 60.334(a) and 60.335(c)(2)?

A: Yes.

Abstract for (0100047):

Q: May a landfill use a natural attenuation factor for fugitive landfill gas control for the purpose of State fee reports and emission inventories?

A: No. Natural attenuation was evaluated during the rulemaking process for 40 CFR part 60, subpart WWW. Analysis by the U.S. EPA determined that there was insufficient oxygen and residence time for aerobic biofiltration to be a significant removal pathway.

Abstract for (0100048):

Q1: Is nitrogen monitoring of either natural gas or landfill gas required?

A1: Nitrogen monitoring of landfill quality natural gas is not required. Nitrogen monitoring of landfill gas will be waived if EPA receives adequate information that the landfill gas in question contains very little fuel-bound nitrogen.

Q2: Will EPA permit a facility not to perform sulfur monitoring when natural gas and landfill gas are used?

A2: No. However, this particular facility provided data on the sulfur content of each type of fuel. This data showed that the sulfur content was minimal. Therefore, the facility may begin at semi-annual testing.

Abstract for (0100049):

Q: Did Tenneco commence construction when it internally obligated funds for the purpose of modifying a boiler prior to June 19, 1984, thereby not triggering NSPS, subpart Db applicability?

A: No. For the purposes of subpart A, there was no contractual obligation to construct an affected facility.

Q: Does the installation of sampling ports on a boiler constitute commencement of construction?

A: No. The ports were installed to gather data for planning and design work, or other unrelated activities, which does not constitute commencement of construction, reconstruction, or modification.

Abstract for (0100050):

Q: Will EPA grant Tyson Foods an alternative fuel usage recordkeeping plan under subpart Dc?

A: Yes. The specific recordkeeping requirements for the facility are included in Attachment A to the response letter.

Abstract for (0100051):

Q1: Will EPA approve the waiver of monitoring fuel bound nitrogen for facilities using only pipeline quality natural gas?

A1: Yes.

Q2: What should the sulfur monitoring schedule be for peaking-only units that use only natural gas and operate only during the summer months?

A2: These types of peaking units test once per month during the initial ozone season (May–September). If this shows little variability, then sulfur monitoring should be conducted once per season thereafter.

Abstract for (0100052):

Q: A company intends to burn stripper off gases (SOGs) from pulping processes in a boiler subject to subpart Db, which would cause the facility to exceed the subpart Db NO_X emission limits. The company requests permission to use an alternative monitoring procedure for NO_X which will consist of correcting the continuous NO_X monitoring data by subtracting the NO_X contribution from burning SOGs. Is this acceptable?

A: No. Since the combustion of SOGs in the boiler is not exempt from NSPS subpart Db, the proposed alternative monitoring procedure is not acceptable. However, EPA's OAQPS has agreed to initiate rulemaking to amend the subpart Db regulation to allow the establishment of an alternative NO_X standard for pulp mills, similar to the provision in 40 CFR 60.44b(f) for chemical manufacturing plants and petroleum refineries which combust byproduct/waste.

Dated: November 6, 2001.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 01–28632 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7104–3]

Preparation of Third U.S. Climate Action Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comments.

SUMMARY: In June 1992, the United States signed, and later ratified in

October, the United Nations Framework Convention on Climate Change (UNFCCC). Pursuant to the national communication reporting requirements under Articles 4.2 and 12 of the Convention and to guidelines later adopted by the UNFCCC Conference of the Parties (COP), the United States submitted the first U.S. Climate Action Report (CAR) to the UNFCCC Secretariat in 1994 and the second in 1997. The U.S. Government has prepared an initial draft of the third national communication for public review. The purpose of this announcement is to notify interested members of the public of the opportunity to submit input on the draft text of the national communication before the final document is completed.

DATES: Written comments should be received on or before noon, December 17, 2001.

ADDRESSES: Comments should be submitted to Mr. Reid P. Harvey via e-mail at *harvey.reid@epa.gov* or via postal mail to Reid P. Harvey, U.S. Environmental Protection Agency, Office of Atmospheric Programs (Mail Stop 6204N), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Reid P. Harvey, Office of Atmospheric Programs, U.S. Environmental Protection Agency at (202) 564-9429.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the UNFCCC's reporting requirements as specified in Articles 4.2 and 12, and following reporting guidelines developed (and adopted by the UNFCCC COP at its first session), the United States prepared the U.S. Climate Action Report (CAR) and submitted it to the UNFCCC Secretariat in October 1994.

At the Second COP, the Parties requested developed country Parties to the Convention to submit to the UNFCCC Secretariat, in accordance with Articles 12.1 and 12.2 of the Convention, a second national communication by April 15, 1997. Parties who submitted first reports in 1996 were to provide an update by the 1997 deadline and Parties with economies in transition were to provide their second communication by April 15, 1998. Developing country Parties have different guidelines and due dates for their national communications. The United States submitted its second national communication to the UNFCCC Secretariat in July 1997.

At the Fifth COP in 1999, the Parties updated the guidelines for preparation of national communications (see FCCC/CP/1999/7). This document is available on the Internet at *http://www.unfccc.int/resource/cop5.html.* In addition, the Parties requested that third national communications be submitted no later than November 30, 2001. However, the U.S. is not able to meet this deadline and plans to submit the document by late January 2002.

The U.S. issued a Federal Register notice on March 19, 2001 (66 FR 15470–15471) to provide an opportunity for the public to submit input on the issues covered in the third national communication. A copy of the **Federal Register** notice can be found on the Internet at *http://www.epa.gov/globalwarming/publications/actions/FRL–6954–1.pdf.* Two comments were submitted by members of the public in response to that notice.

The Third United States Climate Action Report (CAR)

The third CAR provides an update on key activities conducted by the U.S. since the second CAR, an inventory of U.S. greenhouse gas emissions and sinks, an estimate of the effects of mitigation measures and policies on future emissions levels, and a description of U.S. involvement in international programs, including associated contributions and funding efforts. In addition, the text discusses U.S. national circumstances that affect U.S. vulnerability and responses to climate change. Finally, the CAR presents information on the U.S. Global Change Research Program, Global Climate Observing Systems (GCOS), and adaptation programs.

Table of Contents of the Third US CAR

1. Executive summary
2. National circumstances
3. Greenhouse gas inventory
4. Policies and measures
5. Projections and effects of policies and measures
6. Vulnerability assessment, climate change impacts, and adaptation measures
7. Financial resources and transfer of technology
8. Research and systematic observation
9. Education, training, and public awareness

Public Input Process

This **Federal Register** notice solicits comments on the draft chapters listed above. The individual chapters are posted on the Internet and may be downloaded from the national communication web site listed at the following web site: *http://www.epa.gov/globalwarming/nwinsite.html.* However, two chapters (the executive summary and chapter 5 on projections) are not yet complete, but will be made available for public comment in approximately two weeks through posting on the web site. Comments may be submitted to the contact listed above. Comments on each of the chapters will be due within 30 days of release, either through notice in the **Federal Register** or posting on the web site. As the U.S. submission will already be delayed by approximately two months beyond its deadline, a longer review period is not possible.

You may view the 1997 U.S. Climate Action Report on the Internet at: *http://www.state.gov/www/global/oes/97climate—report/index.html.*

Dated: November 9, 2001.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–28736 Filed 11–14–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7103–8]

Final NPDES General Permit for Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Texas (TXG330000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final issuance of NPDES general permit.

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System (NPDES) general permit regulating discharges from oil and gas wells in the Coastal Subcategory in Texas and regulating produced water discharges from wells in the Striper and Offshore Subcategories which discharge into coastal waters of Texas.

The permit prohibits the discharge of drilling fluid, drill cuttings, produced sand and well treatment, completion and workover fluids. Produced water discharges are prohibited, except from wells in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas. Discharge of dewatering effluent is prohibited, except from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997. The discharge of deck drainage, formation test fluids, sanitary waste, domestic waste and miscellaneous discharges is authorized. All of the authorized discharges have effluent limitations.

DATES: The limits and monitoring requirements in this permit shall become effective on December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. This final permit can also be found on the Internet at *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

SUPPLEMENTARY INFORMATION: Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited public comment on NPDES General Permit TXG330000 at 66 FR 6607 (January 22, 2001). The comment period closed on March 23, 2001. Region 6 received written comments from the International Association of Drilling Contractors. The Association requested minor changes to two of the Miscellaneous Discharges; specifically, the term ''desalination unit discharge'' would be more descriptive if termed ''distillation and reverse osmosis brine'', and the definition of ''uncontaminated water'' should be expanded to include seawater cooling overboard discharge, chain locker effluent and firemain system discharge. Those changes were made in the final permit. The Association also asked EPA to add a permit requirement for permittees to inform contractors and subcontractors of any permit conditions effecting operations they have been contracted to perform. In response, EPA has added language to Part I, Section B of the final permit requiring operators to take reasonable steps to assure regulated pollutants are not unlawfully discharged by third parties. This language was in the 1995 Coastal Produced Water General Permit, one of the predecessor permits to today's permit, but was omitted from the draft version of today's permit.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Clean Water Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Railroad Commission of Texas waived certification of the permit.

B. National Environmental Policy Act

EPA's regulations at 40 CFR part 6, subpart F, which implement the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4331, *et seq.*, provide the procedures for carrying out the NEPA environmental review process for the issuance of new source NPDES permits. The purpose of this review process is to determine if any significant environmental impacts are anticipated by issuance of NPDES permits authorizing discharges from new sources. In order to make this determination, EPA prepared an environmental assessment in accordance with 40 CFR 6.604. Based on this environmental assessment document, EPA has determined that there will be no significant impact as the result of issuing today's permit adding coverage of discharges from new sources. Several comments were received during the 30-day agency and public review period on EPA's Environmental Assessment and Finding of No Significant Impact, but none warranted preparation of an Environmental Impact Statement or revision to the Environmental Assessment or Finding of No Significant Impact. A Statement of Findings documenting the completion of EPA's NEPA review process on this permit action has been signed by the Regional Administrator.

C. Endangered Species Act

When EPA issued the previous Permit TXG330000, effective October 21, 1993, covering existing sources, but not New Sources, the United States Fish and Wildlife Service concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or its critical habitat. When EPA issued Permit TXG290000, effective February 8, 1995, the Service also concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or its critical habitat. The Region found that adding New Source coverage to the permit is also unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA received written concurrence from the United States Fish and Wildlife Service on May 2, 2001, and from the National Marine Fisheries Service on May 1, 2001, on this determination.

D. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a new mandate to identify and protect important marine and anadromous fisheries habitats. The purpose of addressing habitat in this act is to further the goal of maintaining sustainable fisheries. Guidance and procedures for implementing these amendments are contained in National Marine Fisheries Service regulations (50 CFR 600.805–600.930). These regulations specify that any Federal agency that authorizes or proposes to authorize an activity which would adversely affect an Essential Fish Habitat is subject to the consultation provisions of the Manguson-Stevens Act. The Texas Coastal Subcategory areas covered by this general permit include Essential Fish Habitat designated under the Magnuson-Stevens Act.

Based on the prohibitions and limitations and other requirements contained in this proposed general permit, as well as the Essential Fish Habitat Assessment prepared for this permit reissuance, the Region found that issuance of this permit is unlikely to adversely affect Essential Fish Habitat. EPA received written concurrence dated November 29, 2000, from the National Marine Fisheries Service on this determination.

E. Coastal Zone Management Act

The Coastal Zone Management Act and its implementing regulations (15 CFR part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a state with an approved Coastal Zone Management Program be consistent with that Program. EPA has concluded, based on the conditions, limitations and prohibitions of this permit that the discharges associated with this permit are consistent with the Texas Coastal Management Program goals and

policies. EPA received a consistency determination from the Texas Coastal Coordination Council on February 13, 2001.

F. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

G. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

H. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

I. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This permit is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by this permit. EPA Region 6, therefore, concludes that the permit being issued today will not have a significant impact on a substantial number of small entities.

J. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law.* * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA thinks it is unlikely that this permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The permit issuance also would not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the ''Act''), this permit regulates discharges from existing source and New Source oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart D) in Texas. In addition, this permit regulates produced water from the Stripper and Offshore Subcategories which discharges into coastal waters of Texas. The discharges are regulated in accordance with effluent limitations and other conditions set forth in Parts I and II of this permit.

In order for discharges to be authorized by this permit, operators of facilities discharging waste waters from oil and gas wells must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). For existing leases, the notification must be submitted no later than 45 days after the effective date of this permit. For leases obtained subsequent to the effective date of this permit, the notification must be submitted at least fourteen days prior to the beginning of the discharge. Unless otherwise notified in writing by the Regional Administrator after submission of the notification, operators requesting coverage are authorized to discharge under this general permit. Operators who fail to notify the Regional Administrator of intent to be covered are not authorized to discharge under this general permit.

Facilities which may adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at midnight, Central Standard Time on December 17, 2001.

This permit and the authorization to discharge shall expire at midnight, Central Time on December 15, 2006.

Dated: November 1, 2001.

Jack V. Ferguson,

Acting Director, Water Quality Protection Division, Region 6.

Part I

Section A. Permit Applicability and Coverage Conditions

1. Discharges Covered

This permit regulates discharges from existing source and New Source oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart D) in Texas. In addition, this permit regulates produced water from the Stripper and Offshore Subcategories which discharges into coastal waters of Texas.

2. Notice of Intent (NOI) To Be Covered

Operators of leases (or lease blocks) desiring authorization to discharge under this general NPDES permit must submit a written Notice of Intent (NOI) to be covered. Operators of facilities having only produced water and produced sand, whose discharge is prohibited by this permit, are automatically covered and a written NOI to be covered by this permit is not required of these facilities. The NOI shall include the legal name and address of the operator, the lease (or lease block) number assigned by the Railroad Commission of Texas or, if none, the name commonly assigned to the lease area, and the type of facilities located within the lease (or lease block). For New Source discharges (as defined in 40 CFR part 435, subpart D), the NOI must also identify any facility which is a New Source and state the date on which the facility's protection from more stringent new source performance standards or technology based limitations ends. That date is the earlier of: ten years from the date that construction is completed, ten years from the date the source begins to discharge process or non-construction related waste water, or the end of the period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

For existing leases, the NOI must be submitted within 45 days of the effective date of this permit. For leases obtained subsequent to the effective date of this permit, the NOI must be submitted at least fourteen days prior to the commencement of discharge. If the lease block was previously covered by another permit, the operator shall also include the previous permit number in the notification.

For facilities applying for authorization to discharge reserve pit dewatering effluent from drilling fluids and drill cuttings dewatering activities, the NOI must certify that such reserve pit(s) have not received drilling fluids and/or drill cuttings after January 15, 1997.

The definition of New Source is found at 40 CFR 122.2 and the criteria for New Source determination are found at 40 CFR 122.29. Additional definitions pertaining to Coastal Subcategory New Sources are found at 40 CFR part 435, subpart D. According to part 435, subpart D, exploratory facilities are never New Sources, although development and production facilities may be New Sources if they meet the criteria for New Source determination.

All notifications of intent to be covered and any subsequent reports shall be sent to the following address: Water Enforcement Branch (6EN–WC), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250.

Upon receipt of the notification, EPA will notify the facility of its specific facility identification number that must be used on all correspondence with the Agency.

3. Termination or Transfer of Ownership of Operations

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. Lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

Section B. General Permit Limits

Permittees shall not discharge nor shall they cause or allow the discharge of pollutants regulated under this permit except in compliance with its limitations and terms. Operators of facilities generating pollutants regulated under this permit shall take reasonable positive steps to assure said pollutants are not unlawfully discharged to waters of the United States by third parties and shall maintain documentation of those steps for no less than three years.

Effluent limitations of this permit include:

1. DRILLING FLUID—No discharge.
2. DRILL CUTTINGS—No Discharge.
3. PRODUCED WATER—No Discharge.

Exception: Produced water from facilities in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas and whose produced water does not exceed 3000 mg/l Total Dissolved Solids shall meet the following limits: 25 mg/l monthly average and 35 mg/l daily maximum for oil and grease. Monitoring for oil and grease shall be performed once per month. The sample type may be grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. Produced water flow monitoring requirement: Once per month, an estimate of the flow in MGD (million gallons per day) must be made and recorded.

4. PRODUCED SAND—No Discharge.
5. DEWATERING EFFLUENT—No Discharge.

Exception: Dewatering effluent from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997, shall meet the following limits:

No discharge of free oil as measured by the static sheen test.

Oil and grease—15 mg/l daily maximum.

Total suspended solids (TSS)—50 mg/l daily maximum.

Total dissolved solids (TDS)—3000 mg/l daily maximum.

Exception: Reserve pit discharges to tidally influenced watercourses are not required to meet the total TDS limit if the TDS of the effluent does not exceed the TDS of the receiving water at the point of discharge at the time of discharge.

COD—200 mg/l daily maximum.

pH—6.0 to 9.0 Standard Units.

Chlorides—500 mg/l daily maximum (discharges to inland areas) 1000 mg/l daily maximum (discharges to tidally influenced watercourses).

Exception: Chloride concentration may exceed 1000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the chloride concentration of the treated reserve pit effluent does not exceed the chloride concentration of the receiving water at the point of discharge at the time of discharge.

Hazardous metals—The discharge must not contain concentrations of the substances classified as ''hazardous metals'' in excess of the levels allowed by Texas Administrative Code (TAC) 319.21.

Monitoring: The monitoring frequency for the above dewatering effluent limitations is once per day when discharging using grab samples. However, if the effluent is batch discharged, the monitoring requirements for all effluent limits shall be once per discharge event by grab sample. In addition, the volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch discharged, the volume

discharged must be estimated for the entire discharge event.

6. DECK DRAINAGE—No Discharge of free oil, as determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

Monitoring shall be once per day, when discharging, during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

7. FORMATION TEST FLUIDS—No Discharge, except to bays and estuaries where no chloride standards have been established.

Where discharges are allowed, the limits are:

Free oil—No Discharge as determined by the static sheen test. Monitoring shall be once per day.

pH—6.0 to 9.0 Standard Units. A grab sample must be taken once per discharge event.

8. WELL TREATMENT, COMPLETION AND WORKOVER FLUIDS—No Discharge

9. SANITARY WASTE—

No floating solids.

BOD5—45 mg/l daily maximum. Monitoring shall be once per quarter using grab samples.

TSS—45 mg/l daily maximum. Monitoring shall be once per quarter using grab samples.

Fecal coliform—200/100 ml. Monitoring shall be once per week using grab samples.

10. DOMESTIC WASTE—No discharge of floating solids or garbage or foam.

11. MISCELLANEOUS DISCHARGES—

Distillation and reverse osmosis brine
Blowout preventer fluid
Uncontaminated ballast and bilge water
Mud, cuttings and cement at the sea floor
Boiler blowdown
Excess cement slurry
Diatomaceous earth filter media
Uncontaminated water

For miscellaneous discharges, the discharge of free oil is prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Discharge may occur at any time if the operator uses the static sheen method for detecting free oil. Monitoring shall be once per day, when discharging.

12. OTHER DISCHARGE CONDITIONS—

a. *Prohibitions:* Halogenated Phenol Compounds—There shall be no discharge of Halogenated Phenol Compounds.

Rubbish, Trash and Other Refuse—The discharge of any solid material not authorized in the permit (as described above) is prohibited.

b. *Limitations:* Floating Solids or Visible Foam—There shall be no discharge of floating solids or visible foam in other than trace amounts.

Surfactants, Dispersants and Detergents—The discharge of surfactants, dispersants, and detergents used to wash working areas shall be minimized except as necessary to comply with applicable State and Federal safety requirements.

Part II

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR 122.41, *et. seq.,* this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the ''Act'') as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for terminating coverage under this permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–122.64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets,'' nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of

this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b. and 4.c.

b. Notice

(1) Anticipated Bypass.

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated Bypass.

The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or waste water control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters, and in accordance with other applicable laws or regulations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or,

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

Coverage under these permits is not transferable to any person except after notice to the Director.

4. Discharge Monitoring Reports and Other Reports

Monitoring results obtained during the previous 12 months for all discharges at a facility shall be summarized and reported to EPA and the appropriate State agency on the 28th day of the month following the end of the twelve month period on Discharge Monitoring Report (DMR) Form EPA No. 3320–1 in accordance with the ''General Instructions'' provided on the form. The permittee shall submit the original DMR signed and certified as required by Part II.D.11 and all other reports required by Part II.D. to the EPA at the address below.

Compliance Assurance and Enforcement Division
Water Enforcement Branch (6EN–W)
U.S. Environmental Protection Agency, Region 6
P.O. Box 50625
Dallas, TX 75250

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the EPA Region 6 24-hour voice mail box telephone number 214–665–6593 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 and Part I.C at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR part 122, appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) One hundred micrograms per liter (100 ug/L);

(2) Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

b. That any activity has occurred or will occur which would result in any

discharge, on a non routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) Five hundred micrograms per liter (500 ug/L);

(2) One milligram per liter (1 mg/L) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification.

Any person signing a document under this section shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations

The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty, as specified in 40 CFR 19.4, for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as specified in 40 CFR 19.4, for each violation.

Section F. Definitions

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ACT means the Clean Water Act (33 U.S.C. 1251 *et seq.*), as amended.

2. ADMINISTRATOR means the Administrator of the U.S. Environmental Protection Agency.

3. BLOWOUT PREVENTER FLUID is used to actuate the hydraulic equipment on the blowout preventer.

4. BOD5 means five day biochemical oxygen demand.

5. BYPASS means the intentional diversion of waste streams from any portion of a treatment facility.

6. COD means chemical oxygen demand.

7. DAILY MAX discharge limitation means the highest allowable ''daily discharge'' during the calendar month.

8. DISTILLATION AND REVERSE OSMOSIS BRINE is wastewater associated with the process of creating fresh water from seawater.

9. DIATOMACEOUS EARTH FILTER MEDIA is filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

10. DIRECTOR means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

11. DOMESTIC WASTE is materials discharged from sinks, showers, laundries, safety showers, eyewash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this permit.

12. ENVIRONMENTAL PROTECTION AGENCY means the U.S. Environmental Protection Agency.

13. FACILITY (as defined in 40 CFR 122.2) means any NPDES ''point source'' or any other facility or activity that is subject to regulation under the NPDES program.

14. FORMATION TEST FLUIDS are the discharge that would occur if hydrocarbons are located during exploratory drilling and tested for formation pressure and content.

15. GRAB SAMPLE means an individual sample collected in less than 15 minutes.

16. ''MGD'' means million gallons per day.

17. ''mg/L'' means milligrams per liter or parts per million (ppm).

18. MUDS, CUTTINGS AND CEMENT AT THE SEA FLOOR are discharges which occur at the sea floor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.

19. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402, and 405 of the Act.

20. SEVERE PROPERTY DAMAGE means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

21. STATIC SHEEN is defined in the static sheen test in appendix 1 to 40 CFR part 435, subpart A.

22. UNCONTAMINATED WATER is freshwater or seawater which is returned to the receiving water without the addition of any chemicals. Included are (1) Discharges of excess water that permit the continuous operation of fire control and utility lift pumps, (2) excess water from pressure maintenance and secondary recovery projects,(3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once-through, non-contact cooling water, (6) potable water released during transfer and tank emptying operations and (7) condensate from air conditioning units, (8) seawater cooling overboard discharge, (9) chain locker effluent, and (10) firemain system discharge .

23. UPSET means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

24. VISUAL SHEEN means a ''silvery'' or ''metallic'' sheen, gloss, or increased reflectivity, visual color, or iridescence on the water surface.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7103–7]

Clean Water Act Section 303(d): Availability of Public Comment Extension for Federal Register Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period extension availability.

SUMMARY: This notice announces the extension availability of the public comment period of the **Federal Register** notice 66 FR 47673–47674 published on 9/13/2001 and **Federal Register** notice 66 FR 52403–52404 published on 10/15/2001. These TMDLs were completed in response to a court order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.).

DATES: Comments must be submitted for the **Federal Register** notice published 9/13/2001 on (pesticides-carbofuran and fipronil) in writing to EPA on or before November 30, 2001 and for the **Federal Register** notice published on 10/15/2001 (dissolved oxygen, nutrients, and ammonia) in writing to EPA on or before November 30, 2001.

ADDRESSES: Comments on the published notices should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs and the determinations that TMDLs are not needed are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

EPA will review all data and information submitted during the extended public comment period and revise the TMDLs and determinations that TMDLs are not needed where appropriate. EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan. EPA also will revise the Louisiana 303(d) list as appropriate.

Dated: October 30, 2001.

Joan E. Brown,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–28631 Filed 11–14–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011712–001.

Title: CMA CGM/CSG Exchange Sailing and Cooperative Working Agreement.

Parties: China Container Shipping Lines Co. Ltd. CMA CGM, S.A.

Synopsis: The amendment revises the number and size of the vessels utilized, increases the amount of space exchanged, and modifies resignation and termination procedures.

Agreement No.: 011737–003.

Title: The MCA Agreement.

Parties: Antillean Marine Shipping Corporation Crowley Liner Services, Inc. CMA CGM, S.A. Far Eastern Shipping Company King Ocean Central America S.A. King Ocean Service De Colombia S.A. King Ocean Service De Venezuela S.A. Mexican Line Limited, LLC Lykes Lines Limited, LLC Tecmarine Lines, Inc. Tropical Shipping & Construction Co., Ltd. Alianca Navegacao E. Logistica Ltda. Hamburg-Sud.

Synopsis: The proposed amendment adds Antillean Marine Shipping Corporation, Far Eastern Shipping Company, King Ocean Central America S.A., King Ocean Service De Colombia S.A., and King Ocean Service De Venezuela S.A. as parties to the agreement. The amendment also deletes Cho Yang Shipping Co., Ltd. and Compania Chilena De Navegacion Interoceanica S.A. as parties to the agreement.

Agreement No.: 11780.

Title: Maersk Sealand/MSC Slot Charter Agreement.

Parties: A.P. Moller-Maersk Sealand Mediterranean Shipping Company.

Synopsis: The proposed agreement authorizes Maersk Sealand to charter slots on MSC ships operating between the U.S. East Coast and Northern Europe until January 31, 2002. The parties request expedited review.

Agreement No.: 011781.

Title: HJS/K-Line Slot Allocation & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd. Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement authorizes the parties to sell and purchase slots to and from each other in the trade between Asia and the United States Pacific Coast.

By Order of the Federal Maritime Commission.

Dated: November 9, 2001.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–28669 Filed 11–14–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–11]

Revocation of License No. 012234 AAA Nordstar Line Inc.; Notice of Show Cause Proceeding

Notice is given that the Commission, on November 5, 2001, pursuant to sections 11 and 19 of the Shipping Act of 1984, served an Order to Show Cause on AAA Nordstar Line, Inc. (''AAA Nordstar''), a Delaware corporation incorporated in 1991 which has operated an ocean transportation intermediary (''OTI'') pursuant to FMC license No. 012234 since August 2000. According to a review of records maintained by the Commission's Bureau of Consumer Complaints and Licensing (''BCCL''), AAA Nordstar maintains principal offices at 1571 Irving Street in Rahway, New Jersey. BCCL records identify the principals of the firm as Anil V. Rane, its President and Qualifying Individual, and Maria E. Fabros, its Vice President and Secretary.

It has come to the attention of the Commission that Anil Rane and Maria Fabros also serve as officers and/or shareholders of Great Eastern Shipping, Inc. (''Great Eastern Shipping''), an unlicensed entity engaged in the transportation of military household goods pursuant to contracts with the U.S. Military Traffic Management Command (''MTMC''). It further appears that Great Eastern Shipping was then sharing office space with AAA Nordstar in Rahway, NJ and possibly at other locations, and that Great Eastern Shipping has held itself out to the public as serving as the agent of AAA Nordstar.[1]

On July 26, 2001, judgment was rendered against Anil Rane in the United States District Court for the District of New Jersey, pursuant to Mr. Rane's plea of guilty to two federal counts alleging mail fraud and conspiracy to commit mail fraud. On September 14, 2001, judgment was rendered against Maria Fabros in the United States District Court, pursuant to Mrs. Fabros' plea of guilty to two counts of mail fraud and conspiracy to commit mail fraud. Sentencing documents relating to the above judgments assert that, from September 1998 through June 2000, co-conspirators Anil Rane and Maria Fabros, acting through Great Eastern Shipping, were awarded more than 350 single-shipment contracts for ocean transportation of cargo through the Department of Defense. It was asserted that defendants Anil Rane and Maria Fabros routinely overbilled MTMC and also falsified documents to make it appear that Great Eastern Shipping was using U.S. flag vessels when the transportation was, in fact, performed by foreign-registered vessels, contrary to U.S. shipping laws and the applicable MTMC shipping contracts. Each defendant was sentenced to jail time and extended court supervision upon subsequent release. Pursuant to a separate settlement agreement, defendants agreed to make financial restitution to the government in the amount of $4,323,673.79.

The crimes of mail fraud and conspiracy to commit mail fraud in connection with Great Eastern Shipping's business of handling and transporting military household goods on behalf of the Department of Defense, admitted in the pleas of guilty entered by Mr. Anil Rane and Mrs. Maria Fabros, constitute acts of moral turpitude reflecting directly upon the licensee's continued fitness to conduct business as an OTI. This is true inasmuch as the offending officials, and perhaps others having ties to Great Eastern Shipping, have served and may continue to serve as employees, officers, directors and shareholders of the corporate licensee, or as the agents for same through the means or device of Great Eastern Shipping. It further appears that, in applying for and conducting business under authority of its OTI license, AAA Nordstar Inc. and its principals made materially false or misleading statements to the Commission, and subsequently failed to correct such omissions or otherwise advise the Commission of changes in material facts relating to its operations

[1] At the time of AAA Nordstar's application for an OTI license, applicant's qualifying individual was required to submit standard information regarding the applicant's current office-sharing arrangements, the identification of officers, directors and owners of corporate applicants, locations of branch offices, and any relationships with other corporations or shippers. Applicant's qualifying individual, Anil Rane, responded in the negative to questions regarding common ownership or operation of other companies.

and the qualifications of its management.[2]

The order directs AAA Nordstar Inc. to show cause, why its OTI license, FMC No. 012234, should not be revoked inasmuch as the officers, directors or other principals, employees or agents of licensee have been found to have violated provisions of the 1984 Act or other shipping statutes or regulations related to carrying on the business of an ocean transportation intermediary, and that such licensee is otherwise not qualified to render intermediary services.

The full text of the Order may be viewed on the Commission's home page at *www.fmc.gov,* or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC.

Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72 and the provisions of the Order to Show Cause.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–28666 Filed 11–14–01; 8:45 am]

BILLING CODE 6730–01–P

[2] Such omissions or misstatements of fact include, but are not limited to, common management, ownership and space sharing arrangements between AAA Nordstar and Great Eastern Shipping; the failure to disclose or obtain additional surety with respect to operation of branch offices in Florida and California; the failure to disclose all current officers and/or directors of AAA Nordstar; and the failure to disclose changes in material facts relating to the convictions of AAA Nordstar principals Anil Rane and Maria Fabros. Under 46 CFR 515.12(d), licensees and applicants must advise Commission of changes in material fact, within thirty (30) days of occurrence, through the submission of an amended Form FMC–18 Rev.

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

AE Eagle America Inc., 155–04 145th Avenue, Jamaica, NY 11434, Officers: Davy NG, Secretary (Qualifying Individual), Milton Cheung, President

Cargozone Trans Corporation, 19550 Dominguez Hills Dr., Rancho Dominguez, CA 90220, Officers: Paul M. Kim, Secretary (Qualifying Individual), Byung Keun Han, President

Mark M. Marcus, North American Container Group, 6600 N. Lincoln Ave., Suite 3066, Lincolnwood, IL 60712, Sole Proprietor

Navetrans Corp. dba Costa Rica Carriers, 240 Crandon Blvd., Suite 203 A, Miami, FL 33149, Officers: Sahir Miguel Morales, Asst. Vice President (Qualifying Individual), Joachim Haubold, President

Datacargo Co. Inc. dba Datacargo, 8235 N.W. 82nd Avenue, Miami, FL 33166, Luis Andres Sara, General Manager (Qualifying Individual), Maria Elena Gomez Ruggiero, Vice President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Summit Cargo Group, Inc., 724 South Hindry Avenue, Inglewood, CA 90301, Officers: Tony Feist, Director of Operations (Qualifying Individual), Zachary Zemby, President

Kuhn Hay, Inc., 1625 Drew Road, El Centro, CA 92243, Officers: James E. Kuhn, President (Qualifying Individual), John Robert Kuhn, Director

Top Cargo Inc., 3537 NW 82nd Avenue, Miami, FL 33122, Officer: Damian J. Pelegrino, President (Qualifying Individual)

Sun Express International, Inc. dba BNX Shipping Hawaii, 1188 Bishop Street, #1006 Honolulu, HI 96813, Officer: Sun Hee Lee, President (Qualifying Individual)

Dated: November 9, 2001.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–28667 Filed 11–14–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 827F
Name: Davies, Turner & Co.
Address: 113 Chestnut Street, Philadelphia, PA 19106
Date Revoked: October 12, 2001.
Reason: Surrendered license voluntarily.

License Number: 4425N
Name: Esprit International Shipping Combined Transport, Inc. dba Capital Freight Management
Address: 701 S. Atlantic Blvd., #200, Monterey Park, CA 91754
Date Revoked: September 5, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3644F
Name: Forward Logistics Group, Inc.
Address: 1902 Cypress Lake Drive, Suite 200, Orlando, FL 32837
Date Revoked: September 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 14162NF
Name: ITS North America Limited
Address: 12727 NE 20th Street, Suite 23, Bellevue, WA 98005
Date Revoked: September 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4513N
Name: Kevin C. Ahn dba Baytop Container Co.
Address: 2800 Plaza Del Amo Blvd., Torrance, CA 90503
Date Revoked: September 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 15333N
Name: Newtrans Service Corp. dba Newtrans Worldwide Co.
Address: 146–92 Guy R. Brewer Blvd., Jamaica, NY 11434
Date Revoked: September 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 13389N
Name: Pacificana Air Services, Inc.
Address: 5250 West Century Blvd., Suite 302, Torrance, CA 90045
Date Revoked: October 3, 2001.
Reason: Failed to maintain a valid bond.

License Number: 14267N
Name: Protech Shipping Co., Inc. dba PSI Express Line
Address: 161–15 Rockaway Blvd., Suite 108, Jamaica, NY 11434
Date Revoked: October 7, 2001.
Reason: Failed to maintain a valid bond.

License Number: 6313N
Name: Puerto Rico Freight Systems, Inc.
Address: Edificio 11, Central Mercantil Zona Libre, Guanaybo, PR 00965
Date Revoked: October 19, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4343F
Name: Sea/Air Cargo Forwarders of NJ, Inc.
Address: 50 Lawlins Park South, Wyckoff, NJ 07481
Date Revoked: October 13, 2001.
Reason: Failed to maintain a valid bond.

License Number: 2581F
Name: Unitrans International Corporation
Address: 709 S. Hindry Avenue, Inglewood, CA 90301
Date Revoked: July 30, 2001.
Reason: Surrendered license voluntarily.

Ronald D. Murphy,
Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–28668 Filed 11–14–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 012 3116]

Esrim Ve Sheva Holding Corp., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 8, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jonathan Cowen or Joni Lupovitz, FTC/S–4302, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2533 or 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 8, 2001), on the World Wide Web, at ''*http://www.ftc.gov/os/2001/11/index.htm*.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement for entry of a consent order from Esrim Ve Sheva Holding Corp., a corporation sometimes doing business as Gadget Universe, and its CEO, Alexander Elnekaveh, individually and as an officer of the corporation (referred to collectively as ''respondents''). The agreement would settle a complaint by the Federal Trade Commission that respondents engaged in deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising representations made about Super FuelMAX, an automotive fuel-line magnet. The administrative complaint alleges that respondents violated the FTC Act by disseminating advertisements that made unsubstantiated performance claims about Super FuelMAX: The Complaint alleges that respondents represented that Super Fuel Max: (1) Causes fuel molecules to line up in straight columns and rows; (2) improves fuel burn through magnetic resonance; (3) reduces fuel consumption; (4) reduces fuel consumption by 27% or up to 27%; (5) reduces harmful emissions or pollutants; and (6) reduces harmful emissions or pollutants by 42% or up to 40%. The Complaint further alleges that respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting them. Additionally, the Complaint challenges, as false, claims that tests performed at a certified U.S. Environmental Protection Agency prove that: (a) Increases mileage by 27%; and (b) reduces harmful pollutants by 42%.

The Complaint also alleges that respondents falsely represented that a testimonial from respondent Alexander Elnekaveh reflected: (a) Elnekaveh's actual findings and experience with the product; and (b) the typical or ordinary experience of members of the public who use the product.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed consent order prohibits respondents from making unsubstantiated claims in connection with any fuel-line magnet or any purported fuel-saving or emission-reducing product for use with a motor vehicle, including claims about the effect of such product on fuel molecules and that such product improves fuel burn; reduces fuel consumption or reduces fuel consumption by any number, percentage, or rate; reduces emissions or pollutants or reduces emissions or pollutants by any number, percentage, or rate; or about the benefits, performance, or efficacy of such product. The evidence required to substantiate such claims must be competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence.

Part II of the proposed consent order prohbits respondents from misrepresenting that any user testimonial or endorsement of the product reflects the actual and current opinions, findings, beliefs, or experiences of the user.

Part III of the proposed consent order prohibits respondents from representing that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; or respondents disclose what the generally expected results would be for users of the product, or that consumers should not expect to experience similar results.

Part IV of the proposed consent order prohibits respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

The remainder of the proposed consent order also contains provisions regarding record-keeping, distribution of the order, notification of changes in corporate status, notification of changes in employment of the individual respondent, the filing of a compliance report, and termination of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–28582 Filed 11–14–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers (0920–0442)—Renewal—National Center for Infectious Diseases (NCID), NCID Centers for Disease Control and Prevention (CDC), is proposing to renew a study of bloodstream infections, vascular access infections, hospitalization, and antimicrobial starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, there was previously no system to record and track these complications.

Participation in the proposed project is voluntary. Currently about 80–90 centers report data each month. We estimate that about 100 of the approximately 4,500 U.S. outpatient hemodialysis centers will participate in the coming years. Participating centers may collect data continuously, or may discontinue participation at any time; we estimate that the average center will participate for nine months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (*e.g.,* type of vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. These data may be reported to CDC on paper forms or via a secure Internet site. CDC aggregates this data and generates reports which are sent to participating dialysis centers.

Centers that participate in the Internet-based reporting system may also analyze their own data and print out reports as desired. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1000 patient-days will be calculated. Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The total cost to the respondents is $126,000.

Form	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Agreement to Participate	100	1	1	100
Census Form	100	12	1	1,200
Log	100	12	1	1,200
Incident Form	100	200	12/60	4,000
Total				6,500

Dated: November 8, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–28616 Filed 11–14–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Emerging Practices in Child Abuse and Neglect Prevention.

OMB No. New collection.

Description: With increasing understanding and recognition of the individual and family risk factors that increase the likelihood of child maltreatment, particularly since the 1990s, the role and importance of prevention has been vigorously promoted. As a consequence, the development, funding, and implementation of programs and initiatives with a specific focus on prevention, have proliferated around the country. However, the precise nature of these efforts—and their effectiveness—is not yet well understood, and information has not been systematically documented. By identifying and showcasing effective and emerging practices, this project will disseminate the best available information on effective and emerging child abuse and neglect prevention practices to researchers, advocates, practitioners, and policymakers in the prevention community.

Respondents: The universe of potential respondents consists of the child abuse and neglect professional community in its entirety, which includes practitioners, service providers, policy makers in state and local agencies, researchers, advocates, and other affiliated parties.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Track I: Effective practices	10—30	1	6	60—180
Track II: Promising practices	150—200	1	4	600—800
Estimated total annual burden hours				660–980

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 7, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–28554 Filed 11–14–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00D–1557 and 00D–1558]

Medical Devices; Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA.'' This guidance document describes the controls FDA believes will provide reasonable assurance of the safety and effectiveness of three anesthesiology devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying indwelling blood gas analyzers from class III to class II (special controls).

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Christy Foreman, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200

Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was developed as a special controls guidance to support the reclassification of three anesthesiology devices from class III (premarket approval) to class II (special controls). The three devices are:

- Indwelling blood carbon dioxide partial pressure (Pco_2) analyzer (21 CFR 868.1150),
- Indwelling blood hydrogen ion concentration (pH) analyzer (21 CFR 868.1170), and
- Indwelling blood oxygen partial pressure (Po_2) analyzer (21 CFR 868.1200).

The guidance document combines and supersedes the guidances entitled ''Guidance for Electrical Safety, Electromagnetic Compatibility and Mechanical Testing for Indwelling Blood Gas Analyzer Premarket Notification Submissions'' and ''Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions'' which, in turn, incorporated the special controls listed separately in the March 15, 1999 (64 FR 12774), proposal to reclassify these devices. In the **Federal Register** of November 22, 2000 (65 FR 70357), FDA announced the availability of the two guidance documents that were intended to serve as special controls and invited interested persons to comment on the guidances by February 20, 2001. In that same issue of the **Federal Register** (65 FR 70325), FDA reopened the comment period for 90 days to allow comments regarding the proposed reclassification of the three anesthesiology devices from class III into class II. FDA received no comments on the proposed reclassification of the three devices.

FDA received one comment on the document entitled ''Guidance for Indwelling Blood Gas Analyzer 510(k) Submissions'' that was proposed as a special control for the devices. The comment, submitted by Diametrics Medical Ltd., disagreed that all clinical studies should be designated ''significant risk'' and be conducted under an investigational device exemption (IDE).

FDA agrees with the comment and has modified the guidance. With the exception of devices employing new technology, studies of the device are nonsignificant risk. These nonsignificant risk studies are exempt from IDE requirements in accordance with § 812.2(c)(2) (21 CFR 812.2(c)(2)), but must be performed in accordance with parts 50 and 56 (21 CFR parts 50 and 56). However, if the device employs new technology (i.e., technology different from that used in a legally marketed indwelling blood gas analyzers), FDA has determined that studies of this device are significant risk, as defined in 21 CFR 812.3(m)(4) and, therefore, do not qualify for the abbreviated requirements of § 812.2(b). In addition to the requirement of having an FDA-approved IDE, sponsors of such trials must comply with the regulations governing institutional review boards (part 56) and informed consent (part 50).

Designation of this guidance as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate indwelling blood gas analyzer should demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurance of safety and effectiveness.

II. Significance of Guidance

This guidance document represents the agency's current thinking concerning indwelling blood gas analyzers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

The agency has adopted good guidance practices (GGPs) and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115). This guidance document is issued as a level 2 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Indwelling Blood Gas Analyzers; Final Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1126) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this guidance at any time. Submit two copies of any comments, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 01–28562 Filed 11–14–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–82]

Notice of Submission of Proposed Information Collection to OMB; Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The propose information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 17, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0512) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, and extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Automated Clearing House (ACH) Program Application—Title I Insurance Charge Payments System.

OMB Approval Number: 2502–0512.

Form Numbers: HUD–56150.

Description of the Need for the Information and Its Proposed Use: This information collection is used to collect data to establish an electronic premium payment method for the Title I Program. This information collection is designed to process the collection of Title I insurance charges electronically in lieu of sending checks and other payments instruments by mail.

Respondents: Business or other for-profit, Individuals or households.

Frequency of Submission: On occasion upon application.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	750		1		0.25		188

Total Estimated Burden Hours: 188.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–28558 Filed 11–14–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–83]

Notice of Submission of Proposed Information Collection to OMB; Preauthorized Debits, HUD PAD Authorization

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 17, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0424) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed uses; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Preauthorized Debits, HUD PAD Authorization.

OMB Approval Number: 2502–0424.

Form Numbers: HUD–92090.

Description of the Need for the Information and Its Proposed Use: The information collection is used to establish a direct electronic transfer of payment form a financial institution to HUD when debtors have established a repayment plan and desire an automated transfer of funds.

Respondents: Business or other for-profit, Individuals or households.

Frequency of Submission: On occasion upon application.

Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
Reporting burden	70	1		0.25		18

Total Estimated Burden Hours: 18.

Status: Reinstatement, with change (reduction in total burden).

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–28559 Filed 11–14–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–84]

Notice of Submission of Proposed Information Collection to OMB; Technical Suitable of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 17, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0313) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Section 521 of the National Housing Act.

OMB Approval Number: 2502–0313.

Form Numbers: HUD–92005.

Description of the Need for the Information and its Proposed Use : This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. Respondents are manufacturers seeking acceptance of their products by HUD.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden	50		1		44		2,200

Total Estimated Burden Hours: 2,200.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 6, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–28560 Filed 11–14–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Sunshine Act Meeting

TIME AND DATE: 9 a.m. to 5 p.m. EST, December 5, 2001.

PLACE: Main Auditorium, National Geographic Society, 1145 17th Street, NW., Washington, DC.

STATUS: The Department of the Interior, as co-chair with the Department of Commerce, on behalf of the Coral Reef Task Force announces a public meeting of the Coral Reef Task Force. We will accept comments on the discussion documents until November 30, 2001.

MATTERS TO BE CONSIDERED: Agenda and Discussion Documents. Documents to be discussed include a Final Charter and Final Oversight Policy. These documents and the agenda are available from Susan White at (202) 208–6211, or on the web at http://coralreef.gov/ . Public comments were previously solicited on the draft Oversight document from November 26, 1999 to January 3, 2000.

CONTACT PERSON FOR MORE INFORMATION: Comments regarding these matters should be sent to Susan White, Office of

the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, 1849 ''C'' Street, NW, MS–MIB–3156, Washington, DC 20240, phone (202) 208–6211, FAX (202) 208–4684, email: susan_white@fws.gov.

Dated: November 2, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28728 Filed 11–13–01; 11:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–048291.

The applicant request a permit to import biological samples from African elephants (*Loxadonta africana*) from Kruger National Park, South Africa, for the purpose of scientific research.

Applicant: San Diego Zoo, San Diego, CA, PRT–049768.

The applicant request a permit to import four captive born African wild dogs (*Lycaon pictus*) from Mountain View Farms, B.C., Canada, for the purpose of enhancement of the survival of the species through propagation.

Applicant: Roger L. Warner, Hickman, CA, PRT–049669.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ed Shallenberger, Omak, WA, PRT–049670.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Victoria Windland-Taraska, Belleview, FL, PRT—039259.

The applicant requests a permit to export and re-import tigers (*Panthera tigris*) and African leopards (*Panther pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Russell E. Jacobs, Ph.D., California Institute of Technology, Pasadena, CA, PRT–043952.

The applicant requests a permit to import five male and seven female captive-born lesser mouse lemurs (*Microcebus murinus*) from Dr. Martine Perret, Laboratoire d'Ecologie generale, Brunoy, France, for the purpose of captive breeding and scientific research.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Sherman J. Silber, M.D., St. Louis, MO, PRT–049529.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: November 2, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–28599 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–086–1220–AA]

Restriction Order for BLM Lands on Blackwell Island, Kootenai County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of restriction order for BLM lands on Blackwell Island, Kootenai County, Idaho, Order No. ID–080–29.

SUMMARY: By order, all public land at Blackwell Island Coeur d'Alene, Idaho is temporarily closed to all public use for the duration of site improvement construction activities. The affected area is described as all public land north of U. S. Highway 95 within the city limits of Coeur d'Alene in section 14: lots 4 and 5, T. 50N., R. 4W., B.M. A map depicting the closed area is available for public inspection at the Bureau of Land Management, Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. The closure becomes effective immediately and shall remain in effect until construction activities are completed and this order is rescinded.

The authority for establishing this restriction is Title 43, Code of Federal Regulations, 8364.1

This restriction does not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any contractor, subcontractor or delivery person while in the performance of an approved site construction activity.

(4) Any person or group expressly authorized by an Authorized Officer to use or occupy the subject public land through the issuance of a permit or other use authorization instrument.

This temporary closure is necessary as a public safety measure and to avoid public interference with construction activities.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Terry Kincaid, (208) 769–5031.

Dated: October 18, 2001.

Ted Graf,

Acting District Manager.

[FR Doc. 01–28607 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–1310–AG]

Notice of Intent To Prepare an Integrated Activity Plan IAP/ Environmental Impact Statement (EIS) on Management of the Northwestern Portion of the National Petroleum Reserve-Alaska (NPR–A); Request for Information; and Call for Nominations and Comments

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; Title I of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), as amended by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1981, Pub. L. 96–514, 94 Stat. 2957, 2964 (codified in 42 U.S.C. 6508); the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, section 810, 16 U.S.C. 3120; and the regulations at 43 CFR parts 2360 and 3130; the Bureau of Land Management (BLM), Alaska State Office, is preparing an Integrated Activity Plan (IAP)/ Environmental Impact Statement (EIS) for the northwest portion of the National Petroleum Reserve-Alaska (NPR–A). This Notice also serves as a Request for Information (Request) and Call for Nominations (Call) and Comments per 43 CFR 3130.1 and 3131.2.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to invite suggestions and the submittal of relevant information for the proposed IAP/EIS. Potential issues include, but are not limited to, wildlife resources protection (terrestrial and aquatic); oil and gas leasing and development (pursuant to 43 CFR Part 3130); subsistence resources and activities and possible impacts on subsistence from various management alternatives; access, recreation, and visual resources; threatened and endangered species; and historic; cultural, soil, water, and vegetation resources. Potential management actions and activities which may have environmental and subsistence impacts for the area include mineral material extraction; oil and gas exploration and development; wilderness; recreation; commercial development; recommendations for wilderness designations; modifications of existing Special Areas; and identification of any new areas for additional resource protection. Information, comments, and nominations on specific issues to be addressed in the plan are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in land use, planning, and management.

Description of the Area

The area subject to this Notice is composed of those BLM-administered lands, subject to valid existing rights, in the northwestern portion of NPR–A. The northwestern portion of NPR–A is described as: Beginning on the western boundary NPR–A on the east—west township line between T.8 N., R.40 W., and T.9 N., R.39 W., Umiat Meridan (UM.); Thence proceed easterly along the township line to the northeast corner of T.8 N., R.26 W., UM.; Thence proceed southerly along the township line to the southeast corner of T.7 N., R.26 W., UM.; Thence proceed easterly along the township line to the northeastern corner of T.6 N., R.25 W., UM.; Thence proceed southerly along the township line to the southeast corner of T.5 N., R.25 W., UM.; Thence proceed easterly along the township line to the northeast corner of T.4 N., R.24 W., UM.; Thence proceed southerly along the township line to the southeast corner of T.1 N., R.24 W., UM.; Thence proceed easterly along the township line to the northeast corner of T.1 S., R.24 W., UM.; Thence proceed southerly along the township line to the southeast corner of T.4 S., R.24 W., UM.; Thence proceed easterly along the township line to a point where the left bank of the Colville River meets the southern township line of T.4 S., R.15 W., UM.; Thence proceed in a generally easterly direction following the left bank of the Colville River to a point where the Colville River intercepts the eastern boundary of T.3 S., R.6 W., UM.; Thence proceed northerly following the township lines to the northeast corner of T.2 N., R.6 W., UM.; Thence proceed westerly following the township line to the right bank of the Ikpikpuk River on the south township line of T.3 N., R.12 W., UM.; Thence proceed northerly along the right bank of the Ikpikpuk River to the northern boundary of NPR–A; Thence follow the boundary of NPR–A in a general westerly and then southerly direction to the point of beginning of this description. This planning area consists of approximately 9,980,000 acres of which approximately 9,437,000 are federal and approximately 543,000 acres are in private ownership. A large scale map of the plan area (which also serves as the Call map) showing boundaries of the area by township is available from the Alaska State Office, BLM, 222 West 7th Avenue, Anchorage, AK 99501, telephone (907) 271–5546.

Public Participation

BLM seeks information and comments on issues relating to the future land use, planning, and management of the northwest portion of NPR–A. Also requested is information and comments on resources, such as wilderness, wildlife and subsistence resources, as well as current and potential future activities on these lands, including possible development of the area's oil and gas potential. The agency is interested in learning what areas are of particular value for various species and uses, and what measures should be considered to protect resources and uses from potentially impacting activities. Comments are also sought on any potential conflicts with approved coastal management plans (CMPs) and other land use plans that may result from possible future activities in the area. These comments should identify specific policies of concern as listed in CMPs or other plans, the nature of the conflicts foreseen, and steps that BLM could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or focused on particular townships of concern. Comments are sought on activities and measures to protect surface resources within the plan area, including fish and wildlife, historical and scenic values. Comments are sought on subsistence uses and needs within the plan area and possible impacts on subsistence from other uses of the area. Comments should include recommendations for particular

sections of the plan area that are of value for surface and subsurface resources, as well as conditions, restrictions, and prohibitions that would protect surface resources. Comments, including names and street addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Pursuant to 43 CFR 3131.1 and 3131.2, relevant information related to possible oil and gas leasing is requested for the plan area. Oil and gas companies are specifically requested to nominate areas within the plan area that they would like to have considered for oil and gas leasing. Nominations must be depicted on the Call map by outlining the area(s) of interest along township lines. Nominators are asked to submit a list of townships nominated to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations for oil and gas leasing become a matter of public record, the individual nominations will be held confidential consistent with applicable law. Nominators also are requested to rank townships nominated for oil and gas leasing according to priority of interest [(e.g., priority 1 (high), 2 (medium), or 3 (low)]. Townships nominated that do not indicate priorities will be considered priority 3. Nominators are encouraged to be specific in indicating townships by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. The regulations at 43 CFR part 3130 limit the size of an oil and gas lease tract within the NPR–A boundaries to no more than 60,000 acres (43 CFR 3130.4–1). Although nominations are to be submitted along township lines, comments are also being sought on the preferred size of tracts for leasing in this area, not to exceed 60,000 acres.

Responses to this request for information and comments, and call for nominations must be received no later than 45 days following publication of this document in the Federal Register. Nominations must be submitted in envelopes labeled ''Nominations Related to the NPR–A IAP/EIS'' to protect the confidentiality of the nominations. The original Call map with nominations must be submitted to the NPR–A Planning Team Leader, Bureau of Land Management, 222 West 7th Avenue #13, Anchorage, AK 99513–7599. Information, comments, and nominations submitted in responses to this publication will assist in early scoping and later development of alternatives for the IAP/EIS and will help identify areas for potential activities, including oil and gas development and resource protection.

Tentative Schedule

Approximate dates for actions and decisions in the planning process for this proposal are:

Comments are due on Notice, Request, and Call—December 15, 2001.

Scoping meetings are scheduled for the following Alaska communities:

Point Lay—December 3, 2001

Anaktuvuk Pass—December 4, 2001

Wainwright—December 5, 2001

Atqasuk—December 6, 2001

Barrow—December 10, 2001

Nuiqsut—December 11, 2001

Fairbanks—January 15, 2002

Anchorage—January 16, 2002

All meetings will begin at 7:00 PM. Meeting locations will be announced later.

Draft IAP/EIS available for comment—November 19, 2002.

Public meetings/hearings—December, 2002—January, 2003.

Comments due on Draft IAP/EIS—January 30, 2003.

Final IAP/EIS available for public view—October 2, 2003.

Record of Decision—November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Curt Wilson, (907) 271–5546 or *clwilson@ak.blm.gov.* He can be reached by mail at 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

Francis R. Cherry, Jr.,

State Director, Alaska.

[FR Doc. 01–28665 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–01–0777XX–241A]

Sierra Front/Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council Meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be a presentation and discussion of accomplishments during 2001 and the outlook for 2002 of the BLM in Nevada; opening and closeout reports of the three Resource Advisory Councils (RACs); discussion of acquisitions proposed to be funded by the Southern Nevada Public Land Management Act of 1998; breakout meetings of the ''pods'; breakout meetings of the three RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the councils may raise.

All meetings are open to the public. During the two noon luncheons, members of the public may join the group for lunch, at their own expense. The public may present written comments to the three-RAC group or the individual RACs. The public comment period for the council meeting will be at 3 p.m. on Thursday, November 8. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Nevada State Office, BLM, 1340 Financial Blvd., Reno, telephone (775) 861–6586.

Date, Time: The council will meet on Thursday, November 8 from 8 a.m. to 4:30 p.m. and Friday, November 9, 2001, from 8 a.m. to 3 p.m., at the Elko Convention Center, Elko, Nevada. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be determined at that time, and will be in Elko, Nevada. The meeting may be cancelled if an alternate site is not available. The dates and times will remain the same. Public comment

will be received at the discretion of the State Director, as meeting moderator, with a general public comment period on Thursday, November 8, 2001 at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Robert Stewart, Public Information Specialist, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586.

Dated: August 27, 2001.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 01–28610 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1430–EU; HAG–01–0260]

Direct Sale of Public Lands in Klamath County, OR—Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: Direct sale of public lands in Klamath County, Oregon (OR 53841).

SUMMARY: The following land has been found suitable and is classified for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 43 U.S.C. 1719, and section 7 of the Taylor Grazing (43 U.S.C. 315f). The land will be sold at no less than the fair market value of $10,200 .00. The land will not be offered for sale until at least 60 days after this notice.

Willamette Meridian

T. 38 S., R. 10 E.
Section 6 Lots 5, 6 and NE¼SW¼.
Containing approximately 119.76 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The lands are being offered to Kennedy Land Company, LLC using the direct sale procedures authorized under 43 CFR 2743.3–3. Direct sale is appropriate because there is no public access to the public lands and the public lands are surrounded by lands owned by the sale proponent.

The terms, conditions, and reservations applicable to this sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States in under 43 U.S.C. 945.

2. All oil and gas and geothermal resources in the land will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

3. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate, with the exception of the oil and gas and geothermal interests which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.

4. Patents will be issued subject to all valid existing rights and reservations of record.

If land identified in this notice is not sold it will be offered competitively on a continuing basis until sold.

Detailed information concerning the sale, including the reservations, sale procedures, and planning and environmental documents, is available at the Klamath Falls Field Office 2795 Anderson Ave. Building 25 Klamath Falls, OR 97603.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Klamath Falls Resource Area Office at the above address. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final action of the Department of the Interior. Questions should be directed to Tom Cottingham at the above address or by phone at 541/885–4141.

Dated: August 6, 2001.

Teresa A. Raml,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 01–28611 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–02–1610–DU]

Intent To Prepare an Amendment to the Headwaters Resource Management Plan and an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Headwaters Resource Management Plan (RMP) and an associated Environmental Assessment (EA).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an amendment to the Headwaters RMP and an associated EA. This process will develop a Travel Management Strategy that will identify a designated road and trail system to accommodate motorized and non-motorized recreation opportunities on approximately 28,000 acres in the Headwaters planning area. These lands are located east of Butte and northwest of Whitehall, in Jefferson County, Montana. The scoping comment period will commence with the publication of this notice. Formal scoping will end 30 days after publication of this notice. Comments should be received on or before the end of the scoping period at the address listed below. There has been extensive public involvement for this project over the past several years. Comments made during this process do not need to be re-submitted.

Public Involvement: The BLM is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. While public participation is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful. To assist the BLM in identifying and considering issues and concerns on the proposed action, comments on the EA should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

ADDRESSES: For further information, contact Steve Hartmann, 406–533–7671, or Ruth Miller, 406–533–7645, Butte Field Office. Send written comments to Whitetail-Pipestone EA, Butte Field Office, 106 North Parkmont, Butte,

Montana, 59701. Comments, including names and addresses of respondents, may be published as part of this EA. Individual respondents may request confidentiality; if you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: In 1995, the U.S. Forest Service and BLM issued a Notice of Intent to Prepare an EIS for the Whitetail-Pipestone analysis area. In June 1998, the BLM implemented an Emergency Closure Order restricting motorized use to existing roads and trails until a Decision is issued for the Whitetail/Pipestone area. The purpose for this closure was to prevent further user-created trails and prevent damage occurring to cultural sites and riparian areas, and to prevent erosion and the spread of noxious weeds.

In 2000, the Forest Service withdrew from the project due to budget reasons; the majority of the analysis area (84 percent) was Forest Service System lands. The BLM decided to proceed with an EA after the Western Montana Resource Advisory Council (RAC) recommended the BLM continue with the project.

Many roads and trails in the analysis area are user-created through repeated use for many years by miners, loggers, ranchers, or for recreation purposes. The proposed action would define a road and trail system and identify a method to prioritize roads and trails for maintenance, decommissioning, and new construction. Preliminary issues and management concerns identified to date are: (1) To bring recreation management into compliance with the 1984 BLM Headwaters Resource Management Plan; (2) to manage cultural properties in accordance with the National Historic Preservation Act of 1966, as amended, the Archaeological Resources Protection Act of 1979 and other appropriate Federal laws; (3) to address the changes in recreation activities during the last 10 years and to address the current and anticipated travel demands on public land in the project area; and (4) to manage recreation use while protecting cultural resources, water quality, soils, vegetation, wildlife and fisheries habitats, riparian areas, and other environmental components.

Dated: October 2, 2001.

Richard M. Hotaling,

Butte Field Manager.

[FR Doc. 01–28608 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of Proposed Planning Criteria and Public Meeting Related to the Multi-Jurisdictional Land-Use Planning Effort for the Coast Dairies Property, Santa Cruz County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of proposed planning criteria and notice of public meeting.

SUMMARY: The U.S. Department of the Interior's Bureau of Land Management (BLM) provides formal notice that, pursuant to 43 CFR 1610.2(f)(2) and 1610.4–2, the proposed planning criteria related to the Hollister Resource Management Plan Amendment are available for public review and comment. Comments will be accepted until December 31, 2001. This notice also announces a public meeting to take public comment on the proposed planning criteria for the planning process, review the draft opportunity and constraints portion of the multi-jurisdictional land-use planning effort, and discuss the project description for the plan's environmental impact documentation process. The public meeting will be held on Saturday, November 17, 2001, in Santa Cruz, California.

DATES: Comments will be accepted until December 31, 2001, and the public meeting will be held November 17, 2001, 10 a.m. to 2 p.m., Santa Cruz, CA.

ADDRESSES: Comments on the proposed planning criteria should be sent to the Field Manager, USDI Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023, ATTN: Coast Dairies Planning Project.

FOR FURTHER INFORMATION CONTACT: Rick Hanks, 831–630–5036.

SUPPLEMENTARY INFORMATION: The BLM is participating in a multi-jurisdictional land-use planning effort with the California Department of Parks and Recreation (DPR) and the Trust for Public Land (TPL), a California non-profit public corporation. The planning effort is being conducted by the TPL for the Coast Dairies Property located in northern Santa Cruz County, California. As part of this planning effort, BLM is preparing an amendment to the Hollister Resource Management Plan (RMP). The RMP amendment will be conducted in order to assess the feasibility of transferring part or all of the property to BLM, or BLM and DPR, for joint management between BLM and DPR, and to include the implementation of the final planning decision, if appropriate, under the Hollister RMP. This planning effort will include the preparation of a companion environmental impact analysis.

Preliminary Planning Criteria:

BLM planning regulations 43 CFR 1610.2(f)(2) and 1610.4–2 require preparation of planning criteria to guide development of all resource management plans or revisions. Planning criteria are the ground rules that guide and direct the development of the plan. They determine how the planning team approaches the development of alternatives and ultimately, selection of a Preferred Alternative. Planning criteria are based on standards prescribed by applicable laws and regulations; agency guidance; the result of consultation and coordination with the public, other Federal, State and local agencies and governmental entities, and Indian tribes; analysis of information pertinent to the planning area; and professional judgment. After public input analysis, they become proposed criteria, and can be added to or changed as the issues are addressed or new information is presented.

The following proposed planning criteria are provided for public review and comment:

- The Plan will establish guidance upon which the BLM will rely in managing the Coast Dairies Property cooperatively with the California Department of Parks and Recreation (DPR).
- The Plan will recognize the Coast Dairies Property as a unique natural and cultural landscape and coastline, and will give priority to actions that complement or enhance its natural and pastoral qualities.
- The planning process will encourage public participation and a collaborative process that strives to incorporate community, visitor, and other entities' needs and values while protecting the resources of the Coast Dairies Property.
- The Plan will be completed in compliance with Federal Land Policy and Management Act and all other applicable laws.

• The Plan will include an Environmental Impact Statement that will comply with National Environmental Policy Act standards and an Environmental Impact Report the will comply with the California Environmental Quality Act.

• The Plan will emphasize protection and enhancement of the biological and open space values afforded by the resources, the size, and the connectivity of the Coast Dairies Property while at the same time providing new and diverse recreational opportunities compatible with the management of existing uses and the protection of natural and cultural resources.

• Plan decisions will give priority to the protection and restoration of key resources such as stream, riparian, and watershed habitats and coastal prairies.

• The lifestyles and concerns of area residents will be recognized in the Plan.

• The Plan will recognize valid existing land use commitments within the Coast Dairies Property and review how valid existing uses are verified. The Plan may allow for other economic uses of the land, provided they are consistent with the overriding biological and open space conservation needs and objectives.

• Plan decisions will use the best available science and an adaptive management approach, i.e., continual monitoring of the Property's resources as the basis for decisions related to the land's uses.

• The planning process will protect Native American cultural resources and traditional uses.

• The Plan will address transportation and access, and will identify where better access is warranted, where access should remain as is, and where decreased access is appropriate to protect resources and manage visitation.

• Decisions in the plan will strive to be compatible with the existing plans and policies of adjacent local, State, and Federal agencies as long as the decisions are consistent with the purpose, policies, and programs of Federal laws and regulations applicable to public lands.

• The Plan will carry forward the concept of ''seamless management'' of the Coast Dairies Property between BLM, State Parks, TPL, and cooperating partners.

• The process will recognize that other Federal agencies, State and local governments have jurisdiction over resources and uses within the planning area (e. g. coastal zone), and will collaborate with these entities to develop complementary management decisions.

• The Plan will create valuable opportunities for education in the field of integrating traditional economic and recreational activities, including sustainable coastal agriculture, with programs designed to protect native biodiversity and other natural landscape values.

Planning Issues

The planning criteria are developed under the major planning issues of which the plan is intended to resolve. In accordance with 43 CFR 1610.4–1, the BLM planning process is issue-driven and BLM regulations equate land use planning with problem solving and issue resolution. A *planning issue* is ''a matter of controversy or dispute over resource management activities or land use that is well defined or topically discrete and entails alternatives between which to choose.'' This definition suggests that one or more entity is interested in a resource on public land, that entity may have different values for the resource, and that there are different ways in which to resolve the competition or demand.

A number of issues have been raised about the long-term use and protection of Property. Preliminary planning issues and management concerns have surfaced during an initial series of facilitated meetings focused on issues and concerns related to the long-term management of the Coast Dairies Property.

We expect that the major BLM issues to be addressed in the Plan will be the following:

• How will the Coast Dairies' natural and cultural resources and unique landscape values be protected?

• How will the existing uses be managed on the Coast Dairies Property?

• How will new uses be managed on the Coast Dairies Property?

• What facilities and infrastructure are needed to provide visitor services and administration of the Coast Dairies Property?

• Does the Coast Dairies Property warrant any special designation(s)?

• How will the management of the Coast Dairies Property be integrated with State Parks and the various other partners and their plans and planning processes?

Public Meeting. A public meeting related to the multi-jurisdictional land-use planning effort is being held on Saturday, November 17, 2001, at the Santa Cruz School District Office, 2931 Mission Street, Santa Cruz, California. The meeting is scheduled to begin at 10 a.m. and end by 2 p.m. The public meeting will also serve as a meeting of TPL's Community Advisory Committee on the Coast Dairies Plan. The purpose of the public meeting is to take public comment on the proposed planning criteria, review the draft opportunity and constraints portion of the multi-jurisdictional land-use planning effort, and discuss the project description for the Plan's environmental impact documentation process.

Authority: 43 U.S.C. 1711–1712.

Dated: September 27, 2001.

Herrick E. Hanks,

Assistant Field Manager.

[FR Doc. 01–28609 Filed 11–14–01; 8:45 am]

BILLING CODE 28609–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 930–01–1430–AG–241A]

Notice Identifying Lands Subject to Secretarial Order of Restoration of February 22, 1945

AGENCIES: Bureau of Land Management, Bureau of Indian Affairs, Interior.

SUMMARY: On February 22, 1945, the Secretary of the Interior issued an Order restoring to the Red Lake Band of Chippewa Indians of Minnesota (''Tribe'') certain lands that the Tribe had previously ceded to the United States for use by non-Indians. The lands restored to the Tribe by the 1945 Order are lands that were continuously held in trust by the United States since the cessions, that were never sold or otherwise disposed of, and for which the Tribe was never paid. This notice provides a partial list of the lands restored to the Tribe by the 1945 Order.

SUPPLEMENTARY INFORMATION: The Nelson Act of January 14, 1889, ch. 24, 25 Stat. 642, created and authorized a Federal commission to negotiate a cession of lands in northern Minnesota from the Red Lake Band of Chippewa Indians of Minnesota (''Tribe'') to the United States. By agreement dated July 8, 1889, 2.9 million acres of land known as ''Royce 706'' were ceded by the Tribe to the United States for the benefit of the Tribe. The Tribe retained a much smaller area known as ''Royce 707.''

On March 10, 1902, another agreement was negotiated between the Tribe and the United States for the cession of an additional 256,152 acres of land in the western portion of Royce 707. This agreement was approved by Congress under the Act of February 20, 1904, ch. 161, 33 Stat. 46. The Tribe's present-day reservation is composed of land remaining after the 1889 and 1902 cessions. Consistent with the provisions of the Nelson Act, the lands the Tribe

ceded to the United States were opened for timber sales and homesteading, and most of the lands were disposed of by the 1930s.

The Indian Reorganization Act of 1934 (''IRA''), 25 U.S.C. 461 *et seq.*, authorized the Secretary of the Interior, if he found it to be in the public interest, ''to restore to tribal ownership the remaining surplus lands to any Indian reservation [that prior to June 18, 1934 were] opened, or authorized to be opened, to sale or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States[.]'' 25 U.S.C. 463(a).

On February 22, 1945, exercising this authority granted by the IRA, the Secretary of the Interior issued an Order of Restoration (''1945 Order'') 10 FR 2448 (1945). The 1945 Order ''Restored to tribal ownership all those lands of the Red Lake Indian Reservation which were ceded by the Indians under [the Nelson Act and the Act of February 20, 1904] and which were opened for sale or entry but for which the Indians have not been paid and which now are or hereafter may be classified as undisposed of .'' 10 FR at 2449. See also Act of December 4, 1942, ch. 673, 56 Stat. 1039 (''All right, title, and interest of the Minnesota Chippewa Tribe in and to the so-called Red Lake Indian ceded lands, including any administrative reserves, is hereby declared extinguished and title thereto vested in the Red Lake Band of Chippewa Indians.'').

On May 28, 1945, the Acting Commissioner of the General Land Office forwarded to the Commissioner of the Office of Indian Affairs a list of lands that satisfied the criteria of the 1945 Order and could be returned to the Band. On April 29, 1946, and January 9, 1947, amendments to the list of lands were made. The list of May 28, 1945, and the amendments of April 29, 1946, and January 9, 1947 (collectively, the ''1945 List'') totaled approximately 157,499 acres of noncontiguous lands. The 1945 List was to have been published in the **Federal Register** to provide public notice of lands that were subject to the 1945 Order. However, shortly after the 1945 List was completed, several title and legal description problems with lands on the list were discovered, and the 1945 List was never published in the **Federal Register**.

From 1945 until 1988, the Department attempted to resolve many of the vexing title and legal description problems with the lands on the 1945 List. On December 22, 1988, the Acting State Director of the Eastern States Office, Bureau of Land Management (''BLM''), forwarded to the Bureau of Indian Affairs a comprehensive listing of lands totaling approximately 186,533 acres (''1988 List'') that the BLM had determined qualified for restoration to the Band under the 1945 Order. Many of the lands on the 1945 List were on the 1988 List. However, shortly after the 1988 List was completed, several additional title and legal description problems were discovered and the 1988 List was never published in the **Federal Register**.

In December 1997, the Department initiated a review of the lands on the 1945 and 1988 Lists. On February 2, 1999, the Department published in the **Federal Register** a list of lands totaling 89,852.06 acres which were determined to be eligible for restoration to the Tribe pursuant to the 1945 Order. 64 FR 5069 (1999).

The Department has determined through a review of BLM records that the following lands that were ceded by the Tribe to the United States in 1889 and 1902, that were held in trust by the United States subject to sale for the benefit of the Tribe, and that were not disposed of by the United States, were restored to the Tribe by the 1945 Order. This list does not represent a final list of all those lands restored to tribal ownership under the 1945 Order. Descriptions of any additional lands that were restored by the 1945 Order may be published as they are confirmed.

Description	Acreage
T. 158 N., R. 25 W.	
Sec. 4, Lot 4, S½NW¼, NE¼SW¼, NW¼SE¼	157.97
Sec. 5, Lot 1, SE¼NE¼	78.13
Sec. 7, Lots 3, 4, E½SW¼	156.24
Sec. 9, E½SE¼	80
Sec. 10, S½SW¼	80
Sec. 15, NE¼, NW¼, SW¼, N½SE¼	560
Sec. 17, NE¼, NE¼NW¼, S½NW4, N2SW4, SE¼SW¼, SE¼	560
Sec. 18, NE¼SE¼	40
Sec. 19, NE¼, E½NW¼, E½SW¼, SE¼	480
Sec. 20, NE¼, NW¼, SW¼, SE¼	640
Sec. 21, N½, SW¼, N½SE¼, SW¼SE¼	600
Sec. 22, S½NE¼, NW¼, N½SW¼, N½SE¼, SE¼SE¼	440
Sec. 23, NW¼NE¼	40
Sec. 27, S½SW¼, SW¼SE¼	120
Sec. 28, NW¼NW¼, SE¼SE¼	80
Sec. 29, N½NE¼, NW¼	240
Sec. 30, Lot 2, N½NE¼, SE¼NE¼	157.85
T. 159 N., R. 25 W.	
Sec. 7, SE¼SW¼, SW¼SE¼	80
Sec. 15, E½NW¼, NE¼SW¼, S½SW¼, SW¼SE¼	240
Sec. 17, W½SW¼, SE¼SW¼, S½SE¼	200
Sec. 18, Lots 1, 2, 3, 4, S½NE¼, E½NW¼, E½SW¼, SE¼	546.40
Sec. 19, Lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼, SE¼	627.65
Sec. 20, NW¼NE¼, N½NW¼, SW¼NW¼, SW¼, SE¼	480
Sec. 21, SE¼	160
Sec. 22, W½NE¼, NW¼, SW¼, W½SE¼	480
Sec. 27, NW¼, N½SW¼	240
Sec. 28, NE¼, NW¼, SW¼, N½SE¼, SE¼SE¼	600
Sec. 29, N½NE¼, SE¼NE¼, N½NW¼, E½SE¼	280
Sec. 30, Lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼	468.32
Sec. 32, NE¼NE¼, S½NE¼	120
Sec. 33, N½NW¼, SW¼NW¼	120
T. 158 N., R. 26 W.	
Sec. 2, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	639.32
Sec. 3, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	641.20
Sec. 4, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	639.84
Sec. 5, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	639.04
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼	624.41
Sec. 7, Lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼, SE¼	626.40
Sec. 8, NE¼, NW¼, SW¼, SE¼	640
Sec. 9, NE¼, NW¼, SW¼, SE¼	640
Sec. 10, NE¼, NW¼, SW¼, N½SE¼, SW¼SE¼	600
Sec. 11, W½NE¼, NW¼	240
Sec. 12, SW¼SW¼	40
Sec. 15, SE¼NW¼, NE¼SW¼, SW¼SE¼	120
Sec. 17, NE¼, NW¼, SW¼, SE¼	640
Sec. 18, Lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼, SE¼	626.60
Sec. 19, Lots 1, 2, NE¼, E½NW¼, NW¼SE¼	353.25
Sec. 20, NE¼, NW¼	320
Sec. 21, S½NE¼, S½NW¼	160
Sec. 22, N½NE¼, NE¼NW¼	120
T. 159 N., R. 26 W.	
Sec. 1, SE¼SE¼	40
Sec. 2, SW¼NE¼	40
Sec. 4, SW¼NW¼, NW¼SW¼	80
Sec. 5, NE¼SE¼, NW¼SE¼	80
Sec. 7, Lots 3,4, E½SW¼, W½SE¼	229.40
Sec. 13, S½SE¼	80
Sec. 14, SW¼NW¼, NE¼SW¼, SE¼SE¼	120
Sec. 17, S½SW¼, SW¼SE¼	120
Sec. 18, Lots 1, 2, 3, 4, W½NE¼, E½NW¼, E½SW¼, SE¼	538.37
Sec. 19, Lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼	464.58
Sec. 20, W½NE¼, NW¼, SW¼, SE¼	560
Sec. 21, SE¼NE¼, SW¼NW¼, SW¼, SE¼	400
Sec. 22, S½NW¼, SW¼, SE¼	400

Description	Acreage
Sec. 23, E½NE¼, SW¼, NE¼SE¼, S½SE¼	360
Sec. 24, NE¼, NW¼, SW¼, SE¼	640
Sec. 25, NE¼, NW¼, SW¼, SE¼	640
Sec. 26, NE¼, NW¼	320
Sec. 27, NE¼, NW¼	320
Sec. 28, N½NE¼, SE¼NE¼, N½NW¼	200
Sec. 29, NE¼NW¼, S½SW¼	120
Sec. 30, S½SW¼	80
Sec. 31, Lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼, SE¼	622.44
Sec. 32, NE¼, NW¼, SW¼, SE¼	640
Sec. 33, NE¼, NE¼NW¼, S½NW¼, SW¼, SE¼	600
Sec. 34, NE¼, NW¼, SW¼, SE¼	640
Sec. 35, SW¼, SE¼	320
T. 160 N., R. 26 W.	
Sec. 33, SW¼SW¼	40
T. 156 N., R. 27 W.	
Sec. 6, Lot 6	30.62
T. 159 N., R. 27 W.	
Sec. 1, SE¼SE¼	40
Sec. 12, E½SW¼, SW¼SE¼	120
Sec. 13, SE¼NE¼, E½SE¼	120
T. 156 N., R. 28 W.	
Sec. 4, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	575.16
Sec. 5, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	570.80
Sec. 7, NE¼, E½NW¼, E½SW¼, SE¼	480
Sec. 8, NE¼, NW¼, SW¼, SE¼	640
Sec. 9, NE¼, NW¼, SW¼, SE¼	640
Sec. 17, NE¼, NW¼, SW¼, SE¼	640
Sec. 18, NE¼, E½NW¼, E½SW¼, SE¼	480
Sec. 19, NE¼, E½NW¼	240
Sec. 20, NW¼	160
Sec. 21, NW¼NE¼, N½NW¼, SW¼NW¼	160
T. 160 N., R. 28 W.	
Sec. 34, SW¼NW¼, NW¼SW¼	80
T. 154 N., R 29 W.	
Sec. 2, NE¼SW¼	40
T. 159 N., R. 33 W.	
Sec. 6, Lot 6, 7, SE¼SW¼	116.61
Sec. 7, E½NE¼	80
T. 167 N., R. 34 W.	
Sec. 3, Lots 1, 2, 3, 4, S½NE¼, S½NW¼, SW¼, SE¼	643.20
Sec. 4, Lot 3, S½NE¼, SE¼NW¼, SW¼, SE¼	480.39
Sec. 5, Lots 2, 3, 4, SW¼NE¼, S½NW¼, SW¼, SE¼	560.79
T. 168 N., R. 34 W.	
Sec. 30, Lots 2, 3, 4, SW¼NE¼, SE¼NW¼, NE¼SW¼ NW¼SE¼	278.58
Sec. 31, Lots 1, 2, 3, 4, W½NE¼, E½NW¼, E½SW¼, SE¼	559.20
Sec. 33, NE¼NE¼, NW¼, N½SW¼, SE¼SW¼	320
T. 149 N., R. 35 W.	
Sec. 26, Lot 7	11.37
Sec. 27, Lot 1	3.25
T. 160 N., R. 35 W.	
Sec. 35, SE¼NW¼, NE¼SW¼, S½SW¼, SE¼	320
T. 168 N., R. 35 W.	
Sec. 10, Lot 1	12.05
T. 151 N., R. 39 W.	
Sec. 2, Lot 14	0.35
Sec. 3, Lot 10	18.40
Sec. 5, Lot 4	0.40

Containing 34,578.58 acres.

FOR FURTHER INFORMATION CONTACT: Gayle F. Gordon, State Director, Eastern States Office, or Walt Rewinski, Deputy State Director, Resources Planning, Use and Protection, Eastern States Office, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153.

Dated: September 25, 2001.

Gayle F. Gordon,

State Director, Bureau of Land Management.

[FR Doc. 01–28614 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[79% to CO–956–1420–BJ–0000–241A; 14% to CO–956–9820–BJ–CO01–241A; 7% to CO–956–1910–BJ–4667–241A]

Colorado: Filing of Plats of Survey

September 28,2001.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., September 28, 2001. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat (in three sheets) representing the dependent resurvey of a portion of the subdivisional lines, certain mineral claims, and the subdivision of sections 24 and 25, T 3 N., R. 73 W., Sixth Principal Meridian, Group 1299, Colorado, was accepted July 17, 2001.

The plat representing the dependent resurvey of a portion of the subdivisional lines, a corrective dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 11, T. 8 S., R. 69 W., Sixth Principal Meridian, Group 1267, Colorado, was accepted August 13, 2001.

The plat representing the entire record of the dependent resurvey and metes-and-bounds survey in section 2, T. 5 N., R. 71 W., Sixth Principal Meridian, Group 1283, Colorado, was accepted September 27, 2001.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of a portion of the Eight Standard Parallel North (south boundary), portions of the north boundary, the subdivisional lines, and the subdivision of certain sections, T. 33 N., R. 4 W., New Mexico Principal Meridian, Group 1281, Colorado, was accepted September 13, 2001.

This survey was requested by the Bureau of Indian Affairs for administrative purposes.

The plat representing the entire record of the limited corrective dependent resurvey designed to reflect a new tie to a recently recovered 1919 court ordered survey, T. 1 N., R. 64 W., T. 1 N., R. 64 W., Sixth Principal Meridian, Group 629, Colorado, was accepted August 6, 2001.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 26 and 27, T. 13 S., R. 73 W., Sixth Principal Meridian, Group 1280, Colorado, was accepted August 6, 2001.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 3, T. 40 N., R. 6 E., New Mexico Principal Meridian, Group 1284, Colorado, was accepted August 7, 2001.

The plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North, a portion of the subdivisional lines, and the subdivision of section 34, T. 41 N., R. 6 E., New Mexico Principal Meridian, Group 1284, Colorado, was accepted August 7, 2001.

The plat representing the entire record of the corrective dependent resurvey of certain mineral surveys, T. 3 S., R. 72 W., Sixth Principal Meridian, Group 680, Colorado, was accepted August 13, 2001.

The plat representing the entire record of the retracement of certain mineral surveys, the informative traverse of the approximate centerline of Colorado State Highway No. 72, a.k.a. the Peak to Peak Highway, the survey of the boundary of new Lot 54, and a supplemental plat of lot 57, all in the SW1/4 of section 12, T. 1 N., R. 73 W., Sixth Principal Meridian, Group 875, Colorado, was accepted August 13, 2001.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 1 S., R. 73 W., Sixth Principal Meridian, Group 1298, Colorado, was accepted August 13, 2001.

The plat representing the limited corrective dependent resurvey of a portion of the subdivisional lines and a

portion of section 9, T. 5 N., R. 71 W., Sixth Principal Meridian, Group 1224, Colorado, was accepted August 30, 2001.

The plat representing the dependent resurvey of portions of the east boundary, the subdivisional lines, a portion of Tract 65, and the subdivision of a portion of Tract 65, and a subdivision of sections 24 and 25, Fractional T. 48 N., R. 5 W., New Mexico Principal Meridian, Group 1243, was accepted September 13, 2001.

The supplemental plat creating new lots in the NW¼ of section 17, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted August 6, 2001. This plat is based upon the Dependent Resurvey Plat approved March 13, 1963, the Supplemental Plat approved November 29, 1932, the memo dated March 1, 2001, canceling M.S. 457 Saint Paul lode, the private survey of M.S. 244 Sunshine lode and M.S. 247 Atchison lode, verified by field investigation, and the official records of the following mineral claims, M.S. 619 Fortune lode, M.S. 670 Aragain lode, M.S. 691 El Dorado lode, M.S. 15051 Sailor lode, and M.S. 17058 Worlds Fair lode.

The plat representing the dependent resurvey of portions of the south and east boundaries and the subdivisional lines, and the subdivision of certain sections in T. 2 S., R. 94 W., Sixth Principal Meridian, Colorado, Group 1244, was accepted September 27, 2001.

The plat representing the dependent resurvey of portions of the east boundary and the subdivisional lines, and the subdivision of certain sections in T. 3 S., R. 94 W., Sixth Principal Meridian, Colorado, Group 1244, was accepted September 27, 2001.

These surveys and supplemental plat were requested by the Bureau of Land Management for administrative purposes.

Randall A. Bloom,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 01–28612 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489] ES–51255, Group 37, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of a portion of the east boundary, a portion of the south boundary, a portion of the subdivisional lines, a portion of the adjusted record meanders of the left bank of the Illinois River and the survey of the Kampsville Lock and Dam acquisition boundary, in Township 10 North, Range 14 West of the 3rd Principal Meridian, Illinois will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 17, 2001.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 17, 2001.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: October 25, 2001.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 01–28613 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–GJ–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–405–408 (Final) and 731–TA–899–904 and 906–908 (Final)]

Hot Rolled Steel Products From China, India, Indonesia, Kazakhstan, The Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India, Indonesia, South Africa, and Thailand of hot rolled steel products, provided for in subheadings 7208.10.15, 7208.10.30, 7208.10.60, 7208.25.30, 7208.25.60, 7208.26.00, 7208.27.00, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.00, 7208.40.60, 7208.53.00, 7208.54.00, 7208.90.00, 7211. 14.00, 7211.19.15, 7211.19.20, 7211.19.30, 7211.19.45, 7211.19.60, and 7211.19.75,[2] of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be subsidized by the Governments of India, Indonesia, South Africa, and Thailand, respectively.

The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from China, India, Indonesia, Kazakhstan, Netherlands, Romania, Taiwan, Thailand, and Ukraine of hot rolled steel products, provided for in the HTS subheadings listed above, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 13, 2000, following receipt of a petition filed with the Commission and Commerce on behalf of Bethlehem Steel Corp.; Gallatin Steel Co.; IPSCO Steel, Inc.; LTV Steel Co., Inc., National Steel Corp.; Nucor Corp.; Steel Dynamics, Inc.; U.S. Steel Group of USX Corp.; Weirton Steel Corp; and the labor union representing the organized workers at Weirton Steel Corp. known as the Independent Steelworkers Union. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of hot rolled steel products from China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine were being subsidized and/or sold at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. 1671b(b) and 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 10, 2001 (66 FR 23950). The hearing was held in Washington, DC, on July 17, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 13, 2001. The views of the Commission are contained in USITC Publication 3468 (November 2001),

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Certain hot-rolled flat-rolled carbon-quality steel covered by these investigations, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel, may also enter under the following tariff numbers: 7225.11.00, 7225.19.00, 7225.30.30, 7225.30.70, 7225.40.70, 7225.99.00, 7226.11.10, 7226.11.90, 7226.19.10, 7226.19.90, 7226.91.50, 7226.91.70, 7226.91.80, and 7226.99.00. Subject merchandise may also enter under 7210.70.30, 7210.90.90, 7211.14.00, 7212.40.10, 7212.40.50, and 7212.50.00.

entitled ''Hot Rolled Steel Products from China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine: Investigations Nos. 701–TA–405–408 (Final) and 731–TA–899–904 and 906–908 (Final).''

Issued: November 9, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–28664 Filed 11–14–01; 8:45 am]

BILLING CODE 7020–02–P'

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 9, 2001, a proposed consent decree in *United States, et al.,* v. *East Lake Management and Development Corp.,* Civil Action No. 01 C 7581, and on October 11, 2001, a proposed consent decree in *United States, et al.,* v. *Wolin-Levin, Inc.,* Civil Action No. 01 C 7580, were lodged with the United States District Court for the Northern District of Illinois.

The consent decrees settles claims against management agents of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in each of its complaints that the defendants failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under both consent decrees, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, and to perform lead-based paint abatement. In addition, under each decree, each defendant will pay a penalty of $25,000 to be divided among the United States, the State of Illinois, Cook County, and the City of Chicago. Lastly, each of the consent decrees calls for the performance of Child Health Improvement Projects (''CHIPs''), which are projects proposed by HUD to address issues of childhood lead poisoning in Chicago. Wolin-Levin, Inc., will contribute $100,000 as a CHIP to the City of Chicago to be used for additional lead-based paint abatement activities in Chicago, primarily replacement of windows. East Lake Management and Development Corp. will contribute $77,000 as a CHIP to community-based health centers to perform blood lead level screening of children and create educational programs in low income areas in South Chicago and Cook County. The defendants manage over 225 buildings with over 10,000 residential units.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.,* v. *Wolin-Levin, Inc.,* D.J. #90–11–2–06829/1, and *United States, et al.,* v. *East Lake Management and Development Corp.,* D.J. #90–5–2–1–07120.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW, Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy please refer to the reference case and enclose a check in the amount of $12.25 (25 cents per page reproduction costs), payable to the Consent Decree Library, for the consent decree in *United States, et al.,* v. *Wolin-Levin, Inc.,* D.J. #90–11–2–06829/1, and $14.00 (25 cents per page reproduction costs), payable to the Consent Decree Library, for the consent decree in *United States, et al.,* v. *East Lake Management and Development Corp.,* D.J. #90–5–2–1–07120.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28567 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement and Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 6, 2001, a proposed Settlement Agreement and Consent Decree (''Decree'') in *United States and State of Colorado* v. *Robert Friedland,* Civil No. 96–N–1213, was lodged with the United States District of Colorado. The United States and State of Colorado filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act for recovery of costs incurred by the United States and State of Colorado in responding to releases of hazardous substances at the Summitville Mine Superfund Site near Del Norte, Colorado.

Pursuant to the proposed Decree, defendants Aztec Minerals Corporation, South Mountain Minerals Corporation, and Gray Eagle Mining Corporation will pay $192,943 to the United States and State of Colorado and transfer certain properties to the United States to resolve the claims of the governments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to, United States and State of Colorado v. Robert Friedland, Civil No. 96–N–1213, and D.J. Ref. #90–11–3–1133B.

The Decree may be examined at the office of the U.S. Department of Justice, Environmental Enforcement Section, 999 18th Street, Suite 945, North Tower, Denver, Colorado; at U.S. EPA Region 8, Office of Regional Counsel, 999 18th Street, Suite 300, South Tower, Denver Colorado. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28564 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act *Resolving U.S. v. IBP Inc. (D. Nebraska)*

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 12, 2001, the United States, on behalf of the United States Environmental Protection Agency (''EPA'') lodged with the United States District Court for the District of Nebraska a Consent Decree resolving the United States' claims against defendant the IBP, Inc. in this action. This Consent Decree, together with the Partial Consent Decree for Interim Injunctive Relief entered in 2000, will fully resolve the United States' Complaint filed on January 12, 2000 in the District of Nebraska, alleging violations by IBP, Inc. [sic] (''IBP'') of the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1311 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.;* and the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 *et seq.,* at its Dakota City Nebraska slaughterhouse facility. IBP is the world's largest producer of fresh beef, pork, and related products. The Dakota City facility is IBP's largest plant.

Under the Consent Decree, IBP will pay $4.1 million in civil penalties, and also will spend approximately $10 million in improvements to resolve its violations at the Dakota City facility and for additional projects to further reduce its discharge of pollutants to the air and water. Specifically, IBP has agreed to construct additional wastewater treatment systems at the complex to dramatically reduce its discharges of ammonia to the Missouri River. The systems to be installed by IBP exceed those required to meet the requirements of IBP's current discharge permit, issued in 1995, and are designed to allow the company to meet the anticipated stricter requirements of a new permit to be issued by EPA under the Clean Water Act. IBP further agrees not to contest EPA's authority to issue that permit. IBP also will expand a water treatment project designed to strip its incoming well water of sulfates and ordered under the prior Partial Consent Decree, thereby further reducing the plant's generation of hydrogen sulfide. The State of Nebraska is joining the case as a co-plaintiff on the CAA claims and will share $1.85 million of the penalty, which will be directed to the local school system.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *IBP,* DOJ Ref. #90–11–3–06517/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1600 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506; the Region 7 Office of the Environmental Protection Agency, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, United States Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $26.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28565 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 16, 2001, a proposed consent decree in *United States* v. *John Evans Sons, Inc., and Ametek, Inc.*, Civ. Action No. 01–5262 (E.D. Pa.) was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States is seeking injunctive relief and response costs pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the North Penn Area Six Superfund Site (''Site''), which consists of a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against John Evans Sons, Inc., and Ametek, Inc. (''Settling Defendants'') in connection with the Site. Settling Defendants will perform part of the remedial action selected by the U.S. Environmental Protection Agency, with projected costs of $615,475.000. Settling Defendants also will reimburse the United States $79,131.25 in past response costs and will pay for future response costs. The consent decree includes covenants not to sue by the United States under section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 and should refer to *United States* v. *John Evans' Sons, Inc. and Ametek, Inc.,* D.J. Ref. 90–11–2–06024/6.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19016, and at U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $23.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 01–28570 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on September 26, 2001, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *National Metal Finishing Corporation,* Civil Action No. 01–30175–FHF. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that National Metal Finishing Corporation (National) violated the Clean Air Act, 42 U.S.C. 7412, *et seq.,* at its decorative chromium plating facility in Springfield,

Massachusetts. The violations involve EPA requirements for reporting, notification and work practice standards for chromium and halogenated solvent emissions. Under the terms of the Consent Decree, National will pay a $29,729 civil penalty and perform a supplemental environmental project that will reduce water pollution in the Springfield area and the Connecticut River.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044, and should refer to *United States* v. *National Metal Finishing Corporation,* D.J. Ref. 90–5–2–1–06723.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 310, 1550 Main Street, Springfield, Massachusetts, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $7.75 payable to the ''Consent Decree Library.''

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01–28569 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *NCR Corporation and Allfirst Financial Center, N.A.,* Civil Action No. 01:593–SLR, was lodged with the United States Court for the District of Delaware on August 31, 2001.

The proposed partial consent decree pertains to the NCR Superfund Site (''Site''), located near Millsboro, Delaware. The United States has sued two defendants pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, to recover past and interim response costs incurred at the Site. The two defendants have agreed to a settlement memorialized in the consent decree. In the settlement, the defendants agree to pay $769,000 for reimbursement of past response costs and $29,500 for interim response costs expended by the Environmental Protection Agency in its oversight of the cleanup at the Site. In addition, the defendants agree to reimburse $3,769.99 to the state environmental agency Delaware Department of Natural Resources and Environmental Control (''DNREC'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *NCR Corporation et al.,* DOJ Ref. #90–11–2–749/1.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE; the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28568 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on October 4, 2001, a proposed consent decree in *United States, et al.,* v. *Oak Park Real Estate, Inc., et al.,* Civil Action No. 01 C 7582, was lodged with the United States District Court for the Northern District of Illinois.

The consent decree settles claims against management agents and owners of several residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. § 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in its complaint that each defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, defendants have agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States and the State of Illinois administrative penalties in the amount of $40,000. The defendants manage and/or own 25 buildings with over 650 residential units.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.,* v. *Oak Park Real Estate, Inc., et al.,* D.J.#90–5–1–1–07056.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW., Room 3206, Washington, DC 20410, (202) 755–1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–28566 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; contacts concerning INS practitioner fraud pilot program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 14, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Approved of a new information collection.*

(2) *Title of the Form/Collection:* Contacts Concerning INS Practitioner Fraud Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–1046. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The INS will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60,000 responses at 52 minutes (0.866) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection;* 51,960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 7, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–28556 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Biological Information/Program Eligibility Questionnaire and Practitioner Fraud Pilot Program Initial Interview Form.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Act of 1995. The information collection was previously published in the **Federal Register** on August 16, 2001 at 66 FR 43030. The notice requested emergency OMB review and processing and allowed for a 60-day public review and comment period. No public comment was received by the INS.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 17, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Approval of a new information collection.

(2) *Title of the Form/Collection:* Biographical Information/Program Eligibility Questionnaire and Practitioner Fraud Pilot Program Initial Interview Form.

(3) *Agency form number, if any, and the applicable component of the Department Justice sponsoring the*

collection: Forms I–908 and I–909. Office of Enforcement, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the INS to identify unscrupulous immigration practitioners who intentionally defraud undocumented alien victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building 601 D Street, NW., Suite 1600, Washington, DC 20004.

Dated: November 7, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–28555 Filed 11–14–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following three information collections: (1) Comparability of Current Work to Coal Mine Employment (CM–913), Coal Mine Employment Affidavit (CM–918), Affidavit of Deceased Miner's Condition (CM–1093); (2) LS–265, Certification of Funeral Expenses; and (3) WH–530, Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration.

DATES: Written comments must be submitted to the office listed in the addressee section below within January 14, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov.*

SUPPLEMENTARY INFORMATION:

CM–913—Comparability of Current Work to Coal Mine Employment

CM–918—Coal Mine Employment Affidavit

CM–1093—Affidavit of Deceased Miner's Condition

I. Background

The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 *et. seq.*, provides for the payment of benefits to coal miners who have contracted black lung disease as a result of coal mine employment, and their dependents and survivors. Once a miner has been identified as having performed non-coal mine work subsequent to coal mine employment, the miner or the miner's survivor is asked to complete a CM–913 to compare coal mine work to non-coal mine work. This employment information, along with medical information, is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment. The CM–918 is an affidavit used to gather coal mine employment evidence only when primary evidence, such pay stubs, W–2 forms, employer and union records, and Social Security records are unavailable or incomplete. The CM–1093 is an affidavit form for recording lay medical evidence, used in survivors' claims in which evidence of the miner's medical condition is insufficient.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to determine eligibility for black lung benefits.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Comparability of Current Work to Coal Mine Employment; Coal Mine Employment Affidavit; Affidavit of Deceased Miner's Condition.

OMB Number: 1215–0056.

Agency Numbers: CM–913, CM–918, CM–1093.

Affected Public: Individuals or households.

Frequency: On occasion.

Form	Total Responses	Time per Response (in minutes)	Burden Hours
CM–913	1,500	30	750
CM–918	100	10	17
CM–1093	100	20	33

Total Respondents/Responses: 1,700.
Estimated Total Burden Hours: 800.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $1,700.

SUPPLEMENTARY INFORMATION:

LS–265—Certification of Funeral Expenses

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The Act provides that reasonable funeral expenses not to exceed $3,000 shall be paid in all compensable death cases. The LS–265 has been provided for use in submitting the funeral expenses for payment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to certify the amount of funeral expenses incurred in the case.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Certification of Funeral Expenses.
OMB Number: 1215–0027.
Agency Number: LS–265.
Affected Public: Businesses or other for-profit.
Frequency: On occasion.
Total Annual Respondents/Responses: 195.
Time Per Response: 15 minutes.
Estimated Total Burden Hours: 49.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $72.15.

SUPPLEMENTARY INFORMATION:

WH–530—Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration

I. Background

Section 101(a) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. Further, section 101(b) of MSPA provides that a farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a farm labor contractor.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to issue, after appropriate investigation and review, a farm labor certificate of registration, including a certificate of registration as an employee of a farm labor contractor, to any person who has filed with the Secretary a written application for a certificate.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration.
OMB Number: 1215–0037.
Agency Number: WH–530.
Affected Public: Businesses or other for-profit; Farms.
Frequency: On occasion (initial application); biennially (renewal).
Total Annual Respondents/Responses: 9,200.
Time Per Response: 30 minutes.
Estimated Total Burden Hours: 4,600.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $2,213.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 8, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 01–28605 Filed 11–14–01; 8:45 am]

BILLING CODE 4510–CK–P

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Meeting

Merit Systems Protection Board

ACTION: Notice.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552(b)), notice is hereby given that the Merit Systems Protection Board is holding a closed meeting on November 14, 2001, at 2 p.m., in the Board's conference room at 1615 M Street, NW., 6th Floor, Washington, DC 20419. In calling the meeting, the Board determined that Board business required its consideration of the agenda item on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered by authority of subsections (c)(10) and (c)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(10) and 5 U.S.C.b(c)(2).

Matter to Be Considered:

Briefing of the Board members on issues in the matter of *Mohammed Yunus v. Department of Veterans Affairs,* and *Phillip A. Geyer v. Department of Justice.*

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shannon McCarthy or Matthew Shannon, Office of the Clerk of the Board, (202) 653–7200.

Dated: November 9, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–28691 Filed 11–9–01; 4:35 pm]

BILLING CODE 7400–01–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Teleconference

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ teleconference for NCD's Youth Advisory Committee. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Youth Advisory Committee: The purpose of NCD's Youth Advisory Committee is to Provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Date: December 6, 2001, 4 p.m. EST.

For Youth Advisory Committee Information, Contact: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F. Street NW., Suite 850, Washington, DC 2004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's's diversity and representing a variety of disabling conditions from across the United States.

Opening Meeting: This advisory committee meeting/teleconference of the National Council on Disability will be open to the public. Those interested in participating in the meeting/ teleconference should contact the appropriate staff member listed above. Due to limited resources, only a few telephone lines will be available.

Records will be kept of all Youth Advisory Committee meetings/ teleconferences and will be available after the meeting for public inspection of the National Council on Disability.

Signed in Washington, DC., on November 9, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–28615 Filed 11–14–01; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005]

Waste Control Specialists, LLC (WCS); Order to Exempt Waste Control Specialists, LLC From Requirements Relative to the Possession of Special Nuclear Material (SNM)

I

In a letter dated September 25, 2000, Waste Control Specialists, LLC (WCS) requested an exemption for certain U.S. Nuclear Regulatory Commission (NRC) regulations relative to the possession of special nuclear material (SNM). A license pursuant to 10 CFR part 70 issued by NRC is required for quantities of SNM in excess of the limits in 10 CFR 150.11. WCS is requesting an exemption from licensing under part 70 for possession of greater than the part 150 SNM limits. NRC issued a similar exemption to Envirocare of Utah, Inc. in May 1999.

WCS operates a low level waste (LLW) and mixed waste (MW) storage and treatment facility in Andrews County, Texas. The facility also disposes of hazardous waste. Texas is an NRC Agreement State. This facility is licensed by the State of Texas Department of Health (TDH) under a 10 CFR Part 30 equivalent radioactive materials license (RML). The facility is also licensed by the Texas Natural Resource Conservation Commission (TNRCC) to treat and dispose of hazardous waste. In 1997, WCS began accepting Resource Conservation and Recovery Act (RCRA) and Toxic Substance Control Act (TSCA) wastes for treatment, storage, and disposal. Later that year, WCS received a license from TDH for treatment and storage of MW and LLW. The MW and LLW streams may contain quantities of SNM.

WCS receives wastes by rail and truck. All of the waste received by truck and some of the waste received by rail are in containers. These containers vary in size from 55-gallon drums to 70 cubic yard intermodal containers. Bulk waste received by rail is placed in large (90 cubic yard) roll-off containers. Separate storage and treatment facilities exist for the RCRA and TSCA waste and the MW and LLW. Storage of the MW and LLW occurs in two buildings and an adjacent outside area. WCS treats mixed waste using several technologies including (1) chemical stabilization, (2) shredding, (3) deactivation, (4) neutralization, and (5) macro encapsulation with cement. WCS is also permitted by TDH to perform compaction using a Ramflat compactor. WCS is also considering adding a solvated electron technology (SET) system and macro encapsulation using low density polyethylene. The SET is authorized in the TDH license for pilot testing. The applicable hazardous waste regulations require bench scale treatability studies prior to treating the bulk of the waste.

II

Pursuant to 10 CFR 70.14, ''the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and

will not endanger life or property or the common defense and security and are otherwise in the public interest.''

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements in 10 CFR part 70. Section 10 CFR 150.10 exempts persons in Agreement States, who possess SNM in quantities not sufficient to form a critical mass, from Commission imposed licensing requirements and regulations. The method for calculating a quantity of SNM not sufficient to form a critical mass is set forth in 10 CFR 150.11. Therefore, WCS is currently limited by NRC regulation to possess SNM in quantities set out in 10 CFR 150.10 and 150.11. The State of Texas has a similar possession limit in the license it issued to WCS. WCS requested the exemption because it expects that the current limits set forth in 10 CFR part 150 will severely impact its ability to compete in the mixed waste treatment market. The exemption proposed to apply concentration-based limits rather than mass-based limits.

III

The staff believes that the appropriate action is to issue WCS an exemption. Specifically, WCS would be exempted from the requirements of 10 CFR part 70, including the requirements for an NRC license in 10 CFR 70.3, for SNM within the restricted area at WCS's site, provided that:

1. Concentrations of SNM in individual waste containers and/or during processing must not exceed the following values:

SNM isotope	Operational Limit (gram SNM/ gram waste)	Measurement Uncertainty (gram SNM/ gram waste)
U-233	4.7E–04	7.1E–05
U-235 (10 percent enriched)	9.9E–04	1.5E–04
U-235 (100 percent enriched)	6.2E–04	9.3E–05
Pu-239	2.8E–04	4.2E–05
Pu-241	2.2E–04	3.2E–05

When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

$$\frac{\text{U-233 conc}}{\text{U-233 limit}} + \frac{\text{100wt\%U-235 conc}}{\text{100wt\%U-235 limit}} + \frac{\text{10wt\%U-235 conc}}{\text{10wt\%U-235 limit}} + \frac{\text{Pu-239 conc}}{\text{Pu-239 limit}} + \frac{\text{Pu-241 conc}}{\text{Pu-241 limit}} \leq 1$$

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms.

2. Waste must not contain ''pure forms'' of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (e.g., a pallet of drums, a B–25 box). By ''pure forms,'' it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc. do not contain other elements. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.

3. Waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined and documented by the generator, based on process knowledge, or testing.

4. Waste packages must not contain highly water soluble forms of SNM greater than 350 grams of U-235 or 200 grams of U-233 or 200 grams of Pu. The sum of the fractions rule will apply for mixtures of U-233, U-235, and Pu. When multiple containers are processed in a larger container, the total quantity of soluble SNM shall not exceed these mass limits. Highly soluble forms of SNM include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, uranyl sulfate, plutonium chloride, plutonium fluoride, and plutonium nitrate. The presence of the above materials will be determined and documented by the generator, based on process knowledge or testing.

5. Processing of mixed waste containing SNM will be limited to chemical stabilization using the following chemicals: ferrous sulfate, ferrous sulfide, portland cement, sodium hypochlorite, sodium tripoly-phosphate, Metaplex II (attapulgite-type clay), hexaderyl mescaptan, lime, sodium hydroxide, Metaplex III, hydrogen peroxide, sodium metabisulfate, sodium sulfide, and sodium hydrosulfide.

Prior to shipment of waste, WCS shall require generators to provide a written certification containing the following information for each waste stream:

a. *Waste Description.* The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

b. *Waste Characterization Summary.* The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

c. *Uniformity Description.* A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

d. *Manifest Concentration.* The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must

describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

WCS shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that WCS has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, WCS shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. WCS shall retain this information as required by the State of Texas to permit independent review.

At the time waste is received, WCS shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

WCS shall require generators to sample and determine the SNM concentration for each waste stream at the following frequency: (a) If the concentrations are above one tenth the SNM limits (Condition 1), once per 600 kg, (b) if the concentrations are below one tenth and greater than one hundredth of the SNM limits, once per 6,000 kg, and (c) if the concentrations are below one hundredth of the SNM limits, once per 60,000 kg.

If the waste is determined to be not homogeneous (i.e., maximum, which cannot exceed the limits in Condition 1, and minimum testing values performed by the generator are greater than five times the average value), the generator shall sample and determine the SNM concentration once per 600 kg thereafter, regardless of SNM concentration. In this case, samples shall be a composite consisting of four uniformly sampled aliquots.

The certifications required under these conditions shall be made in writing and include the statement that the signer of the certification understands that this information is required to meet the requirements of the U.S. Nuclear Regulatory Commission and must be complete and accurate in all material respects.

7. WCS shall sample and determine the SNM concentration for each waste stream at the following frequency: (a) If the concentrations are above one tenth the SNM limits (Condition 1), once per 1,500 kg for the first shipment and every 6,000 kg thereafter, (b) if the concentrations are below one tenth and greater than one hundredth of the SNM limits, once per 20,000 kg for the first shipment and every 60,000 kg thereafter, and (c) if the concentrations are below one hundredth of the SNM limits, once per 600,000 kg. This confirmatory testing is not required for waste to be disposed of at DOE's WIPP facility.

If the waste is determined to be not homogeneous (i.e., maximum and minimum testing values performed by the generator are greater than five times the average value), WCS shall sample and determine the SNM concentration once per 1,500 kg for the first shipment and every 6,000 kg thereafter, regardless of SNM concentration. In this case, samples shall be a composite consisting of four uniformly sampled aliquots.

8. WCS shall notify the NRC, Region IV office within 24 hours if any of the above Conditions are violated. A written notification of the event must be provided within 7 days.

9. WCS shall obtain NRC approval prior to changing any activities associated with the above Conditions.

The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principal emphasis of part 70 is criticality safety and safeguarding SNM against diversion or sabotage. Staff considers that criticality safety can be maintained by relying on concentration limits, under the conditions specified above. Safeguarding SNM against diversion or sabotage is not considered a significant issue because of the diffuse form of the SNM in waste meeting the above conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11, thereby assuring the same level of protection.

The Commission concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts. Accordingly, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the WCS facility is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission hereby grants this exemption subject to the above conditions. The exemption will become effective after the State of Texas has incorporated the above conditions into WCS's RML.

Pursuant to the requirements in 10 CFR part 51, the Commission has published an EA for the proposed action wherein it has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. Copies of the EA and SER are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852.

Dated at Rockville, Maryland, this 30th day of October 2001.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–28661 Filed 11–14–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 28, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Electric Power Research Institute proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, November 28, 2001—8:30 a.m. until the conclusion of business.

The Subcommittee will: (1) Continue review of the NRC Office of Nuclear Regulatory Research activities pertaining to thermal-hydraulic phenomena in support of the ACRS annual report to the Commission on the NRC Safety Research Program, and (2) discuss a proposal by the licensees of the Point Beach and Beaver Valley plants to perform more-realistic analysis for containment design-basis accidents using the MAAP code. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the

concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Fauske and Associates, Inc., and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 8, 2001.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 01–28660 Filed 11–14–01; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2001. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2001.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2001 is 4.52 percent (i.e., 85 percent of the 5.32 percent yield figure for October 2001).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 2000 and November 2001.

For premium payment years beginning in	The required interest rate is
December 2000	4.91
January 2001	4.67
February 2001	4.71
March 2001	4.63
April 2001	4.54
May 2001	4.80
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2001 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of November 2001.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 01–28622 Filed 11–14–01; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Plan for Secure Postage Meter Technology

AGENCY: Postal Service.

ACTION: Notice of final plan.

SUMMARY: The Postal Service has already completed the first phase of a plan to remove insecure postage meters from use with the decertification of mechanical postage meters. The second phase of the plan, the retirement of manually reset electronic meters, is now underway in accordance with the notice published in the **Federal Register** on December 13, 2000 (Volume 65, Number 240, page 77934–77938). This notice publishes the final plan for phases III and IV of the Postal Service's Plan for Secure Postage Meter Technology. There may be additional phases of the plan beyond phase IV. Upon completion of all phases of the plan, meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue. These new meters also provide advanced customer features and convenience.

DATES: This plan is effective November 15, 2001.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson by fax at (703) 292–4073.

SUPPLEMENTARY INFORMATION: In 1995, the Postal Service, in cooperation with all authorized postage meter manufacturers, began a phaseout of all mechanical postage meters because of identified cases of indiscernible tampering and misuse. Postal Service revenues were proven to be at serious risk. The completion of this effort, which resulted in the withdrawal of 776,000 mechanical meters from service, completed phase I of the Plan for Secure Postage Meter Technology. Phase II of the plan, the retirement of electronic meters that are manually set by Postal Service employees, is now being implemented. Phases III and IV of the plan are described in the current notice.

The proposed plan for phases III and IV, describing the retirement of meters with nondigital or letterpress indicia, was published for comment in the **Federal Register**, August 21, 2000 (Vol. 65, No. 163, page 50723–50724). The Postal Service requested that comments on the proposed plan be submitted by October 5, 2000. The Postal Service received four written comments from postage meter manufacturers by the closing date. One comment, from an industry association, was received after the closing date but was still considered in our response.

The Postal Service gave thorough consideration to the comments, modified the proposed plan as appropriate, and now announces the adoption of the final plan. It is the Postal Service's intent to make this an orderly process that minimizes impacts on meter users and the meter manufacturers. Publication of the final plan for phases III and IV gives both postage meter manufacturers and postage meter users ample time to make timely and intelligent decisions on the selection of postage meters and associated mailing equipment.

The Postal Service's evaluation of the comments follows. The final plan, as revised, follows the discussion of comments. The comments are organized to reflect common topics addressed by the commenters.

Discussion of Comments

1. Timetable for Meter Retirement

Manufacturers questioned the timetable for withdrawal of letterpress meters, suggested various alternatives, and requested a ''date certain'' by which meters already placed with customers must be removed from service.

The Postal Service reviewed the various suggestions and revised the withdrawal timetable to ensure that all users will have appropriate technology available to meet their mail processing needs. The plan adds dates for customer notification to ensure ample time for customers to make timely and intelligent decisions on replacement meters and adds a date by which meters already placed with customers must be removed from service.

2. Realizing Return on Investment in Meter Technology

Meter manufacturers and the mailing industry association expressed concern that the early retirement of meters using letterpress technology would prevent them from receiving adequate return on their investments. The comments noted that the proposal must be sensitive to the requirements of users of high-volume/high-speed meters and the unique relationship these mailers have with the Postal Service, since these users tend to make longer-term determinations regarding postage and metering technology needs.

The retirement plan schedule gives customers 5 years from the date of notification to the date that nonenhanced, letterpress (phase III) meters already placed must be removed from service. Any newly placed phase III meter placed in accordance with the schedule may remain in service for at least 4 years before it must be removed. Users of enhanced letterpress (phase IV) meters have 5½ years from the date of notification to the date that phase IV meters already placed must be removed from service. Any newly placed phase IV meter placed in accordance with the schedule may remain in service for at least 4½ years before it must be removed. For manufacturers, publication of this notice provides at least 5 years to recover investments on nonenhanced letterpress technology, and over 7 years to recover investments on enhanced letterpress metering technology before the units must be removed from service.

3. Security of Meters

One industry association asked for information to support the Postal Service claim of increased security benefits from postage meters that have a timeout feature and use digital indicia, and for information on the actual risk to Postal Service revenue from meters that print indicia using letterpress technology, with or without a timeout feature.

The presence of a feature that disables letterpress meter operations when certain preprogrammed criteria are met increases its security but does not compensate for the insecurity inherent in letterpress technology. The printing die used for letterpress indicia is open to tampering in ways that the process used to print digital indicia is not. Digital printing technology also enables the printing of unique indicia, which permits the Postal Service to establish enhanced processes to identify counterfeit indicia.

4. Communications with Meter Users

One postage meter manufacturer was concerned about inadequate, misleading, or confusing communications to meter users, and suggested that phases III and IV be combined to avoid possible confusion that might arise from having multiple retirement dates.

The retirement schedule for phase III meters will differ from that for phase IV meters. The Postal Service is working to ensure the integrity of the meter retirement process with expeditious, accurate, and informative communications to postage meter users, Postal Service employees, and postage meter manufacturers, and it expects manufacturers to provide accurate, clear, and timely information to their customers.

5. Multiple Dates for Completing the Retirement of Letterpress Meters

One manufacturer suggested that the plan be sensitive to the needs of those mailers with multiple meters with different lease expiration dates.

The plan provides for one date by which all nonenhanced letterpress meters must be withdrawn from service, and one date by which all enhanced letterpress meters must be withdrawn from service.

6. Increased Cost

One industry association expressed concern with the increased cost of printing digital postage indicia compared with the cost of preparing mail using letterpress metering technology, as well as increased equipment costs, especially the need for new mailing equipment if the new digital meter is incompatible with the mailer's existing mailing equipment.

The Postal Service recognizes that there may be a slight increase in cost initially but believes this increase in cost will diminish as competition increases. Any additional costs for users are determined on a manufacturer-by-manufacturer basis and not by the Postal Service. Customers have choices in a competitive meter marketplace if they are not satisfied with the costs of a given manufacturer's technology. Individual

meter manufacturers can provide detailed information about their products and services.

7. Classification of Meter Models as Nonenhanced or Enhanced

Some meter manufacturers questioned whether specific meter models would be classified as nonenhanced (phase III) or enhanced (phase IV) based on the presence of a feature that disables meter operations when certain preprogrammed criteria are met.

These issues involve company proprietary information. The Postal Service responded directly to the manufacturers concerned.

8. How the Retirement Plan for Letterpress Meters Will Be Enforced

One manufacturer asked about the enforcement of the retirement plan for letterpress meters.

After the date by which a meter must be withdrawn from service, the Postal Service, in coordination with the meter manufacturers, will prevent postage resets, and manufacturers will be required to take possession of the meter.

Final Postal Service Plan for the Retirement of Letterpress Postage Meters

Phases III and IV of the Postal Service proposed Plan for Secure Postage Meter Technology affect nondigital, or letterpress, meters that are remotely reset under the Computerized Meter Resetting System (CMRS). If such a meter has a feature that automatically disables the meter if it is not reset within a specified time period or when certain preprogrammed criteria are met, it is called an enhanced meter. Phase III of the proposed plan requires that the users of nonenhanced CMRS letterpress meters are notified of the schedule for the retirement of their meters by December 31, 2001. The placement of nonenhanced CMRS letterpress meters must cease by December 31, 2002, and these meters must be off the market by December 31, 2006. Phase IV of the proposed plan requires that the customers of enhanced CMRS letterpress meters are notified of the schedule for the retirement of their meters by June 30, 2003. The placement of enhanced CMRS letterpress meters must cease by June 30, 2004, and these meters must be off the market by December 31, 2008.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–28553 Filed 11–14–01; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Advance notice of amendment to an existing system of records.

SUMMARY: The Postal Service proposes to amend Postal Service Privacy Act System of Records 120.090, Personnel Records—Medical Records. The proposed amendments reflect the collection, maintenance, and storage of candidate medical assessment records for Postal Service employment. The system is a Web-based application with a secure user-friendly interface that allows nontechnical medical staff to collect, maintain, and store post-offer candidate medical assessment records. The system will ensure Human Resources staff has ready access to ability-to-work information about these candidates. This notice amends the system location, categories of individuals covered by the system, categories of records in the system, storage, retrievability, safeguards, and retention and disposal sections to reflect the new process for collection, maintenance, and storage of medical assessment records. Other minor changes are included to bring the notice into conformity with current practices.

DATES: This proposal will become effective without further notice on December 17, 2001, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Mail or deliver written comments to the Records Office, U.S. Postal Service, Room 5821, 475 L'Enfant Plaza, SW., Washington, DC 20260–5202. You can view or make copies of all written comments between 8 a.m. and 4 p.m., Monday through Friday, at the same address.

FOR FURTHER INFORMATION CONTACT: Susie Travers, Records Office, 202–268–3362.

SUPPLEMENTARY INFORMATION: The electronic Medical Assessment Program (eMAP) is a Web-based application that streamlines the manual process of collecting, analyzing, maintaining, and storing medical data on candidates who have been offered employment with the Postal Service.

Authorized Human Resources personnel with the appropriate access authorization will use the eMAP application to enter the candidate information into the centralized eMAP database, creating a candidate record. Authorized Human Resources personnel will then contact the candidate to schedule the assessment at an authorized Medical Assessment Program (MAP) site. Authorized medical personnel at MAP sites will use the eMAP application to display a list of candidates required to appear at the assigned MAP site office for a medical assessment. When the candidate appears at the MAP site office, the candidate's identity will be verified and he or she will be given the Medical History Questionnaire and answer sheet for completion. The answer sheet will be an optical mark recognition (OMR) form that the candidate can easily use to indicate his or her responses to the questionnaire by shading in the appropriate oval on the form. When the candidate completes the questionnaire, the authorized MAP site medical personnel will scan the form using an OMR scanner. The candidate's responses will be recorded automatically by the eMAP application, and the results will be immediately displayed to the authorized MAP site medical personnel for verification of a successful scan. The results from a successful scan will be stored in a permanent centralized eMAP database that will use a unique encrypted code for candidate identification. The eMAP application will generate and record timestamp information as the candidate proceeds through the medical assessment process and will produce printed letters as needed. Authorized eMAP users will be able to generate standard, predefined printed reports at the MAP site, district, area, and national levels. Authorized application users will be allowed to easily add, annotate, or inactivate candidate assessment records. Candidate inactivated records will remain in the database. A copy of each candidate's medical information will be printed and retained in the medical office. Candidate medical information includes the medical history questionnaire; answer sheet containing the candidate's responses; copy of job application, job description and functional requirements; and supporting medical information acquired in the process of reaching a medical determination of ability to work. If the candidate is hired, the candidate's medical information is retained in the employee medical file (EMF).

Candidate and response data obtained from sites currently using the existing Medical History Questionnaire with the stand-alone application (MAQ or MAP version 1) will be imported into the eMAP database, one time only, using a utility that automates the process with minimal user interaction. After the

MAQ data are imported into eMAP, MAP sites will no longer use MAP version 1.

The proposed amendments are not expected to diminish individual privacy rights. Only authorized users who have an official need-to-know in the performance of their job functions will be allowed access to the application or will have the ability to review the medical information. Access to computer data will be restricted through the use of computer password security and data encryption. Printed copies of questionnaires and medical information will be stored in locked file cabinets with restricted access.

Pursuant to 5 U.S.C. 552a(e)11, interested persons are invited to submit written data, views, or arguments on this proposal. A report of the amendments has been sent to the Congress and to the Office of Management and Budget for their evaluation. It is proposed that the system description be amended as follows:

USPS 120.090

SYSTEM NAME:

Personnel Records—Medical Records, 120.090.

SYSTEM LOCATION:

[CHANGE TO READ]

Postal Service medical facilities and designee offices, Postal Service Corporate Health and Fitness Center (L'Enfant Plaza location only), and Postal Service personnel offices (rosters of examinees scheduled for medical assessment only).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ]

Present and former Postal Service employees and individuals who have been offered employment but failed the medical examination before being placed on the rolls, or who declined the offer; and any Headquarters employees who participate in the Corporate Health and Fitness Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ]

Name, address, job title, Social Security number, installation, illness, supervisor's and physician's reports (on Authorizations for Medical Attention); relevant medical history and medical assessments including physical examinations, treatment received at the health unit, occupational injuries or illnesses, substance abuse information, findings, diagnosis and treatment, doctors' statements and recommendations, records of immunizations, and medical findings related to employee's exposure to toxic substances. In addition, Headquarters employees who participate in the Corporate Health and Fitness Program will voluntarily provide data about their lifestyle, exercise schedule, smoking habits, knowledge about personal health, personal and family medical history, nutrition, stress levels, and other data relevant to making a health risk appraisal. Records of participant employees' individualized schedules and progress may be kept.

STORAGE:

[CHANGE TO READ]

Preprinted forms, paper files (Official Medical Folders), and magnetic tapes or disks (candidate medical assessments); preprinted forms, paper files, and hard copy computer storage (Corporate Health and Fitness Center records) are stored in limited access areas with appropriate physical and environmental controls to ensure the confidentiality and physical integrity of the information.

RETRIEVABILITY:

[CHANGE TO READ]

Employee name, Social Security number, and location.

SAFEGUARDS:

[CHANGE TO READ]

Printed copies of medical records are kept in locked file cabinets with controlled physical access, restricted to individuals who need to know the information in performance of their job functions. Access to computer data is restricted to authorized personnel with a need to know the information in the performance of their job functions and is protected through computer password controls and data encryption. Access to automated Corporate Health and Fitness Center records is restricted by password protection to medical screening personnel and health and fitness specialists under contract to operate the Corporate Health and Fitness Program facility at Headquarters.

RETENTION AND DISPOSAL:

[CHANGE TO READ]

a. Employee Medical Folder (EMF)—Medical records considered permanent are maintained until the employee is separated from the Postal Service, and then the records are sent to the National Personnel Records Center for storage or to the federal agency that now employs the individual. The records are kept for 30 years from the date the employee separates from federal service. Security and privacy of the EMF is safeguarded by the processes and procedures described in Postal Service Management Instruction EL–860–98–2, Employee Medical Records. Computer data is archived from the active database to a history database after 3 years and retained in the history database indefinitely.

b. Candidate medical information of failed eligibles (and those who cleared but ultimately declined the offer)—Candidate medical information, which includes the medical history questionnaire, answer sheet containing the candidate's responses, copy of job application, job description and functional requirements, and supporting medical information acquired in the process of reaching a medical determination of ability to work is retained in the medical office and destroyed by shredding after 2 years. Computer data are archived from the active database to a history database after 3 years and retained in the history database indefinitely.

c. Authorization for Medical Attention (Form 3956)—The form is destroyed after 2 years.

d. Corporate Health and Fitness Center records—The record is retained by the contractor operating the Health and Fitness Center until termination of the contract, at which time the record must be returned to the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–28552 Filed 11–14–01; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45045; File No. SR–Amex–2001–94]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Increase to Two Hundred and Fifty the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

November 7, 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 October 29, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Amex. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Amex proposes to increase to 250 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 1985, the Exchange implemented the AUTO–EX system, which 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''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 2500 option contracts.[3] AUTO–EX, however, is only permitted to execute equity option orders and index option orders of up to 100 contracts.[4] Thus, market and marketable limit orders of more than 100 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 250 contracts the maximum permissible number of equity and index options contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to 250 contracts in permissible order size for AUTO–EX 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 an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increased.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option class. The Exchange believes that automatic executions of orders for up to 250 contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[5] of the Act, in general, and furthers the objectives of section 6(b)(5),[6]1 in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

No written comments were solicited or received with respect to 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 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 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 Amex. All submissions should refer to File No. SR–Amex–2001–94 and should be submitted by December 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28586 Filed 11–14–01; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[4] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45047; File No. SR–NASD–20001–77]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposal to Permit SuperSOES To Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

November 8, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 31, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, and an amendment thereto [3] as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice and simultaneously granting approval on a temporary basis to the proposed rule change, as amended.

I. Self-Regulatory organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD filed a proposed rule change to amend Rule 4710 to state that if an exchange that trades Nasdaq securities pursuant to unlisted trading privileges (''UTP exchange'' elects not to participate in SuperSOES, SuperSOES will not include the UTP exchange's quoation for order processing and execution and purposes. The text oif the proposed rule change is available from the NASD and from the Commission.

II. Self-Regulatory Organization's Statement of the purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statemenets 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 polaces specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 4710 to specify that if a UTP exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP exchange's quotation for order processing and execution purposes. Nasdaq is seeking approval of this rule change as a pilot that would be effective until February 28, 2002.

Background. On January 14, 2000, the Commission approved a rule change to establish the Nasdaq National Market Execution System (''NNMS'').[4] On July 30, 2001, NNMS was implemented for all Nasdaq National Market securities.

NNMS refers to Nasdaq's reconfigured Small Order Execution System named SuperSOES. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares. By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, and with the exceptions discussed below, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.[5]

Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, a subset of Nasdaq market participants, UTP exchanges, as well as Electronic Communications Networks (''ECNs''), continue to have their quotes in Nasdaq accessed through SelectNet and, as such, are not required to accept automatic executions.[6] Whereras Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP exchange. As a result, when a UTP exchange is alone at the best bid/best offer for a particular security, and that UTP exchange is only accessible through SelectNet, SuperSOES will stop processing orders in that security and will hold those orders in queue for up to 90 seconds.

This pause serves two purposes. First, it provides a Nasdaq market participant the opportunity to send a SelectNet liability message to the UTP exchange (if that exchange has chosen to participate in SelectNet [7]), but at the risk of substantial queuing of market and marketable lilmit orders for that security as the Nasdaq market participant awaits a response to its order. Second, it enables a SuperSOES market participant (*i.e.,* market maker, Full Participant ECN, or participating UTP exchange) to join the current best bid/best offer or create a new best bid/best offer.

If, after 90 seconds, a SuperSOES market participant does not join the current best bid/best offer, and the UTP exchange does not respond to its inbound SelectNet order, SuperSOES returns the orders in the queue and the system shuts down for that security. The system will only resume once the UTP exchange responds to orders delivered to its quote, or moves its quote away from the inside.[8] Nasdaq believes that such delays have adversely affected Nasdaq's ability to ensure the proper functioning of its market, as well as the ability of market participants to obtain executions for their customers.

Proposed Amendment. To address these problems, Nasdaq is proposing to amend NASD Rule 4710 to require UTP exchanges that chose to trade Nasdaq securities through Nasdaq market systems to participate fully in the automatic executions through SuperSOES, or paritipate in SelectNet pursuant to existing NASD Rules and have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP exchange elects not to participate in SuperSOES, SuperSOES will trade through the UTP exchange quotation. This will prevent SuperSOES from effectively shutting down the market in that security.

[3] *See* letter from Edward S. Knight, General Counsel, Nasdaq, to Belinda Blaine, Associate Director, SEC dated November 7, 2001 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[5] As originally proposed, market participants were permitted to enter into the modified SelectNet Only: (1) those orders that specify a minimum acceptable quantity for a size that is a least 100 shares greater than the posted quote of the receiving market participant; or (2) All-None-or-None orders that are at least 100 shares greater than the displayed bid/offer size. Since the original proposal, the SEC also approved the entry of non-liability, inferior-priced orders through SelectNet.

[6] ECNs may choose whether or not to take automatic executions through SuperSOES. ECNs that choose to take automatic execution against their quotes through SuperSOES are referred to as ''Full Participant ECNs.'' Full Participant ECNs are not required to take liability orders through Select Net. ECNs that choose not to take automatic execution against their quotes through SuperSOES must conttinue to take delivery of liability orders against their quotes through SelectNet. These ECNs are referred to as Order-Entry ECNs.'' (A ''liability order rdquo; imposes an obligation on the market participant that receives the order to respond to the order in a manner consistent with the Firm Quote Rule (Rule 11Ac1–1 under the Act) (*e.g.,* by executing the order for that market participant's displayed size.).

[7] The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, it relies on the language in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/national Market System Securities Traded on Exchangges on an Unlisted Trading Privilege Basis (''OTC/UTP Plan''), and provides telephone access to its quotes.

[8] To illustrate, assume CHX does not participate in SuperSOES and is alone at the current best bid of $20 for 1,000 shares of ABCD. MMA enters an order into SuperSOES and MMB directs (or preferences) 1,000 shares via SelectNet to CHX. If no other market maker or Full Participant ECN joins the current best bid of $20, SuperSOES stops processing orders in ABCD for 90 seconds. CHX waits 2 minutes before responding to MMB's preferenced SelectNet liability order either by filling or declining the order. (This delay could occur if there are equipment problems at CHX, in Nasdaq, or both.) The result is that the market in ABCD effectively is held up for 2 minutes and SuperSOES is shut off for ABCD after 90 seconds.

UTP exchanges that choose this option would be accessible by telephone as contemplated in the OTC/UTP Plan, or via a mutually agreed-upon alternative bilateral link negotiated by the UTP exchange. Nasdaq states that it welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that the proposal is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of nonautomatic execution UTP exchanges is necessary for the fair and orderly operation of the Nasdaq Stock Market because it helps reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible through SuperSOES and is alone at the best bid or best offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–77 and should be submitted by December 6, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal, as amended, is consistent with Section 15A of the Act, and in particular with paragraph (b)(6), which requires that the rules of a national securities asssociated be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.[10] The proposal will permit SuperSOES to continue providing executions to investor's orders when a UTP exchange is alone at the inside with a quote that cannot be reached through SuperSOES.

Nasdaq has requested that the Commission grant accelerated approval of the proposed rule change because it believes that the potential for shut down in its automatic execution systems is a serious, imminent concern. Up to four additional national securities exchanges plan to begin trading Nasdaq listed securities in the near future.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change, as amended prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. With several UTP exchanges planning to trade Nasdaq securities, the potential for queuing in SuperSOES when a non-automatic execution UTP exchange is alone at the inside will increase.[12]

V. Conclusion

It Is Therefore Ordered pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–2001–77) and Amendment No. 1 thereto, are hereby granted accelerated approval, through February 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28587 Filed 11–14–01; 8:45 am]

BILLING CODE 8010–01–M

[9] The OTC/UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the OTC/UTP Plan states, in pertinent part, that Plan participants ''shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations.'' *See* Section IX, Market Access, OTC/UTP Plan. This currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the OTC/UTP Plan.

[10] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] For exchanges that participate in SuperSOES, this is not an issue.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45023; File No. SR–NYSE–2001–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Amend Rule 13 on XPress Quote Parameters

November 5, 2001.

I. Introduction

On June 13, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 NYSE Rule 13 on XPress quote parameters. The proposed rule change was published for public comment in the **Federal Register** on July 18, 2001.[3] The Commission received two comment letter regarding the proposed rule change.[4] The Exchange submitted a letter responding to comments on October 19, 2001.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44539 (July 11, 2001), 66 FR 37509.

[4] Letter from Ari Burnstein, Associate Counsel, Investment Company Institute (''ICI'') to Jonathan G. Katz, Secretary, Commission, dated August 7, 2001 (''ICI Letter''); Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, dated August 29, 2001 (''Peake Letter'').

[5] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated October 18, 2001 (''NYSE Letter'').

II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 13.30 to: (i) reduce the minimum size of XPress orders and quotes from 25,000 shares to 15,000 shares; and (ii) reduce the time period for designation as an XPress quote from 30 seconds to 15 seconds.

III. Comments

The Commission received two comment letters from the Investment Company Institute (''ICI'') and Junius W. Peake (''Peake'').[6] The ICI stated that the Institutional XPress system does not adequately respond to the problems faced by institutional investors trading on the NYSE. The ICI stated that the proposal to reduce the minimum XPress order and quote size and to reduce the minimum display period for XPress quote, although a small improvement, does not address the issues of inadequate protection of limit orders placed on the Exchange's limit order book and the inability of investors to interact with those orders. The ICI stated that the NYSE should eliminate the required time display for quotes to qualify as XPress, make XPress orders ineligible for price improvement, and allow XPress orders to reach through to orders on the book below the best bid and offer.

In response to the ICI Letter, the NYSE stated that the ICI's suggested changes would ''result in automatic execution of large-size orders against contra side interest that is both reflected in the current quotation, and reflected as away from the market limit orders on the limit order book that have never been exposed to the auction market.''[7] The Exchange stated that these modifications would redefine the Exchange's agency auction market structure and would disrupt its auction market price discovery mechanism. The Exchange also stated that requiring XPress orders to be exposed to the market for price improvement opportunities is essential ''because it affords the opportunity for the most advantageous price to the XPress order, and it allows other market participants, who may * * * not wish to show their interest in the displayed quotation, to interact with the XPress order at the improved price.'' Finally, the Exchange stated that the ICI's proposal to allow XPress orders to penetrate the limit order book would ''distort the auction market pricing mechanism'' and ''would result in executions at prices away from the current market, with no opportunity for other market participants to interact with XPress orders at the away from the market prices unless they expose their interest on the limit order book.''

Peake supported the ICI's position, but stated that the ICI ''did not go far enough in criticizing the NYSE's system.'' In addition, Peake stated, among other things, that ''[t]he NYSE's system continues to favor its specialists by giving them time to react to bids and offers sent to them before requiring execution.'' Peake also stated that ''[m]any institutional investors are reluctant to expose their orders to the Floor, since it provides a golden opportunity for those with advance information to front run investors' orders, either for themselves or for their favored customers.''

In response to the Peake Letter, the NYSE stated that the NYSE's market structure does not favor specialists by allowing them to react to bids and offers before executing them. According to the Exchange, the specialist ''must expose all agency orders to the auction, represent them in accordance with the principles of agency law, and may not trade for his or her own account at prices at which he or she holds an executable agency order.'' In addition, the Exchange stated that the XPress system addresses the issue of front running by ''freezing the contra side of the market from further auction trading once the XPress order is announced.''

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[8] which requires an Exchange to have 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.[9] The Commission also finds that the proposed rule change is consistent with section 11A(a)(1)(C)(i) of the Act[10] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions.

The Commission believes that by reducing the required number of shares for XPress orders and quotes and the minimum display requirement for XPress quotes, the proposed rule change should result in more orders and quotes being XPress eligible, which should help to assure the economically efficient execution of securities transactions and remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Commission believes that the 15 second display requirement should continue to provide brokers and non-XPress orders the opportunity to interact with the quote before it becomes XPress eligible.

The Commission finds that the Exchange has addressed the most significant concerns raised by commenters.[11] The Commission believes that the proposed parameters of the XPress system are appropriate and within the Exchange's business discretion. Moreover, the Commission believes that it is appropriate for the Exchange to attempt to balance the needs of institutional investors with the Exchange's desire to preserve its agency auction market structure.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2001–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28584 Filed 11–14–01; 8:45 am]

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[6] *See supra* note 4.

[7] *See* NYSE Letter, *supra* note 5.

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78k–1(a)(1)(C)(i).

[11] *See supra* section III.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45046; File No. SR–Phlx–2001–89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Maximum Guaranteed Size for Auto-X Eligible Orders in Options on the Nasdaq-100 Index Tracking Stock (''QQQ'' from 100 Contracts to 250 Contracts

November 7, 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 September 27, 2001, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') 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 Phlx. On October 9, 2001, the Phlx filed Amendment No. 1 to the proposed rule change.[3] 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 Phlx proposes to amend Exchange Rule 1080, ''Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),'' to increase its automatic execution guarantee for options overlying the QQQ[4] from 100 contracts to 250 contracts.

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(b) No change.

(c) AUTO–X—AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series. Currently, orders up to 100 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X. *With respect to options on the Nasdaq–100 Index Tracking Stock (''QQQ''), orders of up to 250 contracts are eligible for AUTO–X.*

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)(A)–(E) No change.

(d)–(j) 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 Phlx 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 Phlx 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 Phlx proposes to increase the maximum order size eligibility for Auto-X in QQQ options from 100 contracts to 250 contracts. Under the rules of the Exchange, through AUTOM,[5] orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[6]

The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options from 100 contracts to 250 contracts should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in the automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO–X orders. For example, PHLX Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 5, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx changed the status of the proposal from a filing made pursuant to section 19(b)(3)(A) of the Act to a filing made pursuant to section 19(b)(2) of the Act.

[4] The Phlx represents that Nasdaq–100, Nasdaq–100 Index (''Index''), Nasdaq, The Nasdaq Stock Market, Nasdaq–100 Shares, Nasdaq–100 Trust, Nasdaq–100 Index Tracking Stock, and QQQ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx (''Licensee'') pursuant to a License Agreement with Nasdaq. The Index determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq–100 Trust, or the beneficial owners of Nasdaq–100 Shares. The Phlx represents that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

[5] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO–X, if they are eligible for execution on AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Options orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Phlx Rule 1080(c).

trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. In addition, Phlx Options Floor Procedure Advice F–7 provides that the size of any disseminated bid or offer by the Exchange shall be equal to the AUTO–X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of limit orders on the book shall be 10 contracts and shall be firms, regardless of the actual size of the orders. Violations of any of theses provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO–X trades among specialists and Registered Options Traders (''ROTs'').[7] An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO–X order size in QQQ options does not prevent an ROT from declining to participate on the Wheel. Because the wheel rotates in two-lot to ten-lot increments depending upon the size of the order,[8] no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permits a specialist to disengage AUTO–X in extraordinary circumstances.[9] The Exchange represents that AUTOM users will be notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.[10] Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support the Auto-X trading of orders in QQQ options as large as 250 contracts.

The Exchange believes that automatic execution of orders in QQQ options for up to 250 contracts should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO–X maximum order size in QQQ options should not impose a significant burden on operation or capacity of the AUTOM system and will give the Exchange better means of competing with other options exchanges for order flow.

2. Statutory Basis

For the reasons stated above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protest investors and the public interest by providing automatic executions to a larger number orders in QQQ options.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–89 and should be submitted by December 6, 2001.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28585 Filed 11–14–01; 8:45 am]

BILLING CODE 8010–01–M

[7] Unlike ROTs, specialists are required to participate on the wheel. *See* Phlx Rule 1080(g).

[8] *See* Exchange Options Floor Procedure Advice F–24(e).

[9] *See* Phlx Rule 1080(e) and Exchange Options Floor Procedure Advice A–13.

[10] *See* Phlx Rule 703.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3840]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the seventeen letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to

Congress or as soon thereafter as practicable.

Dated: November 6, 2001.

William J. Lowell,

Director, Office of Defense Trade Controls, U.S. Department of State.

July 16, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles for the Enhanced Paveway II and III Computer Control Groups, Guidance Control Groups and associated hardware, containers and test software for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 074–01

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of the An-Yu Mobile and Fixed Radar System to the Government of Taiwan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 066–01

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

October 7, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the sale of nineteen AN/ALQ–165 (Lot II) aircraft self-protection jammers, test equipment, spares and associated training to the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 103–01

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed technical assistance agreement for the export of defense services involving the manufacture abroad of significant military equipment.

The transaction contained in the attached certification involves the export of defense services to participate in the design of the Future Royal Navy Aircraft Carrier for the United Kingdom Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 104–01

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information and services for the manufacture of F110/F101/TF39/F404/F404–402/RM12 aircraft engine components in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 105–01

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Japan for the manufacture of T53 propulsion engine spare parts for use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 106–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to support the manufacture in Japan of the Combined Effects Munition for the Japanese Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 107–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and engineering information to Japan for the manufacture of Chukar II and III target drone systems for use by the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 108–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and technical assistance to support the manufacture in Japan of microwave tubes for the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 109–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 1, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and technical assistance to support the manufacture in Japan of the Firebee I Target System for the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secreteary, Legislative Affairs.

Enclosure: Transmittal No. DTC 110–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 3, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of technical data and assistance associated with the sale of one NIMIQ–2 Direct Broadcast Satellite System commercial communication satellite to Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secreteary, Legislative Affairs.

Enclosure: Transmittal No. DTC 111–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 3, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture, maintenance, repair and testing in Japan of the AN/ARR–78(V) Advanced Sonobuoy Communications Link Receiver for installation on P–3C aircraft of the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 113–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 3, 2001.

Dear Mr. Speaker:

Pursuant to Section 36 (c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed manufacturing license agreement with South Korea.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of the AN/ARC–232 (V), also known as the RT–1818 UHF/VHF Multi-Band Have Quick II Tactical Airborne Communications Equipment, for end use by the armed forces of South Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 115–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 10, 2001.

Dear Mr. Speaker:

Pursuant to Section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves six launches of commercial communications satellites aboard Delta launch vehicles for the Skybridge program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 099–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 10, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the extension through 2011 of the F–15 component manufacturing licensing agreement with Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 102–01

The Honorable, J. Dennis Hastert, Speaker of the House of Representatives.

October 10, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the sale of fifty installed and nine spare F100–PW–229 engines, spare parts, ten-year warranty, support equipment and engine test equipment to the Government of Israel, Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 112–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

October 10, 2001.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data for the manufacture in the United Kingdom of the Vehicle Intercommunications System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 117–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 01–28653 Filed 11–14–01; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 3839]

United States-Egypt Science and Technology Joint Board Public Announcement of a Science and Technology Program for Competitive Grants To Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

November 1, 2001.

AGENCY: U.S. Department of State.

ACTION: Notice.

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Vickie Alexander, Program Administrator, U.S.-Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; E-mail: *alexanderva@state.gov.* The 2001 Program guidelines for Junior Scientist Development visits will be available starting November 1, 2001 on the Joint Board web site: www.usembassy.egnet.net/usegypt.joint-st.htm

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin November 1, 2001. This program will provide modest grants for successfully competitive proposals for development visits by Junior American Scientists to Egypt; and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years. Proposals considered for funding must be postmarked by December 13, 2001. All proposals, which fully meet the submission requirements, will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program Announcement/Application may be obtained request.

William R. Gaines,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, And, Chair, U.S.—Egypt S&T Joint Board, U.S. Department of State.

[FR Doc. 01–28652 Filed 11–14–01; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–13)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Services (ISAC–13) will hold a meeting on November 20, 2001, from 9 a.m. to 12 p.m. The meeting will be opened to the public from 9 a.m. to 9:45 a.m. and closed to the public from 9:45 a.m. to 12 p.m.

DATES: The meeting is scheduled for November 20, 2001, unless otherwise notified.

ADDRESSES: The meeting will be held in Conference Room 6057, of the Minority Business Development Agency (MBDA), located at 14th and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll (principal contact), at (202) 482–1316, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the agenda topics to be addressed will be:

- Report on November 2001 WTO Ministerial in Doha
- U.S.-Chile Free Trade Agreement (FTA) Negotiations Overview
- Review of ISAC Membership Process

Christina Sevilla,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 01–28579 Filed 11–14–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending October 26, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10883.
Date Filed: October 23, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC23 Middle East-TC3 (except South East Asia) dated October 23, 2001. Expedited Middle East-TC3 Resolutions r1–r10. Intended effective date: December 1, 2001.

Docket Number: OST–2001–10887.
Date Filed: October 24, 2001.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 147. PTC123 0164 dated October 23, 2001. TC123 North Atlantic (except USA-Malaysia) Resolutions r1–r26. Minutes—PTC123 0160 dated October 16, 2001. Tables—PTC123 Fares 0062 dated October 26, 2001. Intended effective date: November 1, 2001/March 1, 2002.

Docket Number: OST–2001–10904.
Date Filed: October 24, 2001.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 150. PTC123 0157 dated September 24, 2001. TC123 North Atlantic between USA and Malaysia. Resolutions r1–r9. TC123 0165 dated October 23, 2001 (Affirmative). Minutes—PTC123 0161 dated October 19, 2001. Tables—PTC123 FARES 0063 dated October 26, 2001. Intended effective date: March 1, 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–28618 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 26, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–656.
Date Filed: October 22, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 2001.
Description: Application of US Airways, Inc., pursuant to 49 U.S.C. section 41102 and 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity for Route 737, which authorizes US Airways to engage in scheduled foreign air transportation of persons, property, and mail between Philadelphia, Pennsylvania, and Boston, Massachusetts, on the one hand, and Madrid, Barcelona, Malaga, and Palma de Mallorca, Spain, on the other.

Docket Number: OST–2001–10888.
Date Filed: October 24, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 14, 2001.
Description: Application of Lineas Aereas Azteca, S.A. de C.V, pursuant to 49 U.S.C. 41302 and subpart B, requesting a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail on the following US-Mexico routes: Mexico City, Mexico to El Paso, Texas; Mexico City, Mexico to Albuquerque, New Mexico; and, Chihuahua, Mexico to Albuquerque, New Mexico. Also, Azteca is requesting authority to engage in charter foreign air transportation of persons, property, and mail between a point or points in Mexico, on the one hand, and a point or points in the United States, on the other hand; and,

authority to operate charters, pursuant to 14 CFR part 212 of the Department's regulations.

Docket Number: OST–2001–10905.

Date Filed: October 25, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 15, 2001.

Description: Application of Air Canada, pursuant to 49 U.S.C. 41302 and subpart B, requesting an amendment to its foreign air carrier permit, to include authority to provide scheduled air service between points in Canada and points in Australasia via Honolulu, Hawaii.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–28617 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10196]

Electronically Controlled Braking System Test Track Validation

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

ACTION: Notice of Research Activity.

SUMMARY: The U.S. Department of Transportation (DOT) is seeking partners who have the potential of providing electronically controlled braking systems (ECBS) that can be used in an electronically controlled braking system test track evaluation. This notice describes criteria and tests that will be applied to each candidate system as part of the determination of fitness for inclusion in this evaluation. Manufacturers of systems that meet these criteria are invited to submit a description of their system and instructions on operation of the system to DOT.

Each system must satisfy the following criteria: (1) It must be designed to work in conjunction with standard, air-actuated drum brake mechanisms (*i.e.*, the ''foundation'' brakes) currently used on the vast majority of commercial vehicles; (2) it must provide proportional electronic control of the foundation brake mechanisms in response to brake pedal inputs from the driver, and primary control of the foundation brakes must be via electronic signals and electropneumatic valves; (3) it must provide the antilock function as defined by Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems* (49 CFR 571.121); (4) in the event of any single electrical or pneumatic failure in the control system, performance of the vehicle it is installed on must comply with the emergency brake stopping distance requirements of S5.7.2 of FMVSS No. 121; (5) the system must be designed to be compatible with conventional, pneumatically controlled braking systems (PCBS) to allow safe operation of tractor and trailer combinations where one of the units has ECBS and the other utilizes PCBS; and (6) the system shall be designed to be durable, reliable, and able to withstand the full range of environmental and operational conditions encountered in commercial vehicle operations.

Any system that meets the above criteria may be included in a DOT-sponsored test track study to evaluate the validity and reliability of its capability to electronically control braking systems on commercial motor vehicles. This planned test track evaluation was previously developed by a working group of brake experts formed by the Society of Automotive Engineers (SAE) under Federal Motor Carrier Safety Administration (FMCSA) Contract No. DTMC75–01–P–00022 as part of the Intelligent Vehicle Initiative. Various ECBS will be evaluated by SAE at the Transportation Research Center, Inc., located in East Liberty, Ohio. Various Class 7 and 8 heavy duty tractors and commercial trailers will be used in this evaluation of the validity and reliability of these systems' capability to electronically control braking systems on commercial motor vehicles under a cooperative agreement with the Federal Highway Administration (FHWA) Contract No. DTFH61–96–X–00015, Amendment No. 18.

The offeror understands that the system, if selected to participate in the test track evaluation, will be tested as provided. The analysis that is derived from this test track work will be made publicly available; however, the system will not be identified by manufacturer. The offeror shall in no way interfere with the procedures or personnel involved in conducting or managing the study.

Furthermore, (1) previous studies and research involving the device may be disclosed and provided to the Federal Government to assist in evaluating the ''fitness'' of the system for evaluation; (2) selection to participate in the test track study will NOT constitute an endorsement of the device by the Federal Government; and (3) involvement does not constitute a promise of any future relationship with the Federal Government.

The systems will be tested in an outdoor test track environment. A test matrix will be used to assess various configurations of ECBS-equipped vehicles as ECBS can be provided in various formats. The ECBS systems will be tested on a range of different Class 7 and 8 trucks, tractors, and commercial semitrailers equipped with new, burnished foundation brakes. To provide a baseline for comparison, vehicles will be tested first with conventional pneumatically controlled brake systems (PCBS) in accordance with FMVSS No. 121. This testing will include stopping distance and static brake timing tests. Vehicles will then be modified to incorporate ECBS, and the tests will be repeated. The tests with ECBS will evaluate a broad range of possible failure modes in order to assess partial system performance and compliance with the emergency stopping requirements of FMVSS No. 121.

As part of the testing program, the stopping performance of combination vehicles (*i.e.*, tractor semitrailers) will be evaluated in order to determine compatibility between individual units with ECBS and PCBS.

The test results will be shared with the manufacturers of these systems. DOT is only interested in testing systems that are operationally ready.

DATES: Submit system descriptions on or before December 17, 2001.

ADDRESSES: All proposals should refer to Docket No. NHTSA–2001–10196 and should be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Docket hours are from 9 a.m. to 5 p.m. Monday through Friday. If you wish to receive confirmation of your written comments, please include a self-addressed, stamped postcard.

Proposals may also be sent by electronic submission. The electronic submission procedure is described in the Docket Management section of DOT's web site: *http//www.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Britell, Mail Code NRD–13, Office of Vehicle Safety Research, NHTSA, 400 Seventh Street, SW., Washington DC 20590–0001, telephone (202) 366–5678.

SUPPLEMENTARY INFORMATION:

Background

DOT has created a program titled the Intelligent Vehicle Initiative (IVI). The goal of the IVI program is to increase safety on the Nation's highways through the acceleration of the deployment of on-vehicle safety devices. One of the primary focus areas of the IVI is commercial motor vehicle stability.

Further information on the IVI program may be found on web site *www.ivi.its.dot.gov/ivi.* Additionally, DOT has the goal of reducing truck-involved fatalities by 50 percent by the year 2010. Additional information concerning DOT and its commercial motor vehicle safety goals may be found on web sites *www.nhtsa.dot.gov* and *www.fmcsa.dot.gov.*

Electronically controlled braking is viewed as a technology that can provide shorter stopping distances (improved timing), improved dynamic brake force distribution, improved combination vehicle brake balance, self-diagnosis, and continuous brake monitoring. Because of the complexity of this technology (ranging from shorter stopping distances to improved vehicle brake diagnostics) and the various systems involved, it was suggested by the Truck Manufacturers Association at a public hearing sponsored by the National Transportation Safety Board in Nashville, Tennessee, August 31 through September 2, 1999, on Advanced Safety Technologies Applicable to Commercial Vehicles, that industry and Government work together in the preliminary track and operational testing of these braking systems. Additionally, electronically controlled brakes are an enabling technology whose benefits could extend to, and enhance, a number of vehicle braking and dynamic control system issues.

Numerous factors play a contributing role in causing heavy-duty tractor/trailer and passenger car crashes. Inadequate braking performance is a significant cause of commercial and vehicle crashes. The existing brake systems have performance limits. To more effectively address the brake-related issue of crashes (1) due to brake failures or defective brakes, (2) due to maladjusted and/or overheated brakes, and (3) where the heavy-duty vehicle is unable to stop in time, it is obvious to brake experts that some kind of adaptive electronic control system will be required. In 1993, brake manufacturer Bosch and truck manufacturer Scania introduced the first production-like brake by wire system for tractors/trucks and trailer/semitrailers. This technology is more commonly called Electronically Controlled Braking System (ECBS) for commercial vehicles. Other brake manufacturers and truck manufacturers have developed similar, although not identical, systems. Due to a lack of standardization of the tractor/trailer interface, production has been mostly limited to straight trucks and tractors. The next generation of electronic braking systems is well under way, taking advantage of the Controller Area Network technology, a joint development of Bosch and Intel of a data bus especially suited for the requirements in heavy duty vehicles.

DOT, NHTSA has addressed brake-induced instability by requiring ABS on newly manufactured tractors and trailers (FMVSS No. 121). The basic function of ABS is to monitor wheel speed and modulate the air pressure in the brake chambers in a manner to prevent wheel lock during severe braking. The successful introduction and acceptance of ABS by industry was only accomplished after many years of track testing and an extensive 4-year field operational test. The planned test track evaluation of ECBS solicited by this notice will be accomplished under a cooperative agreement between the FHWA and SAE. This evaluation is intended as a precursor to an on-the-road field operational test, which will include a motor carrier fleet in revenue generating service.

Technology Submission Instructions

Submit proposed system descriptions in English, including the Docket Number (NHTSA–2001–10196), to DOT's Public Docket Management Room at the previously listed address. The submission should include the following:

1. A description of the system, along with operating instructions.
2. The submission should be no more than five pages in length.
3. Any existing evidence of objective validity or reliability is encouraged to be submitted. This information DOES NOT count toward the 5-page length limit.
4. Three copies of your submission.
5. Your name, address, phone number, and E-mail address.
6. DO NOT submit your system at this time.
7. Applications, once submitted, become the property of DOT.

Issued on: November 6, 2001.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 01–28621 Filed 11–14–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34108]

Flats Industrial Railroad Company and Norfolk Southern Railway Company—Joint Relocation Project Exemption—in Cleveland, OH

Flats Industrial Railroad Company (FIR) and Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project involving the relocation of lines of railroad in Cleveland, OH. The relocation pertains to and facilitates NSR's Cloggsville Connection, which is an overhead routing through Cleveland developed by NSR, relating to the acquisition of control over Consolidated Rail Corporation (Conrail) by NSR and CSX Transportation, Inc.[1] The transaction was expected to be consummated on or after October 24, 2001.

FIR, a Class III carrier, owns a 4-mile rail line acquired from Conrail in 1996 that extends north from Knob to the Flats area of Cleveland, OH.[2] NSR, a Class I carrier, along with its wholly owned subsidiaries, owns or operates approximately 21,800 miles of rail line in 22 states, the District of Columbia, and the Province of Ontario, Canada. Under Board authorization in *CSX/NS–Conrail*, NSR commenced operations over certain Conrail routes in the northeastern United States allocated to Pennsylvania Lines LLC (PRR), including the PRR line extending from the connection with FIR at Knob southward to a connection with a PRR east-west main line at Short. FIR's line between Knob and Cloggsville is immediately parallel to an NSR line, and at Cloggsville, NSR's east-west Nickel Plate main line passes overhead.

Under the Cloggsville Connection alternative, imposed by the Board as Environmental Condition No. 26(A) in *CSX/NS–Conrail*,[3] NSR agreed to upgrade its line between Cloggsville and Knob and the PRR line between Knob and Short into a high-density, double-track main line route that now handles a significant amount of NSR's traffic in the Cleveland area. The Cloggsville Connection improvements have involved the relocation of a portion of NSR's new double-track main line onto FIR's adjacent right-of-way, requiring the relocation of certain FIR rail operations.

With respect to the joint relocation project, FIR and NSR have reached an agreement to accommodate the FIR relocation and the transfer of the underlying right-of-way to NSR, as follows: (1) FIR's rail line extending between milepost 14.0 at Knob, and milepost 11.85 near West 41st Street, a distance of approximately 2.15 miles, will be transferred to NSR, rebuilt and

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[1] *See CSX Corp. et al.—Control—Conrail Inc. et al.,* 3 S.T.B. 196 (1998) (*CSX/NS–Conrail*).

[2] *See Flats Industrial Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation,* STB Finance Docket No. 33044 (STB served Oct. 11, 1996).

[3] 3 S.T.B. at 355–56, 595.

permanently incorporated into the NSR double-track Cloggsville Connection main line; and (2) the existing FIR-NSR interchange will be relocated from Knob to the vicinity of Fulton Road, just north of the segment being transferred to NSR, where a new FIR interchange yard has been constructed at NSR's expense.

The proposed joint relocation project will not disrupt service to shippers.[4] Its stated purpose is to facilitate and finalize the Cloggsville Connection routing alternative which has significantly improved train operations through Cleveland and minimized adverse impacts on area residents.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Under these standards, the incidental abandonment and construction components require no separate approval or exemption when the relocation project will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the joint relocation project will be protected by the conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34108, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William C. Sippel, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago IL 60601–6721, and John V. Edwards, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–9241.

Board decisions and notices are available on our web site at *''WWW.STB.DOT.GOV.''*

Decided: November 7, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28502 Filed 11–14–01; 8:45 am]

BILLING CODE 4915–00–P

[4] There are no shippers located on the FIR segment to be transferred to NSR, and FIR will continue to serve all of its existing shippers as it has done in the past. Interchange operations between FIR and NSR will also continue but at a relocated point approximately 2 miles north of the former interchange location.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34131]

Fort Worth and Western Railroad Company, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Company

Fort Worth and Western Railroad Company, Inc. (FWWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate rail lines owned by the Union Pacific Railroad Company (UP). FWWR will acquire, by lease, the full and exclusive rights to operate UP's Peach Yard, extending from milepost 611.20 to milepost 611.80 in Fort Worth, TX, excluding main line trackage. In addition, FWWR will acquire non-exclusive incidental trackage rights, solely for the purpose of interchanging traffic, over UP's main lines as follows: (1) Between mileposts 748.00 and 754.41, on the Choctaw Subdivision; (2) between mileposts 608.00 and 612.96, on the Duncan Subdivision, and between mileposts 250.00 and 251.03, on the Fort Worth Subdivision. The total route miles of trackage acquired under lease is 0.60 and under incidental trackage rights are 12.40.

Because the projected revenues of the rail lines to be operated will exceed $5 million, FWWR has certified to the Board that the required notice of its acquisition and operation was posted at the workplace of the employees on the affected lines and a copy of the notice was served on the national offices of the labor unions of the employees on the affected lines on October 25, 2001. *See* 49 CFR 1150.42(e). The earliest the transaction can be consummated is January 1, 2002, the effective date of the exemption (60 days after FWWR's November 2, 2001 certification to the Board).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34131, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Paul H. Lamboley, Esq., 1717 N Street, NW., Washington, DC 20036.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: November 7, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–28655 Filed 11–14–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Mutual Service Casualty Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001 at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35047, July 2, 2001.

With respect to any bonds, including continuous bonds, currently in force with the above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/*

index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: November 6, 2001.

Wanda J. Rogers,

Acting Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 01–28548 Filed 11–14–01; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
November 15, 2001

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7101–1]

RIN 2060–AH99

Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rulemaking amends the current regulations that implement the statutory ban on nonessential products that release Class I ozone-depleting substances under section 610 of the Clean Air Act, as amended. This final rule does not affect the use of Class II ozone-depleting substances. This rulemaking was developed by EPA based on new and compelling information that was gathered and indicates limited continued use by some sectors of Class I substances in products where the use of those substances today should be considered a ''nonessential use of Class I substances in a product'' based on the availability and widespread use of alternatives. The products affected by this rulemaking are aerosol products, pressurized dispensers, plastic foam products, and air-conditioning and refrigeration products that contain or are manufactured with Class I substances (*e.g.,* chlorofluorocarbons). Through this action, an additional category of products will be added and some products will be removed from the list of banned products (i.e., products that cannot be introduced into interstate commerce).

EFFECTIVE DATE: January 14, 2002.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–98–31, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Stratospheric Program Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities
II. Background
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2. Determinations Under 610
3. The Purpose or Intended Use of the Product
4. The Technological Availability of Substitutes
5. Safety and Health
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8. Reconsidering Nonessential Determinations
B. Class II Ban
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I. Congressional Review Act
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VII. Judicial Review

I. Regulated Entities

Entities potentially regulated by this action are those that wish to sell and/or distribute in interstate commerce aerosols, pressurized dispensers, plastic foam products, refrigerators and air-conditioning equipment that contain chlorofluorocarbons (CFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Aerosol packagers. Aerosol manufacturers. Air-Conditioning and refrigeration equipment manufacturers. Specialty chemical manufacturers. Foam manufacturers. Air conditioning and refrigeration distributors. Air conditioning and refrigeration retailers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in section 610 of the Clean Air Amendments of 1990, discussed in regulations codified at 40 CFR part 82, subpart C and published on January 15, 1993 (58 *FR* 4768); December 30, 1993 (58 FR 69672) and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Title VI of the Clean Air Act (the ''Act'') divides ozone-depleting chemicals into two distinct classes. Class I is comprised of chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform, methyl bromide and hydrobromofluorocarbons. Class II is comprised of hydrochlorofluorocarbons (HCFCs). (See listing notice January 22, 1991; 56 *FR* 2420.) Section 610(b) of the Act, as amended, requires EPA to promulgate regulations banning nonessential products releasing Class I substances. EPA published a final rule for the Class I Nonessential Products Ban on January 15, 1993 (58 *FR* 4768). A final rule establishing regulations that implemented the statutory ban on nonessential products containing or manufactured with Class II ozone-depleting substances under section 610(d) of the Clean Air Act, as amended, was issued December 30, 1993 (58 *FR* 69637). That final rule was developed to clarify definitions and provide exemptions, as authorized under section 610(d). All of the regulations are codified at 40 CFR part 82, subpart C. Comments and materials supporting those rulemakings are contained in Public Dockets A–91–39 and in A–93–20.

On June 14, 1999, EPA proposed changes to the Class I Nonessential Products Ban (64 *FR* 31772). Today's action is based on those proposed changes and comments the Agency received in response to that NPRM.

In a separate action, EPA's Significant New Alternatives Policy (SNAP) program, recently made available for public comment new information concerning the use of Class II substances and non-ozone depleting alternatives in

the production of plastic foam products. That information includes: sector description and size, non-ozone depleting alternatives currently used in each sector and technically viable alternatives. That document, Protection of Stratospheric Ozone: Notice of Data Availability; New Information Concerning SNAP Program Proposal on HCFC Use in Foams (May 23, 2001, 66 *FR* 28408) does not pertain directly to today's action. However, in gathering information for that document, the Agency did not uncover any additional information that indicated significant continued use of CFCs in foam manufacturing.

A. Class I Ban

Section 610(b) of the Act directs EPA to identify nonessential products that ''release Class I substances into the environment (including any release during manufacture, use, storage, or disposal)'' and to ''prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce.''

Section 610(b)(1) and (2) specify products to be prohibited under this requirement, including ''chlorofluorocarbon-propelled plastic party streamers and noise horns'' and ''chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment.''

Section 610(b)(3) extends the prohibition to other products determined by EPA to release Class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: ''the purpose or intended use of the product, the technological availability of substitutes for such product and for such Class I substance, safety, health, and other relevant factors.''

The regulatory Class I Ban promulgated by EPA under these statutory provisions currently identifies as nonessential, and therefore subjects to the prohibitions, the following:

(A) plastic party streamers and noise horns propelled by chlorofluorocarbons;

(B) cleaning fluids for electronic and photographic equipment which contain a chlorofluorocarbon, including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial purchaser;

(C) plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to:

I. open cell polyurethane flexible slabstock foam,
II. open cell polyurethane flexible molded foam,
III. open cell rigid polyurethane poured foam,
IV. closed cell extruded polystyrene sheet foam,
V. closed cell polyethylene foam, and
VI. closed cell polypropylene foam, except flexible or packaging foam used in coaxial cable; and

(D) any aerosol product or other pressurized dispenser which contains a chlorofluorocarbon, *except:*

—medical devices listed in 21 CFR 2.125(e),
—lubricants for pharmaceutical and tablet manufacture,
—gauze bandage adhesives and adhesive removers,
—topical anesthetic and vapocoolant products,
—lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC–11, CFC–12, or CFC–113 for solvent purposes, but which contain no other CFCs,
—lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC–11 or CFC–113, but which contain no other CFCs,
—mold release agents used in the production of plastic and elastomeric materials, which contain CFC–11 or CFC–113, but which contain no other CFCs,
—spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC–114, but which contain no other CFCs,
—containers of CFCs used as halogen ion sources in plasma etching,
—document preservation sprays which contain CFC–113, but which contain no other CFCs, and
—red pepper bear repellent sprays which contain CFC–113, but which contain no other CFCs.

Verification and public notice requirements have been established for distributors of certain products intended exclusively for commercial use.

Through this action, an additional category of banned products will be added and some products will be removed from the exempted list. The preamble to the 1993 rulemaking implementing the Class I Ban established that EPA should in the future reconsider exceptions granted and limitations of the Ban under that rulemaking based on new and compelling information regarding the availability of substitutes for Class I substances. In 1993, EPA limited consideration of banned products to aerosols, pressurized dispensers, and foams. These sectors traditionally used ozone-depleting substances and were subject to the statutory Class II Ban. Since that rulemaking was issued, the phaseout of production and consumption of Class I substances has become effective and the Significant New Alternatives Policy (SNAP) program mandated under section 612 of the Act has been established. The phaseout of newly manufactured Class I substances and the identification of acceptable substitutes provide compelling reasons to reconsider the initial decisions regarding both product-specific exemptions and the decision to limit the Ban's effect to major sectors that traditionally used ozone-depleting substances.

1. Reconsideration

The regulations implementing the Class I Ban provide for EPA to reconsider decisions that were made regarding specific products and product categories. EPA indicated in 1993 that the Agency would reconsider decisions in the future based on developments of products using substitutes to Class I substances. EPA has previously reconsidered specific decisions. In December 1993 (58 *FR* 69672), EPA reconsidered the application of the Class I Ban to replacement parts that were previously manufactured and stored for future use, such as car seats designed and manufactured for a particular vehicle model.

Based on development of new substitutes and the characterization of the criteria for nonessentiality discussed below, particularly as applied to the use of Class I substances in products that are themselves not nonessential, on June 14, 1999, (64 *FR* 31774) EPA proposed that it was appropriate to reconsider previous determinations. Specifically, EPA proposed to reconsider the determinations for the air-conditioning and refrigeration, solvents, and foam-blowing sectors.

2. Determinations Under 610

As stated above, section 610(b)(3) extends the prohibition on sale of nonessential products to other products determined by EPA to release Class I substances and to be nonessential. In determining whether a product is nonessential, EPA is to consider the following criteria: ''the purpose or intended use of the product, the technological availability of substitutes for such product and for such Class I substance, safety, health, and other relevant factors.'' The statute requires EPA to consider each criterion but did not outline either a ranking or a methodology for comparing their

relative importance, nor does it require that any minimum standard within each criterion be met. To develop the initial rulemaking, EPA considered all of these criteria in determining whether a product was nonessential. In addition, EPA reviewed the criteria used in the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Today's action follows similar methodology.

3. The Purpose or Intended Use of the Product

This criterion relates to the importance of the product, in terms of benefits to society, specifically whether the product is sufficiently important that the benefits of its continued production outweigh the associated danger from the continued use of a Class I ozone-depleting substance in it, or alternatively, whether the product has little benefit, such that even a lack of available substitutes might not prevent the product from being considered nonessential. The initial Class I final rulemaking included a discussion about the contributions of a product to the quality of life.

The distinction between a ''nonessential product'' and a ''nonessential use of Class I substances in a product'' is a relevant criterion. For example, while foam cushioning products for beds and furniture are not ''frivolous,'' the use of a Class I substance in the manufacturing process for foam cushioning where substitutes are readily available is considered nonessential. The ability of manufacturers to switch from using a Class I substance is a relevant indicator for this criterion. The initial Class I final rule states that ''the Agency believes that in sectors where the great majority of manufacturers had already shifted to substitutes, the use of a Class I substance in that product may very well be nonessential.'' Consequently, EPA believes it is appropriate under this criterion to examine sectors where most of the market has previously switched out of CFCs.

4. The Technological Availability of Substitutes

EPA has previously interpreted this criterion to mean the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing Class I substances. EPA believes that the phrase ''technological availability'' includes both currently available substitutes (*i.e.,* presently produced and sold in commercial quantities) and potentially available substitutes (*i.e.,* determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). However, EPA considers the current availability of substitutes more compelling than the potential availability of substitutes in determining whether a product is nonessential.

The corresponding criterion from the 1978 aerosol ban is the ''nonavailability of alternative products.'' In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an ''essential use'' under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned as nonessential.

The availability of substitutes is clearly a critical criterion for determining if a product containing a Class I substance is nonessential. In certain cases, a substitute that is technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion with respect to certain products. However, EPA believes that, where substitutes are readily available, the use of Class I substances could be considered nonessential even in a product that is extremely important.

EPA does not necessarily advocate the use of all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. In many cases potential substitutes are subject to other regulatory programs. For example, the SNAP program promulgated under CAA 612 carefully considers the relative health and environmental risks and merits of different substitutes for ozone-depleting substances. Substitutes are listed under that regulatory program as acceptable, unacceptable, or acceptable subject to use restrictions for specific uses. However, within the limited purposes of the nonessential products bans, EPA considers the existence and accessibility of alternative products or alternative chemicals for use in, or in place of, products releasing Class I substances. Any future use of such substitutes must comport with any conditions of the SNAP program, if applicable.

5. Safety and Health

EPA interprets these two criteria to mean the effects on human health and the environment of the products releasing Class I substances or their substitutes. In evaluating these criteria, EPA considered the direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone depletion potential, flammability, toxicity, corrosiveness, energy efficiency, ground-level air hazards, and other environmental factors.

If any safety or health issues prevented a substitute from being used in a given product, EPA then considered that substitute to be ''unavailable'' at the time for that specific product or use. EPA noted in the initial rulemaking that as new information becomes available on the health and safety effects of possible substitutes, EPA could reevaluate determinations made regarding the nonessentiality of products.

6. Medical Products

Section 610(e) states that ''nothing in this section shall apply to any medical devices as defined in section 601(8).'' Section 601(8) defines ''medical device'' as ''any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a Class I or Class II substance for which no safe and effective alternative has been developed and, where necessary, approved by the Commissioner of the Food and Drug Administration (FDA); and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.''

The FDA is currently reviewing its determinations under 21 CFR 2.125(e). At this time, the FDA lists 12 medical devices for human use as essential uses of CFCs in 21 CFR 2.125(e). These devices consist of certain metered dose inhalers (MDIs), contraceptive vaginal foams, intra-rectal hydrocortisone acetate, polymyxin B sulfate-bacitracin-zinc-neomycin sulfate soluble antibiotic powder without excipient for topical use, and anesthetic drugs for topical use on accessible mucous membranes where a cannula is used for application. For additional information regarding FDA determinations and plans for potential regulatory changes, see 62 FR 10242 (March 6, 1997).

Medical products as determined by FDA and listed as essential at 21 CFR 2.125(e) are exempt from the Class I Ban at 40 CFR part 82, subpart C. This document does not propose any changes to this current exemption. However, other medical-related products not contained in the FDA's list of essential uses (21 CFR 2.125(e)), and therefore not

subject to 610(e), that were considered in the initial Class I Ban rulemaking, and given exemptions, under 610(b) are reconsidered in this action. Those products are gauze bandage adhesives and adhesive removers, lubricants for pharmaceutical and tablet manufacture, and topical anesthetic and vapocoolant products.

7. Other Products

In drafting the initial rulemaking to prohibit certain products under section 610(b)(3), the Agency considered every major use sector that used Class I substances including: Refrigeration and air-conditioning, solvent use, fire extinguishing, foam blowing, and aerosol use. Based on that review, EPA identified three broadly defined product categories for further evaluation: Aerosol products and pressurized dispensers containing CFCs or halons, plastic flexible and packaging foams, and halon fire extinguishers for residential use.

EPA believed that in each of these sectors two important conditions existed: Substitutes were already available for the product or the Class I substance used or contained in that product; and, either the affected industry had, for the most part, moved out of the use of Class I substances or the market share of products using or containing Class I substances was small and shrinking. In addition, in the case of aerosols and plastic flexible and packaging foams, section 610(d) imposed a self-effectuating ban on the sale or distribution of such products containing or produced with Class II substances after January 1, 1994.

The 1993 rulemaking specifically discussed the other sectors and provided information regarding the Agency's determinations. Refrigeration and air-conditioning, including mobile air-conditioning, represented the largest total use of Class I substances in the United States in 1993. At the time the initial rulemaking was promulgated, substitutes were available for some refrigeration and air-conditioning products. For example, the automotive manufacturers were in the process of switching to HFC–134a for new models rather than CFC–12 in their air-conditioning systems. However, potential substitutes for other refrigeration and air-conditioning uses were still being evaluated.

EPA did not include prohibitions on the use of Class I substances in refrigeration or air-conditioning in the 1993 rulemaking because determinations regarding substitutes for all such uses were not anticipated to be available within the time-frame of that rulemaking. Accordingly, EPA could not conclude that the use of Class I refrigerants in all refrigeration or air-conditioning uses were nonessential at the time of that rulemaking. Furthermore, at that time, EPA had not yet issued final regulations that specifically addressed non-automotive or stationary refrigeration and air-conditioning uses of Class I substances (subsequently promulgated under CAA section 608 and codified at 40 CFR part 82, subpart F). These regulations addressed standards for the recovery and reuse of refrigerants.

Solvent uses of Class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning also represented a significant use in 1993. Industry had already identified potentially available substitutes for nearly all of the thousands of products then manufactured with Class I solvents, and many companies had already phased out the use of CFCs in certain products. EPA did not address solvent use in that rulemaking (accept where the solvent application was within an aerosol or pressurized dispenser) because the sheer number of products and the range of potential substitutes made it impossible for EPA to conclude definitively that substitutes were available for any of these specific uses, and thus that such uses were nonessential, within the short statutory time-frame for the Class I Ban rulemaking. Moreover, EPA believed a ban on such uses would be unnecessary as most manufacturers were phasing out use as particular substitutes became available, in anticipation of the impending production phaseout.

EPA considered the use of Class I substances in fire extinguishing applications in its initial review as well. Halons were widely used in fire extinguishing systems. These fire extinguishing systems include both total flooding systems (such as stationary fire suppression systems in large computer facilities) and streaming systems (such as hand-held fire extinguishers). In evaluating possible nonessential uses of halons in fire fighting, the Agency divided the fire protection sector into six broad end uses: (1) Residential/Consumer Streaming Agents, (2) Commercial/Industrial Streaming Agents, (3) Military Streaming Agents, (4) Total Flooding Agents for Occupied Areas, (5) Total Flooding Agents for Unoccupied Areas, and (6) Explosion Inertion. EPA concluded that substitutes for halons, whether other halocarbons or alternatives such as water, should meet four general criteria to provide a basis for determining that the use of halon in residential fire extinguishers is nonessential. They must be effective fire protection agents, they must have an acceptable environmental impact, they must have a low toxicity, and they must be relatively clean. In addition, they must be commercially available as a halon replacement in the near future. EPA concluded that while satisfactory substitutes were not yet available in most commercial and military applications within the short statutory time-frame of the rulemaking, certain substitutes were already commercially available for hand-held halon fire extinguishers in residential settings. Consequently, the Agency decided to evaluate this application more closely in order to determine whether residential fire extinguishers containing halon should be designated nonessential products, or whether the continued use of halons, despite the imposition of the excise tax and the impending production phaseout, indicated that this application did not meet the criteria for nonessentiality. Ultimately, after reviewing the issue and soliciting comment, the final rulemaking did establish a ban on the use of halon in residential streaming applications. Furthermore, the use of CFCs in fire extinguishing equipment was also restricted.

EPA considered aerosols and pressurized dispensers likely candidates for designation as nonessential products in 1993 because a great deal of information on substitutes for CFCs in these applications already existed. Research on substitutes for CFCs in aerosol applications began in the 1970s in response to the early studies on stratospheric ozone depletion and the 1978 ban on the use of CFCs as aerosol propellants. Consequently, extensive data already existed on possible substitutes for most remaining aerosol uses.

The 1978 aerosol ban prohibited the manufacture of aerosol products using CFCs as propellants. Other uses of CFCs in aerosols (such as solvents, active ingredients, or sole ingredients) were not included in the ban. In addition, certain ''essential uses'' of CFCs as aerosol propellants were exempted from the ban because no adequate substitutes were available at the time. Consequently, although the use of CFCs in aerosols was reduced dramatically by the 1978 ban, the production of a number of specific aerosol products containing CFCs was still legal including: Metered dose inhalant drugs; medical solvents such as bandage adhesives and adhesive removers; skin chillers for medical purposes; aerosol tire inflators; mold release agents;

lubricants, coatings, and cleaning fluids for industrial/institutional applications to electronic or electrical equipment; special-use pesticides; aerosols for the maintenance and operation of aircraft; diamond grit spray; single-ingredient dusters and freeze sprays; noise horns; mercaptan stench warning devices; pressurized drain openers; aerosol polyurethane foam dispensers; and whipped topping stabilizers. In 1993, EPA concluded that satisfactory substitutes were available for most uses of CFCs in aerosols and pressurized dispensers. As a result, the Agency banned all uses of CFCs in aerosols and pressurized dispensers except for certain products, such as medical devices, that it specifically exempted.

8. Reconsidering Nonessential Determinations

New and compelling information has been gathered by EPA that indicates that in some sectors there is limited continued use of Class I substances in products where the use of the substance today should be considered a ''nonessential use of Class I substances in a product.'' Since the promulgation of the initial regulations under section 610, the SNAP program has been established and now provides information regarding acceptable substitutes for various applications. While the SNAP program does not determine the efficacy of substitute substances as potential replacements for ozone-depleting substances, for most applications there are sources of information regarding the effectiveness of the substitutes, such as laboratory testing and information provided by major users and trade associations. For example, many substitutes have been listed by SNAP as acceptable for various refrigeration applications. Newly manufactured refrigerators in the United States for residential use are employing these available substitutes. As described in this notice, the Agency has determined that the use of a Class I substance in refrigeration applications now meets the definition of nonessentiality and that it is, therefore, reasonable now to promulgate revisions to the regulations that extend the Class I Ban to refrigeration applications. Similarly, substitutes now appear to be available for certain foam, aerosol, and pressurized dispenser uses.

Today's action amends the Class I Ban to meet the Agency's obligations to eliminate the nonessential uses of Class I substances. Specifically, EPA has determined that it is appropriate to reconsider the determinations of nonessentiality for the air-conditioning and refrigeration, foam-blowing, aerosols, and pressurized dispensers product categories. Today's action amends the Class I Ban to include additional nonessential uses of CFCs for these end-use applications.

B. Class II Ban

On December 30, 1993, EPA published a final rulemaking (580 FR 69637) addressing issues related to the statutory prohibition against the sale or distribution, or offer for sale or distribution in interstate commerce of nonessential products containing or manufactured with a Class II substance, imposed by section 610(d) of the Act. Section 610(d)(1) states that after January 1, 1994, ''it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—(A) any aerosol product or other pressurized dispenser which contains a Class II substance; or (B) any plastic foam product which contains, or is manufactured with, a Class II substance.'' Section 610(d)(2) authorizes EPA to grant certain exceptions and section 610(d)(3) creates exclusions from the Class II Ban in certain circumstances.

Section 610(d)(2) authorizes the Administrator to grant exceptions from the Class II Ban for aerosols and other pressurized dispensers where ''the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns,'' *and* where ''the only available alternative to use of a Class II substance is use of a Class I substance which legally could be substituted for such Class II substance.''

Section 610(d)(3) states that the ban of Class II substances in plastic foam products shall not apply to ''foam insulation products'' or ''an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a Class I or Class II substance) is practicable for effectively meeting such standards.'' Unlike the Class I Ban, the Class II Ban was self-executing. Section 610(d) bans the sale of the specified Class II products by its own terms, without any reference to required EPA regulations. However, EPA did issue regulations implementing the Class II Ban in order to better define the products banned under section 610(d) and to grant authorized exceptions under section 610(d)(2). Section 301(a) of the Act gives EPA the authority to promulgate such regulations as are necessary to carry out its functions under the Act, and EPA determined that it was necessary to issue the Class II Ban regulations for those purposes.

1. Determinations Under Section 610(d)

The statutory criteria for providing an exemption from the Class II Ban are explicit. For any potential exemption, the use of the aerosol product or pressurized dispenser must be found to be essential based on flammability or worker safety concerns and EPA must find that the only available alternative to use of a Class II substance is use of a Class I substance which could legally be substituted for such Class II substance.

The initial final rulemaking regarding the Class II Ban provided exemptions for:

—Lubricants, coatings, or cleaning fluids for aircraft maintenance containing HCFCs as solvents;
—Lubricants, coatings, or cleaning fluids for electrical, electronic or photographic equipment containing HCFCs as solvents;
—Aircraft pesticides;
—Mold release agents containing HCFCs as solvents;
—Mold release agents containing HCFC–22 as a propellant, for use where no alternative, including an alternative formulation, is available and where the seller must notify purchaser about the restriction;
—Spinnerette lubricant/cleaning sprays containing HCFCs as solvents and/or propellants;
—Document preservation sprays containing HCFCs as solvents;
—Document preservation sprays containing HCFCs as propellants, for use on thick books, books with coated or dense paper, and tightly bound documents, only;
—Portable fire extinguishing equipment containing HCFCs as fire extinguishants, for use in non-residential applications only;
—Wasp and hornet sprays, for use near high-tension power lines only and where the seller must notify purchaser about restrictions; and
—the definition of foam insulation product.

2. Reconsideration

Since the issuance of the final rule providing exemptions from the statutory Class II Ban, EPA amended the final rule with regard to fire suppression based on compelling information that the Agency received. That amended regulation was issued in the **Federal Register** on December 4, 1996 (61 FR 64424) and subsequently codified at 40 CFR part 82, subpart C.

EPA has received information indicating that it may be appropriate to

reconsider the continued relevance of the current list of exemptions for specific aerosol products and pressurized dispensers; and potentially the definition of foam insulation product. The Agency is aware that since the issuance of that initial final rulemaking, there has been further substitution away from ozone-depleting substances for a variety of insulating foam, aerosol products and pressurized dispensers.

3. Potential Future Notice of Proposed Rulemaking

EPA is currently reviewing information concerning the above aerosol and foam products and pressurized dispensers, as well as the exemptions from the Class II Ban provided in the December 1993 rulemaking. Since the implementation of the Class II Ban on January 1, 1994, progress has been made to further identify substitutes for various applications. In addition, as stated above, the SNAP program has been established and provides lists of acceptable substitutes for various applications, including applications affected by the Class II Ban. When EPA completes its evaluation of the existing exemptions for HCFCs in pressurized dispensers and aerosol products, as well as the definition of foam insulation product, the Agency may proceed with a notice of proposed rulemaking if the Agency determines that any rule revisions are appropriate.

III. Summary and Response to Comments

On June 14, 1999, EPA issued an NPRM proposing changes to the Class I Ban (64 FR 31772). EPA received ten comments regarding this rulemaking. These comments are contained in Air Docket A–98–31. While most of the comments suggested minor changes or clarifications with regard to the proposal, nine of the ten comments generally supported EPA in acting to revise the Class I Ban.

A. Foam Products

EPA proposed to ban the sale and distribution and offer of sale or distribution in interstate commerce of all foam products (both insulating and non-insulating) that release Class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA stated in the NPRM its belief that there are acceptable substitutes available for replacing any continued use of Class I substances as blowing agents for foam products. EPA requested comments on revising the Class I Ban to ban the sale and distribution or offer of sale and distribution in interstate commerce of *any* foam plastic product or plastic foam product that releases Class I substances into the environment (including any release during manufacture, use, storage, or disposal). EPA stated that it would consider any specific data indicating that substitutes are not available for certain foam products.

EPA received two comments that specifically addressed plastic foam products. Both comments address specific types of foam. The first comment, from a manufacturer, stated that they currently have a stockpile of CFC–11 for producing integral skin foam. According to the comment, the company has continued to use small quantities of CFC–11 while conducting research and development of alternative foam systems. The company stated that ''it is the only producer of CO_2 blown systems for integral skin foams that has developed foam systems meeting FAA requirements for commercial aircraft.'' The company further stated that it has ''manufactured a large number of molded articles with the new non-CFC blown systems over the last several years'' and that ''this accomplishment has required a considerable research and development work for several different foam systems.'' The company stated that the change to the new molds and tooling was underway and would be complete within a few months. The commenter believes that they should be permitted to produce some integral skin with the remaining CFC–11 that they have on hand, particularly if they ''encounter any unforeseen problems.'' The commenter further questioned why EPA is pursuing this rulemaking since the commenter believes there will only be a ''very minor impact on ozone depletion.''

EPA applauds the efforts of this manufacturer in replacing CFCs in its processes. EPA recognizes that foam blowing companies have invested significant time and effort in developing substitute products. However, EPA does not agree with the commenter's reasons to exempt the use of the CFCs that remain on hand. Since the commenter indicates there are alternatives already available for the products that it manufactures, EPA believes this indicates that the continued use of CFC–11 in this plastic foam product meets the definition of nonessential. Therefore, EPA does not believe that the final rule should be modified to exempt the continued production of integral skin foam products with CFC–11. However, EPA recognizes the concerns with existing inventories of manufactured products containing Class I substances that have already been completely manufactured and placed into inventory. Therefore, existing inventories of previously manufactured products are considered below at section IV: Effective Dates.

With regard to the general comment regarding the benefits from this rulemaking, EPA believes that it is obligated under the criteria established by section 610 of the Act to list products that are nonessential. The recovery of the ozone layer and its resulting benefits are based on the cumulative implementation of all the programs established under Title VI of the Act, not one individual rule.

EPA received a comment from the National Aeronautics and Space Administration (NASA) regarding the use of specific plastic foam products for the space shuttle. NASA identified one particular product, BX–250, a foam which is part of the thermal protection system of the Space Shuttle External Tank and which uses CFC–11 as a blowing agent. NASA stated that ''although extensive efforts have been made and continue to be made to replace this material, no viable alternative has been identified.'' NASA requested that EPA revise the proposed rule to provide an exemption for CFC–blown foam products in applications that are associated with space vehicles. NASA suggested that EPA consider using the same language that EPA has previously adopted under 40 CFR part 63, subpart GG (40 CFR 63.742) for the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) program. NASA provided EPA with additional information concerning its proactive pursuit of potential alternative blowing agents.

Since human space flight safety is of paramount importance to NASA, prior to implementing any new material, that material must undergo a rigorous development and qualification program for which no suitable substitute has yet been identified. NASA requested that EPA consider using the language at 40 CFR 63.742:

Space vehicle means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, which through contamination can compromise the space vehicle performance.

EPA agrees that an exception is necessary, but EPA disagrees with NASA's proposed language. This language is far broader than what EPA concludes is actually necessary based on an evaluation of the information NASA presented. If EPA were to simply exempt all foams used for any applications associated with space vehicles EPA could be exempting products where there are already suitable substitutes. NASA only provided information concerning one particular type of foam used in applications associated with the Space Shuttle External Tank. Therefore, based on that information, through this action, EPA will modify § 82.66(c) to provide an exemption for foam products manufactured with or containing Class I substances that are used as part of the thermal protection system of external tanks for space vehicles and will add the definition of space vehicles found at § 63.742 to § 82.62. The exemption will be limited to the use of CFC–11 as a blowing agent and where no other CFCs are contained in the foam product. Although EPA did not propose this exemption or the additional definition, they are logical outgrowths of the comment submitted by NASA and thus it is appropriate to proceed to final action without providing any additional proposal or opportunity for further comment.

B. Aerosol Products and Pressurized Dispensers

As stated above, EPA initially provided exemptions for a narrow list of aerosol products and pressurized dispensers that release Class I substances into the environment. EPA proposed to eliminate exemptions for: gauze bandage adhesives & adhesive removers, topical anesthetic and vapocoolant products, lubricants for pharmaceutical tablet manufacture, containers of CFCs used as halogen ion sources in plasma etching, and red pepper bear repellent sprays containing CFC–113 as a solvent. EPA stated in the NPRM that the Agency believes there are substitutes available for these uses of Class I products and therefore these exemptions should be eliminated. Additionally, EPA did not propose any changes to the exemption for medical devices that are determined to be essential by the Food and Drug Administration and are listed at 21 CFR 2.125(e). Also, given the statutory links established between the Class I and Class II Bans for aerosol products and pressurized dispensers, namely the criterion in 610(d) that states that exemptions are available only where the alternative to the use of a Class II substance is the legal use of a Class I substance, EPA did not propose to eliminate exemptions for aerosol products or pressurized dispensers from the Class I Ban that are also exempted from the Class II Ban. However, EPA stated that if the Agency subsequently issues a proposed rulemaking reconsidering exemptions from the Class II Ban, that notice will also include the reconsideration for the remaining aerosol products and pressurized dispensers under the Class I Ban as well. EPA requested comments on the proposed changes to the list of exemptions for aerosol and pressurized dispensers that release Class I substances into the environment, and specifically any data indicating that such uses are still essential.

EPA received three comments that directly concern the proposed changes to the aerosol and pressurized dispensers. All three comments generally support the proposed changes to the Class I Ban. The first comment stated that the proposed changes to the ban were reasonable and agreed that for all of the listed products there are suitable substitutes for the Class I components. The comment stated that the market impact of these regulatory changes would be small.

The second comment, from a trade association, approved of EPA's decision to delay any proposed changes to the exemptions that are linked to the Class II Ban by the statutory language in 610(d). The commenter provided additional information regarding the Class II Ban and its exemptions. The third comment, from a manufacturer of aerosol products and pressurized dispensers, provided information concerning products with exemptions linked to both the Class I and Class II Bans. EPA will consider the information provided by these commenters in the future when the Agency addresses the Class II Ban and the linked Class I and Class II exemptions. Regarding the commenters' statements on the impact of today's action, EPA agrees with the comments and the assessment of the limited impacts of this action.

Therefore, EPA is taking final action to eliminate the Class I exemptions, as proposed; and will consider Class II exemptions at a later date.

C. Air-Conditioning and Refrigeration Appliances

Today, there are substitutes identified for a variety of refrigeration and air-conditioning applications. While substitutes continue to be developed and evaluated for these applications, the Agency stated in the June 14, 1999, NPRM that it was confident that there are sufficient technologically available substitutes for the use of Class I substances in all refrigeration and air-conditioning applications as documented in the docket for this rulemaking. EPA further stated that while there may be a limited number of products manufactured abroad and imported into the United States, as well as some potential domestic manufacturing of refrigeration and air-conditioning products containing Class I substances that EPA is not aware of and given the designated criteria for nonessentiality, EPA believed that air-conditioning and refrigeration appliances that contain CFCs meet the criteria for nonessential uses of a Class I substance. Therefore, EPA stated that it now was reasonable to consider broadening the applicability of the Class I Ban to include air-conditioning and refrigeration applications. EPA proposed to amend § 82.66 to add a provision banning the sale and distribution or offer for sale or distribution of air-conditioning and/or refrigeration appliances that contain Class I substances. EPA requested comments on expanding the Class I Ban to include air-conditioning and refrigeration appliances. In particular, EPA requested comments regarding whether there are sufficient technologically available substitutes for the use of Class I substances in all new air-conditioning and refrigeration appliances.

EPA received three comments on air-conditioning and refrigeration applications. The first commenter, a trade association, stated that it generally supported the proposal but noted that it had recommendations regarding implementation. Their support, according to the comment, is based on the knowledge that non-CFC technology for domestic refrigeration is widely disseminated.

The second commenter, a manufacturer, generally supports the efforts of EPA to restrict the manufacture of refrigerators and room air conditioners containing CFCs. The manufacturer stated that this is ''a positive move that will hasten the day when CFCs (for which substitutes are available) can be eliminated completely from commerce.'' Both these commenters stated that they did not believe that the ban would in any way unfairly treat foreign manufacturers or importers. The association noted that ''most, perhaps all, of the firms that are importing these products are also producing and/or selling non-CFC units.'' EPA agrees that replacement technology is widely available and

therefore the use of CFCs in this category of products now meets the criteria for nonessentiality. Furthermore, EPA agrees that the effects of this rule will be consistent for both domestic and imported goods.

Comments from the manufacturer applauded EPA for not including the servicing of existing products with Class I refrigerants in this rulemaking and stated that banning use of CFCs for servicing would be unfair to consumers who opt for repairing older appliances. EPA agrees with the commenters' statements about not including servicing of existing products, and has not done so in this rulemaking. Under section 608 of the Act, EPA has issued requirements pertaining to the service, maintenance, repair, and disposal of these appliances.

Another commenter noted that while EPA clearly states that this proposed addition of air-conditioning and refrigeration appliances covers the sale and distribution of new products, it is unclear with regards to used products (64 FR 31778). The commenter believes this is so since regulatory language at § 82.66 did not provide specific reference to new products but rather bans classes of products. The commenter alleges that the language ''any air-conditioning or refrigeration appliance which contains a Class I substance used as a refrigerant'' could imply that all are banned, not just new. EPA disagrees with this commenter's interpretation. The Agency stated previously, and with regard to all products covered under the Class I and Class II Bans, that the effectiveness of these regulations is limited to all sales and distribution in interstate commerce up to and including the sale to the ultimate end user, but that the ban does not extend to a resale of the products after a period of use. EPA previously stated on December 30, 1993, that the resale of used products means a sale, by a person after a period of use other than demonstration use. The Agency recognizes that more than one consumer often derives utility from owning and using certain durable goods and therefore stated (58 FR 69643) that:

> while EPA's interpretation of ''interstate commerce'' is such that interstate commerce includes the entire chain of sale and distribution from the manufacturer of a new product to its ultimate consumer, the Agency recognizes in the NPRM that in the case of durable consumer goods such as boats and motor vehicles, resale of the product to additional consumers may occur after the original sale of the new product to the ultimate consumer after some period of use by the original ultimate consumer.

Therefore, EPA believes that the language at § 82.66 has been properly constructed and is consistent with EPA's past approach under the 610 ban. EPA believes that the interpretation of interstate commerce remains as including the entire chain of sale and distribution from the manufacturer of a new product to its ultimate consumer but does not extend to any resale by that initial ultimate consumer to additional consumers after some period of use has occurred.

EPA received a comment from the Department of the Navy on behalf of the Department of Defense (DoD) that generally supported the proposed regulations as drafted. However, the Navy asked to clarify whether their interpretation of the term ''appliance,'' consistent with section 601 of the Act and previously promulgated at 40 CFR part 82, subpart F was also the definition used with regard to this action. Section 601 of the Act states that an appliance is used for ''household or commercial purposes.'' Therefore, EPA has previously stated in regulations implementing Section 608 of the Act that the definition of ''appliance'' includes ''all air-conditioning and refrigeration equipment except that designed and used exclusively for military applications' (58 FR 28660). EPA continues to agree with this interpretation.

DoD stated that while it has aggressively sought to eliminate Class I ozone-depleting substances from military equipment, in some cases equipment using Class I ozone-depleting substances is still being procured until suitable substitutes are fully qualified and new equipment or equipment modifications are available. For example, the Department of the Navy was scheduled to take delivery of its final CFC–114 shipboard chillers in early 2000. Additional chillers using non-ozone-depleting refrigerants are in the final qualification process and according to the comment, were scheduled for delivery late in 2000. The comment further stated that the existing chillers that use CFC–114 are to be converted to a non-ozone-depleting substance within the next few years. EPA applauds the efforts of DoD to replace the uses of all ODSs. EPA reminds DoD that the section 608 codified language limits the exemption of military appliances to those that are designed and used ''exclusively'' for military applications. EPA believes DoD will be able to find suitable substitutes for all ODS use in a timely manner.

D. Metered Dose Inhalers

EPA received two comments regarding metered dose inhalers (MDIs). EPA specifically noted in the preamble to the proposed rule (64 FR 31778) that:

> EPA is not proposing any changes to the exemption for medical devices that are determined to be essential by the Food and Drug Administration and are listed at 21 CFR 2.125(e). Products such as metered dose inhalers (MDIs) are listed at 21 CFR 2.125(e). The Class I Ban will continue to provide an exemption for the sale and distribution or offer of sale or distribution in interstate commerce of MDIs that release Class I substances into the environment, as well as any other essential medical device listed at 21 CFR 2.125(e).

The first commenter stated that EPA should not permit the marketing and sales of CFC-containing MDIs that ''do not themselves qualify under the Act for essential use allowances under section 604.'' The commenter believes that ''while the agency has consistently urged the FDA not to approve new CFC-MDIs, the EPA fails to prohibit marketing of new CFC-containing MDIs under section 610 even though it is well within the authority, if not the mandate, of the agency to do so.'' EPA notes that the proposed changes in the June 14, 1999, NPRM did not contemplate any changes with regard to the FDA linked exemptions. EPA disagrees with this commenter's interpretations. EPA regularly consults with the FDA to authorize production of limited quantities of Class I substances for use in medical devices, including MDIs, as specified under section 604(d) of the Act. However, EPA defers to FDA on all medical judgments pertaining to approval of new medical products, including MDIs. EPA has neither the authority nor the medical expertise, to consult with FDA on such matters and has never urged the FDA to not approve new CFC-MDIs. EPA continues to believe that the most appropriate means for linking these rules is through cross reference to 21 CFR 2.125(e) where any medical device, including but not limited to MDIs, is listed as essential.

EPA received a second comment regarding MDIs. This commenter stated that to be a medical device under section 601(8) of the Act, a product must be approved and determined to be essential by the FDA Commissioner. The commenter stated that FDA may move the list of essential uses to another section and suggested that EPA ''take this opportunity now to amend its section 610 implementing regulations so as to except products deemed essential by FDA under the CAA—rather than refer to 21 CFR 2.125(e).'' The commenter recommended that § 82.66(d)(2)(i) should be amended to read: ''medical devices determined to be essential by the Food and Drug

Administration.'' EPA disagrees with this commenter. EPA does not believe it is necessary to take any action regarding the reference to 21 CFR 2.125(e) at this time. If the FDA were to move the list of exempted products, EPA would undertake any necessary regulatory actions at that time only if such steps were necessary. Moreover, EPA would likely not consider language that is as broadly constructed as the language suggested by the commenter. EPA believes that because FDA now lists all essential medical devices in 21 CFR 2.125(e), it is appropriate to retain the reference to that rule in the 610 ban.

IV. Effective Dates and Grandfathering

EPA proposed a 60-day effective date for this rulemaking, but discussed the possibility of a longer time frame if necessary. EPA received two comments supporting the proposed effective date for the amendments. However, these two comments, as well as an additional comment, raised concerns regarding products that were already manufactured and placed into inventory prior to the effective date. One commenter stated that the effective date for the provisions on air-conditioning and refrigeration products should be based on the date of import for goods that are imported, and based on date of manufacture for goods that are produced domestically. The commenter stated that this was necessary to allow for goods already in inventory to be sold or distributed. However, the commenter states that the general effective date for the rulemaking should be 60 days from the date of publication of the final rule in the **Federal Register** because the industry has been aware of the action for several years.

EPA recognizes the concerns with products that have already been manufactured and placed into initial inventory. Given that the ban is on all sales and distribution of all products until the sale to the ultimate end user, EPA has in previous rulemakings promulgated under section 610 of the Act, permitted products that are manufactured and placed into initial inventory by a specific date to be ''grandfathered'' and thus sold and distributed in interstate inventory. Through this rulemaking, EPA is establishing a provision to permit air-conditioning and refrigeration appliances containing a Class I substance as a refrigerant that are placed into initial inventory by January 14, 2002 to continue to be sold and distributed through sale to the ultimate consumer. As with all provisions of the ban, this provision includes both products manufactured in the United States and those manufactured abroad and subsequently imported into the United States, as well as products manufactured domestically for export.

EPA received a comment raising concerns about existing inventories regarding a specific type of integral skin foam used in commercial aviation that will now be covered by the ban based on today's action. EPA agrees with this commenter's concerns about such previously manufactured products and is adding a similar provision to also grandfather existing inventories of completely manufactured products. These products must be manufactured and placed into initial inventory by January 14, 2002 to qualify for the grandfathering provision.

To ensure consistent interpretation regarding what is meant by initial inventory, EPA is restating in this FRM the interpretation provided in the preamble to the December 30, 1993 FRM. EPA stated that initial inventory means ''that the original product has completed all of its manufacturing processes and is ready for sale by the manufacturer (e.g., the foam is manufactured).'' The Agency further clarified that ''that product may be subsequently incorporated into another product by a different manufacturer after purchase.'' To continue selling products after the effective date of the provisions, the manufacturer or distributor ''must be able to show, upon request by EPA, that the product was in fact manufactured, and thus placed into initial inventory.'' EPA stated that shipping forms, lot numbers, manufacturer date stamps or codes, invoices, or the like are normally kept records that could be maintained from the time the product was put into initial inventory as proof of the date a product was placed into initial inventory (58 FR 69661).

To facilitate consistent understanding, through this action, EPA is adding to its list of definitions, a definition of ''initial inventories'' as defined above. Products that are manufactured and placed into initial inventories by January 14, 2002 may continue to be sold and distributed in interstate commerce, not withstanding the 610 ban.

V. Summary of Today's Action

Through this action, EPA is today amending the current regulations that implement the statutory ban on nonessential products. EPA is replacing the previous list of banned plastic foam products with a more encompassing prohibition that exempts only one particular foam product used to provide thermal protection to external tanks for space vehicles. EPA is also amending the list of banned products to include any air-conditioning or refrigeration appliances that contain a Class I substance used as a refrigerant. In addition, EPA is adding definitions of space vehicles and initial inventories to the definitions section of the regulation and is exempting air-conditioning and refrigeration products, as well as integral skin foam used in the commercial aviation industry, when such products are fully manufactured and placed into initial inventory by a specific date.

VI. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis for this final rule. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to

identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604.

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. First, as discussed elsewhere in this preamble, acceptable substitutes for CFCs are widely available and currently used by domestic manufacturers for the applications covered by this rule. Second, the rule affects the use of CFCs only. Except for a limited number of essential uses (e.g., Metered Dose Inhalers), production and importation of CFCs has been prohibited in the United States since January 1, 1996. Since production ceased, inventories have been dwindling. The information the Agency has reviewed, indicates that CFCs are primarily being used to service existing equipment such as older automobile air conditioners. EPA believes it very unlikely that there is any significant use of CFCs in manufacturing new products affected by this rulemaking by any businesses, large or small. In addition, EPA's contacts with manufacturers and organizations representing these manufacturers supports the view that there is little if any ongoing manufacturing of products using Class I substance. In developing information for this and other rulemakings, except where noted in the response to comments in today's action, EPA did not encounter any manufacturers large or small that are continuing to use Class I substances in their products. Moreover, in the few exception cases (see preamble III. Summary and Response to Comments), EPA was able to accommodate most of the commenters' concerns, notably by including provisions to ''grandfather'' existing inventories of products already manufactured and placed in initial inventories, allowing these existing inventories to be sold. The findings in the development of this rulemaking and others are in keeping with EPA's view that non-Class-I substitutes are widely used and available, and that the transition away from Class I substances for the affected products is essentially complete.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this FRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

D. Paperwork Reduction Act

This action requires no information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and therefore no information collection request will be submitted to OMB for review.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications within the meaning of Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule alters the applicability of the Class I Ban to certain ozone depleting substances but does not impose any enforceable duties on the states or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This final rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

G. Applicability of Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined in Executive Order 12866 and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084. Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 14, 2002.

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

VII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review of this action in the United States Circuit Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements that are the subject of today's rule may not be challenged later in judicial proceedings brought to enforce these requirements.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements.

Dated: November 1, 2001.

Christine Todd Whitman,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.62 is amended by removing paragraph designations (a) through (i), placing the existing definitions in alphabetical order, and adding new definitions for ''Initial Inventory'' and ''Space Vehicles'' to read as follows:

§ 82.62 Definitions.

* * * * *

Initial Inventory means that the original product has completed all of its manufacturing processes and is ready for sale by the manufacturer. Products in initial inventory may be subsequently incorporated into another product by a different manufacturer after purchase. To continue selling products after the effective date of the provisions, the manufacturer or distributor must be able to show, upon request by EPA, that the product was in fact manufactured, and thus placed into initial inventory prior to the effective date. Shipping forms, lot numbers, manufacturer date stamps or codes, invoices, or the like are normally kept records that could be maintained from the time the product was put into initial inventory and may be used to demonstrate when a product was placed in initial inventory.

* * * * *

Space Vehicles means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, which through contamination can compromise the space vehicle performance.

3. Section 82.65 is amended by adding paragraphs (h) and (i) to read as follows:

§ 82.65 Temporary exemptions.

* * * * *

(h) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any air-conditioning or refrigeration products specified as nonessential in § 82.66(e) that are manufactured and placed into initial inventory by January 14, 2002.

(i) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any integral skin foam products manufactured with a Class I substance for use in commercial aviation and specified as nonessential in § 82.66(c) that are manufactured and placed into initial inventory by January 14, 2002.

4. Section 82.66 is amended by:

a. Revising paragraph (c);

b. Removing paragraphs (d)(2)(ii) through (iv), (ix), and (xi);

c. Redesignating paragraphs (d)(2)(v) through (viii) as paragraphs (d)(2)(ii) through (v) respectively;

d. Redesignating paragraphs (d)(2)(x) as paragraph (d)(2)(vi); and

e. Adding a new paragraph (e).

The additions and revisions read as follows:

§ 82.66 Nonessential Class I products and exceptions.

* * * * *

(c) Any plastic foam product which is manufactured with or contains a Class I substance; except any plastic foam product blown with CFC–11, but which contains no other Class I substances and where this product is used to provide thermal protection to external tanks for space vehicles;

(d) * * *

(e) Any air-conditioning or refrigeration appliance as defined in CAA 601(l) that contains a Class I substance used as a refrigerant.

[FR Doc. 01–28191 Filed 11–14–01; 8:45 am]

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Federal Register

Thursday,
November 15, 2001

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Holocarpha macradenia*; (Santa Cruz Tarplant); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG73

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Holocarpha macradenia* (Santa Cruz Tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Holocarpha macradenia* (Santa Cruz tarplant). Approximately 1,360 hectares (3,360 acres) in Contra Costa, Santa Cruz, and Monterey Counties, California, are proposed for designation of critical habitat. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling any future habitat conservation plans. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until January 14, 2002. Public hearing requests must be received by December 31, 2001.

ADDRESSES: Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, telephone 805/644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Holocarpha macradenia (Santa Cruz tarplant) is an aromatic annual herb in the aster family (Asteraceae) that is restricted to coastal terrace prairie habitat along the coast of central California. *Holocarpha macradenia* is one of only four species of the genus *Holocarpha.* All four are geographically restricted to California. The plant is rigid with lateral branches that grow to the height of the main stem, which is 10 to 50 centimeters (cm) (4 to 20 inches (in)) tall. The lower leaves are broadly linear and up to 12 cm (5 in) long; the upper leaves are smaller, with rolled back margins, and are truncated by a distinctive craterform (open pitted) gland. The yellow daisy-like flower head is surrounded from beneath by individual bracts (small leaf-like structure associated with flower head) that have about 25 stout gland-tipped projections (Keil 1993). *H. macradenia* is distinguished from other members of the genus by its numerous ray flowers and black anthers.

Holocarpha macradenia, like other closely related tarplants in the genus *Deinandra,* is self-incompatible, meaning that individuals will not produce viable seeds without cross pollinating with other individuals (B. Baldwin, *in litt.* 2001). Gene flow from individual to individual and from population to population increases the likelihood of viability through the maintenance of genetic diversity; therefore gene flow is important for the long-term survival of self-incompatible species (Ellstrand 1992). Gene flow often occurs through pollen movement between populations, and likely occurs over short distances because most of the native insects thought to pollinate *H. macradenia* generally travel less than 0.5 kilometers (km) (0.3 miles (mi)) at one time. Because clusters of small populations of *H. macradenia* may facilitate greater gene flow, even the conservation of small occurrences may be critical to maintaining genetic diversity in this species. Native bees, bee flies, and wasps have been observed visiting *H. macradenia* flowers (Sue Bainbridge, Jepson Herbarium, University of California, Berkeley, pers. comm. 2001).

Seed production in *Holocarpha macradenia* is highly variable. A large, multi-branched individual may produce 25 seed heads with up to 15 seeds per head, while individuals growing in crowded conditions may be unbranched and produce only one seed head (S. Bainbridge, pers. comm. 2001). Floral heads produce two kinds of achenes (seeds), disc and ray. The disc achenes readily germinate under field and lab conditions, but appear to lose viability within 18 months of production (Bainbridge 1999, S. Bainbridge, pers. comm. 2001). In contrast, the ray achenes do not germinate readily under field and lab conditions; they represent the persistent soil seed bank in the field, and germination may be delayed for many years until further environmental cues break their dormancy (Bainbridge 1999).

The disc achenes usually fall from the receptacle to the ground below the parent plant, while the ray achenes are enclosed in a sticky glandular phyllary (leaf-like structure) which aides dispersal by attaching to animals. Those animals likely to assist in seed dispersal include, but are not limited to, mule deer (*Odocoileus hemionus*), gray foxes (*Urocyon cinereoargenteus*), coyotes (*Canis latrans*), black-tailed jackrabbits (*Lepus californicus*), bobcats (*Felis rufus*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), racoons (*Procyon lotor*), and other small mammals and small birds.

The *Holocarpha macradenia* seed bank (a reserve of dormant seeds, generally found in the soil) is important to the species' year-to-year and long-term survival (Bainbridge 1999). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year. The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. For example, the Graham Hill population near Santa Cruz comprised 12,000 standing plants in 1994 and 550 in 2001 (V. Haley, consultant, Felton, CA, pers. comm. 2001); the Apple Hill population near Watsonville comprised 0 standing plants in 1999 and 4,049 in 2000 (T. Edell, *in litt.,* 2000).

The extent of seed bank reserves is variable from population to population. At the Twin Lakes population in Santa Cruz, the seed bank density averaged 240 seeds per square meter (m^2) (10 square feet (ft^2)); at the Watsonville Airport, the seed bank density averaged 887 seeds per (m^2) (10 ft^2); at the Porter Ranch population in northern Monterey County, the seed bank density averaged 40,000 seeds (m^2) (10 ft^2) (Bainbridge 1999, S. Bainbridge, pers. comm. 2001).

Management activities can affect the balance between the number of standing plants and the extent of seed bank reserves. Burning, mowing, and scraping habitat for *Holocarpha macradenia* have been utilized to enhance populations at several sites, including Graham Hill, Arana Gulch, Twin Lakes, Tan, and Apple Hill, with variable results. At the Watsonville Airport site, *H. macradenia* habitat adjacent to runways has been mowed, disced, and grazed to maintain visibility for airport operations. While this

management has increased the standing population of *H. macradenia,* the vigor of individual plants appears to be in decline, and the seed bank reserve may be becoming depleted (Deb Hillyard, California Department of Fish and Game, pers. comm. 2001).

Habitat for *Holocarpha macradenia* historically consisted of grasslands and prairies found on coastal terraces below 100 meters (m) (330 feet (ft)) in elevation, from Monterey County north to Marin County. In the late 1800s, coastal prairies were estimated to cover 350,000 hectares (ha) (865,000 acres (ac)) in California (Huenneke 1989). However, in the mid 1990s, the California Natural Diversity Data Base (CNDDB) estimated that only 800 ha (1980 ac) of high quality coastal prairie remained (CNDDB 1996, cited in Holl 1998). Historically, four major factors contributed to changes in the distribution and composition of coastal prairies: grazing; the introduction of highly competitive, non-native species; the elimination of periodic fire; and cultivation (Heady *et al.* 1988). The remaining coastal prairie habitat is becoming increasingly fragmented and restricted in distribution, largely due to these same factors as well as urban development.

In the Santa Cruz area, *Holocarpha macradenia* exists on flat to gently sloping marine terrace platforms that are separated by steep-sided gulches. A series of populations occur on older marine terraces inland from the communities of Santa Cruz and Soquel; these terraces range in elevation from about 34 to 122 m (110 to 400 ft). Two populations (Arana Gulch and Twin Lakes) occur on a more recent marine terrace at lower elevations (12 to 18 m (40 to 60 ft)) and closer to the ocean. In the Watsonville area in Santa Cruz County, a series of *H. macradenia* populations occur on a low-lying marine terrace (15 to 37 m (50 to 120 ft) in elevation) that is dissected by Harkins Slough, Hanson Slough, and Struve Slough; the close proximity of these populations suggest that they were once part of a larger population that has since been fragmented by changes in land use over the past 100 years. Approximately 4 miles north of Watsonville, several *H. macradenia* populations are located on a marine terrace 55 m (180 ft) in elevation. Approximately 3 miles south of Watsonville a population occurs at an elevation of 30 m (100 ft) on alluvium (sedimentary material deposited by flowing water) resulting from marine terrace deposits. On the east side of San Francisco Bay (Contra Costa County), the marine terraces are more extensively dissected, and *H. macradenia* populations historically occurred on the alluvium resulting from terrace deposits (Palmer 1986).

In Santa Cruz County, where most of the remaining native occurrences of *Holocarpha macradenia* occur, the soils most typically found on marine terraces and the alluvial deposits derived from them are of several soil series (U.S. Department of Agriculture (USDA 1980). The Watsonville, Tierra, Elkhorn, and Pinto soil series are most frequently associated with occurrences of *H. macradenia.* These loams and sandy loams are very deep and range from well drained to somewhat poorly drained. Other soil series, including Los Osos, Elder, and Diablo, are also located in the vicinity of known populations of *H. macradenia,* but due to the scale used for mapping the distribution of soils we cannot determine the importance of these soils to this species.

Because the soils where *Holocarpha macradenia* occurs typically include a subsurface clay component, they hold moisture longer into the growing season compared to the surrounding sandy soils. As a summer-blooming species, *H. macradenia* may benefit from this late season moisture (California Department of Fish and Game (CDFG) 1995); alternatively, the saturated soil conditions during the spring season may be too wet for many other species to become established, and therefore maintain the reduced cover that *H. macradenia* prefers (Grey Hayes, University of California, Santa Cruz, pers. comm. 2001).

Today, the Santa Cruz tarplant is associated most frequently with grasses such as non-native wild oat (*Avena fatua*), Mediterranean barley (*Hordeum hystrix*), rattlesnake grass (*Briza maxima*), and bromes (*Bromus* sp.); and native needlegrass (*Nassella* spp.), and California oatgrass (*Danthonia californica*). Associated native herbaceous species include other tarplants from the genus Hemizonia. At some locations, the plant is found with rare or sensitive species, including Gairdner's yampah (*Perideridia gairdneri*), San Francisco popcorn flower (*Plagiobothrys diffusus*), Santa Cruz clover (*Trifolium buckwestiorum*), and the Ohlone tiger beetle (*Cicindela ohlone*), a species listed as endangered (Service 2001). Other locally unique plant species such as Choris's popcorn flower (*Plagiobothrys chorisianus var. chorisianus*), Triteleia (*Triteleia ixiodes*), coast coyote thistle (*Eryngium armatum*), and San Francisco gumplant (*Grindelia hirsutula* var. *maritima*) also occur in these areas.

The distribution of *Holocarpha macradenia* has been severely reduced due to continuing destruction and alteration of coastal prairie habitat. All of the native San Francisco Bay area populations have been extirpated. The last remaining native population, known as the Pinole Vista population, consisting of 10,000 plants, was eliminated in 1993 by commercial development (CDFG 1997).

Along Monterey Bay in Santa Cruz and Monterey Counties, approximately 13 populations are extant. According to CNDDB, an additional nine populations along the Monterey Bay have been extirpated by development, most recently in 1993 when a population in Watsonville (Anna Street site) was destroyed during construction of office buildings and a parking lot (CDFG 1993 and 1995a). Other populations have been in decline or have recently disappeared due to changes in grassland management that favor species which compete with *Holocarpha macradenia*. Where habitat is still intact, management favorable to *H. macradenia* can reverse these trends and allow seeds in the dormant seed bank of the species to germinate and grow. The ability to provide appropriate management for the remaining occurrences of *H. macradenia* will be pivotal in the recovery the species.

Holocarpha macradenia is currently known from approximately 13 native and eight experimentally seeded populations (CNDDB 2001, CDFG 2000) in Contra Costa, Monterey, and Santa Cruz Counties. Some of these native populations may represent separate, fragmented patches of what historically was a single larger population. Seven of the native populations occur around the cities of Santa Cruz and Soquel. These populations, with the number of standing plants and year of the most recent survey, are: Graham Hill Road, 550 (2001); De Laveaga, 1000 (2000), Arana Gulch, 234 (2000); Twin Lakes, 16 (1999); O'Neill/Tan, 0 (1998); Winkle (also referred to as Santa Cruz Gardens), 0 (1994); and Fairway, 150 (2001). Note that the names of the populations used here are those used in the final rule to list the species published on March 20, 2000 (65 FR 14898).

The remaining six native populations occur around the city of Watsonville. Four of these are bounded generally by Corralitos Creek, Harkins Slough, Watsonville Slough, and the city of Watsonville; they may represent remnants of a larger population. These four populations, with their number of standing plants and year of the most recent survey are: Watsonville Airport, 4 million (2000); Harkins Slough, 15,000

(1993); Apple Hill, 4049 (2000); and Struve Slough, 1 (1994). Two outlying populations in the Watsonville area are: Spring Hills Golf Course, 4,000 (1990); and Porter Ranch, 3,200 (1993).

The other eight existing populations of *Holocarpha macradenia* have resulted from experimental planting of seed in Wildcat Regional Park in the east San Francisco Bay area (East Bay). The final rule to list *H. macradenia* (65 FR 14898) included a discussion of these efforts to establish new populations within the historic range of the species. Twenty-two sites were seeded between 1982 and 1986 in what appeared to be suitable habitat but representing a range of conditions based on the following criteria: soil series (Tierra as well as five others), grazing pressure (light or moderate), and exposure to coastal fog (fog, wind but no fog, and out of wind). The seeds used for the planting had been collected from East Bay populations at the northern end of the species' range. Although a number of populations did well for a few years, many have failed to persist. Of the eight populations that have persisted at least for 14 years, only one, named Mezue, has consistently supported large numbers of individuals. In the year 2000, this population was the largest it has been since the initial seeding in 1983 and supported over 17,000 individuals (CDFG 2000).

Several agencies have taken the initiative to undertake efforts to enhance habitat for *H. macradenia*. In conjunction with the CDFG, the city of Santa Cruz has been applying a variety of habitat manipulations to plots within the Arana Gulch Open Space Preserve, including raking, scraping, mowing, and controlled burning with the objective of increasing the number of standing individuals, which had been in decline since grazing was terminated in the 1980s (CDFG 1997). The CDFG has been applying habitat manipulations and carrying out seed bank studies (Bainbridge 1999). The California Department of Transportation has been mowing the Apple Hill population west of Watsonville to reduce the biomass of non-native grasses (T. Edell, *in litt.*, 1998). While the interpretation of results can be complex, these efforts generally show that the number of standing individuals can be increased by reducing the potential for competition between *H. macradenia* and non-native grasses through mowing and other techniques. However, increasing the number of standing individuals may also deplete seed bank reserves; therefore, the goals of appropriate management should include not only increasing the number of standing individuals in small populations, but also maintaining the appropriate balance between standing individuals and seed bank reserves.

Several proposed development projects will impact habitat for *Holocarpha macradenia*. Housing developments have been approved for several sites including the Graham Hill site and the Fairway site, but management plans for *H. macradenia* have not yet been fully implemented. A management plan for *H. macradenia* has been initiated for the Tan population, but has not yet resulted in enhancement of the population. Approval for a housing development adjacent to the Winkle population is pending. A housing development for the Struve Slough was recently approved without any active management plan for *H. macradenia*. As a result of a legal challenge, Watsonville Wetlands Watch has been granted a 3-year time period to raise funding to purchase the 6-ac parcel that supports *H. macradenia* for conservation purposes (Superior Court of the State of California 2001).

As has been observed at the Watsonville Airport, human activities, such as mowing and cattle grazing can favor the abundance of *Holocarpha macradenia* by reducing competition from other herbaceous species. However, because these activities can also promote the spread and establishment of non-native species, they should be repeated frequently to maintain the establishment of *H. macradenia*. Such intensive management may not be practical in all areas where *H. macradenia* habitat includes a complement of non-native species. Moreover, while the presence of *H. macradenia* could be maintained in areas with a high abundance of non-native species, the habitat quality of these areas may be less than areas where the presence of non-native species is minimal.

Based on the presence of other fragments of remaining coastal terrace prairie habitat, we believe that other populations of *Holocarpha macradenia* may occur within the current range of the species but have not yet been detected by botanists. In particular, suitable habitat most likely remains on older coastal terraces that lie to the north of the cities of Santa Cruz and Soquel. These areas may contain a viable seed bank, even if no standing plants are found.

Holocarpha macradenia is threatened primarily by historic and recent habitat destruction caused by residential development and habitat alteration caused primarily by land management practices that favor the increase of other species which compete with *H. macradenia*. Most often, the establishment of invasive, competing species follows from the cessation of grazing by cattle or horses. Future loss of habitat may also result from recreational development, airport expansion, and agriculture. Habitat that has been set aside in preserves, conservation easements, and open spaces also suffers secondary impacts from: (1) Casual use by residents, (2) introduction of non-natives, (3) lack of active management, and (4) changes in hydrology. In particular, smaller preserve areas with *H. macradenia* suffer because they are cut off from the ecosystem functions, such as those involving soil and water, that would be present in larger, more contiguous sites. More often, these smaller areas are left as open spaces, but without the benefit of the grassland management needed to sustain them.

Non-native species that have invaded and threaten habitat supporting native populations of *Holocarpha macradenia* include French broom (*Genista monspessulana*), eucalyptus (*Eucalyptus sp.*), acacia (*Acacia decurrens, A. melanoxylon*), and a number of non-native grass species, particularly Harding grass (*Phalaris aquatica*) and bromes (*Bromus spp.*). In Wildcat Regional Park in the East Bay area, artichoke thistle (*Cynara cardunculus*) has invaded habitat for *H. macradenia* at the one site that is being proposed for critical habitat (Mezue), as well as many of the other sites where introduced populations of *H. macradenia* were attempted.

Previous Federal Action

Federal action on this plant began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51), was presented to Congress on January 9, 1975, and included *Holocarpha macradenia* as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of our intention thereby to review the status of the plant taxa named therein. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. *Holocarpha macradenia* was included in this June 16, 1976, **Federal Register** document.

In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposed rules already more than two years old. Later, on December 10, 1979, we published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposed rule that had not been made final, along with four other proposed rules that had expired. We published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Holocarpha macradenia* as a category one candidate (species for which data in our possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice (48 FR 6752) of our prior finding that the listing of *Holocarpha macradenia* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing, or the petitioned action is found to be not warranted. Each October from 1983 through 1990 further findings were made that the listing of *H. macradenia* was warranted, but that the listing of this species was precluded by other pending proposals of higher priority.

Holocarpha macradenia continued to be included as a category one candidate in plant NORs published September 27, 1985 (50 FR 39526), February 1, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *H. macradenia* as a candidate. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. The 1997 NOR, published September 19, 1997 (62 FR 49398) retained *H. macradenia* as a candidate, with a listing priority of 2. On March 20, 1998, we published a proposed rule in the **Federal Register** (63 FR 15142) to list *H. macradenia*. The final rule listing *H. macradenia* as a threatened species was published on March 20, 2000 (65 FR 14898).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Holocarpha macradenia* was listed, we found that designation of critical habitat for *H. macradenia* was prudent, but that given our limited listing budget, designation of critical habitat would have to be deferred so as to allow us to concentrate limited resources on higher priority critical habitat and other listing actions.

On June 17, 1999, our failure to issue final rules for listing *Holocarpha macradenia* and eight other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. In mid-September 2001, plaintiffs agreed to a brief extension of this due date until November 2, 2001.

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.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we determine critical habitat at the time of listing, as required under section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. 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), which 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 our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies,

and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods for Selection of Areas for Proposed Critical Habitat Designation

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Holocarpha macradenia*. This information included information from the California Natural Diversity Data Base (CNDDB 2001), soil survey maps (Soil Conservation Service 1980, 1978), aerial photos available through TerraServer (*http://terraserver.homeadvisor.msn.com*), aerial photos on loan from the County of Santa Cruz Planning Department, recent biological surveys and reports, additional information provided by interested parties, and discussions with botanical experts. Frequently accompanied by agency representatives, we also conducted site visits, either cursory or more extensive, at a number of locations managed by, or with involvement from, local, State or Federal agencies, including Graham Hill, De Laveaga Park, Twin Lakes State Beach, Arana Gulch Open Space Area (City of Santa Cruz), Anna Jean Cummings County Park (Santa Cruz County), and the Watsonville Airport (City of Watsonville). We also visited the Porter Ranch site, which is owned and managed by the Elkhorn Slough Foundation.

Much of what is known about the specific physical and biological requirements of *Holocarpha macradenia* is described in the Background section of this proposed rule. Additional information about appropriate management techniques is being generated by ongoing management efforts and research on life history. As discussed in the Background section, several agencies such as the California Department of Fish and Game, the California Department of Parks and Recreation, the California Department of Transportation, the county of Santa Cruz, the city of Santa Cruz, and East Bay Regional Park District are undertaking efforts to learn how to better enhance habitat for *H. macradenia*. Preliminary management and seed bank studies show that habitat manipulation such as burning, mowing, grazing, and scraping can increase standing numbers of plants and may be necessary to enhance and maintain populations of *H. macradenia*. Active management is necessary to preserve habitat which is essential for the long-term conservation of *H. macradenia*.

Primary Constituent Elements

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Based on our knowledge to date, the primary constituent elements for *H. macradenia* consist of, but are not limited to:

(1) Soils associated with coastal terraces prairies, including the Watsonville, Tierra, Elkhorn, Santa Inez, and Pinto series.

(2) Plant communities that support associated species, including native grasses such as *Nassella* sp.(needlegrass) and *Danthonia californica* (California oatgrass); native herbaceous species such as members of the genus *Hemizonia* (other tarplants), *Perideridia* gairdneri (Gairdner's yampah), *Plagiobothrys diffusus* (San Francisco popcorn flower), and *Trifolium buckwestiorum* (Santa Cruz clover); and

(3) Physical processes, particularly soils and hydrologic processes, that maintain the soil structure and hydrology that produce the seasonally saturated soils characteristic of *Holocarpha macradenia* habitat.

Site Selection

We identified critical habitat areas essential for the conservation of *Holocarpha macradenia* in the three primary areas where it is known to occur: in the East Bay (Contra Costa County), in the Santa Cruz-Soquel area (Santa Cruz County), and the Watsonville area (Santa Cruz and Monterey Counties). Historic locations for which there are no recent records of occupancy (within the last 20 years) were not proposed for designation, including those previously found in Marin and Alameda Counties that have become urbanized over the last 100 years; locations to the north of Santa Cruz where *H. macradenia* has not been seen in over 50 years; and locations around the Watsonville area that have been destroyed by fill, agricultural activities, and parking lot construction. In the East Bay, only one of the eight sites that support an introduced population of *H. macradenia* in Wildcat Regional Park is being proposed for designation because it is the largest seeded population that represents the genetic variability of the northern portion of the species' range.

The long-term survival and recovery of *Holocarpha macradenia* is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these sites. Important ecological functions include connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal, and the ability to maintain disturbance factors (for example, grazing, mowing, or fire disturbance) that maintain the openness of vegetation on which the species depends. Threats to the remaining habitat of *H. macradenia* include: urban development and its associated impacts, such as habitat fragmentation, recreational use, and changes in grazing regimes that have facilitated the increase in non-native plant species that

compete with *H. macradenia*. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *H. macradenia.* Given the species' need for an open plant community structure and the threat of competition from non-native species, we believe that these areas require special management considerations or protection.

In our delineation of the critical habitat units, we believe it is important to propose all areas that are currently support native populations of *Holocarpha macradenia* because the number of populations that have been extirpated and the reduction in range that the species has undergone place a great importance on the conservation of all the known remaining sites. In the area just west of Watsonville, a number of populations that are in close geographic proximity to each other are included in the same unit because the distribution of *H. macradenia* in this area was probably once greater, prior to fragmentation of populations into smaller units. Including these populations in one unit is important to maintain connectivity among them.

With regard to the experimental seeded populations of *H. macradenia,* we acknowledge the importance these seeding trials have offered with respect to understanding the range of habitat characteristics that *H. macradenia* may tolerate. However, for purposes of designating critical habitat, we believe that the area that supports the Mezue population has the most important role to play in the recovery of the species. This population is the best expression of the genetic variability that once occurred in the northern end of the range of the species; native stands in this portion of the range have now been extirpated.

Even though we do not have sufficient information at this time to propose sites other than where populations are currently known to occur, this does not signal that habitat outside the designation is unimportant or may not be required for recovery of the species. Areas that support newly discovered populations in the future, but are outside the proposed critical habitat designation, will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time an action is being proposed.

Mapping

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Holocarpha macradenia,* using information from the California Natural Diversity Data Base (CNDDB 2001), aerial photos, recent biological surveys and reports, and discussions with botanical experts. These data layers were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were mapped using Universal Transverse Mercator (UTM) coordinates. Some units were mapped with a greater precision than others, based on the available information, and the size of the unit. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of certain mapping units will be refined.

In selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements or otherwise contribute to the conservation of *Holocarpha macradenia.* However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *H. macradenia.* Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of *Holocarpha macradenia.* Critical habitat being proposed for *H. macradenia* includes 11 units that currently sustain the species. Protection of this proposed critical habitat is essential for the conservation of the species because the geographic range that *H. macradenia* occupies has been reduced to so few sites that the species may well be threatened with extinction in the near future, particularly if appropriate management of the remaining habitat is not employed. The areas being proposed as critical habitat are within the three primary areas that currently support *H. macradenia* and include the appropriate coastal terrace prairie habitat necessary for the species. We propose to designate approximately 1,360 ha (3,360 ac) of land as critical habitat for *H. macradenia.* Approximately 3 percent of these lands are owned by the State, while county, regional, and city lands comprise approximately 18 percent, and private lands comprise approximately 79 percent of the proposed critical habitat. All units are within the geographic area occupied by the species in accordance with section 3(5)(A)(i) of the Act.

A brief description of each critical habitat unit is given below:

East Bay Area Unit

Unit A: Mezue

Unit A consists of grassland habitat on sloping alluvial deposits from old marine terraces within Wildcat Regional Park in Contra Costa County. This entire unit of approximately 61 ha (150 ac) is on lands managed by the East Bay Regional Park District (EBRPD). Management activities at this site include controlled grazing, removal of invasive artichoke thistle, and annual population monitoring (EBRPD 1992 and 2001). Of the 22 sites that were used as sites to introduce *Holocarpha macradenia* seed in the East Bay region between 1982 and 1986, this population has been the only one that has consistently supported a large population of *H. macradenia.* In the year 2000, this population supported over 17,000 individuals (CDFG 2000). Although this population is an introduced population, this unit is critical to the survival and conservation of the species because this population represents the genetic variability in the northernmost portion of the plant's range and is important for the expansion of the existing population.

Santa Cruz—Soquel Area Units

Unit B: Graham Hill

Unit B consists of grasslands on a relatively flat coastal terrace prairie on the west side of Graham Hill Road, approximately 1 mile north of the city of Santa Cruz in Santa Cruz County. This entire unit of approximately 12 ha (30 ac) is on privately owned lands. The unit includes a 7 ha (17 ac) area that has been set aside for conservation of coastal prairie habitat and *Holocarpha macradenia* as mitigation for an adjacent development that comprises 52 residences and associated amenities. The population has been fenced and

non-native species have been removed; however, efforts to enhance the population, as called for in a management plan (ESA 1996) have not yet been initiated. In 1994, this population numbered 12,000 individuals; by 1998, 675 individuals were counted; in 2001, approximately 550 individuals were counted (V. Haley, consultant, Felton, California, pers. comm. 2001). This unit is important because it currently supports a population of *H. macradenia* and because it represents the western limit of the cluster of populations that are found on the northern end of Monterey Bay. This unit, along with the Fairway unit, occur at the highest elevation of the native populations (400 ft in elevation) and consequently the farthest away from the influence of the coastal climate. Preserving genetic variability within the species that has allowed it to adapt to these different environmental conditions is important for the long-term survival and conservation of the species.

Unit C: De Laveaga

Unit C consists of grasslands on a relatively flat coastal terrace prairie within De Laveaga Park just north of the city of Santa Cruz in Santa Cruz County. This entire unit of approximately 3 ha (7 ac) is on State lands managed by the California Army National Guard (CANG) and supported by Federal funds from the National Guard Bureau. CANG does not anticipate undertaking any new activities on this parcel, and is currently developing a management plan for *Holocarpha macradenia* (Joanne Froland, biologist, CANG, pers. comm. 2001). In 2001, a maintenance crew from the adjacent city-owned golf course spread wood chips from a felled tree over half the population. This unit is important because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. Despite its small size, this unit is important because it is located between the Graham Hill, Arana Gulch, and Rodeo Gulch units, and is important for maintaining connectivity between these other units.

Unit D: Arana Gulch

Unit D consists of grasslands on a relatively flat coastal terrace prairie within an open space preserve just north of Woods Lagoon in the City of Santa Cruz. This entire unit of approximately 26 ha (65 ac) is on lands owned and managed by the City of Santa Cruz. It is bounded on the west, east, and north sides by existing development and on the south side by the Santa Cruz Harbor. Huge population fluctuations have occurred on this site, ranging from 100,000 individuals in the late 1980s when the site was being grazed by cattle, to only a few hundred individuals 4 or 5 years later. The City entered into an MOU with CDFG in 1997 to manage *Holocarpha macradenia*, which includes utilizing a variety of management techniques to enhance the population. As of 1998, individuals numbered approximately 12,820; in 2000, they numbered 234 (K. Lyons *in litt.*, 2001). The City is proposing to construct a bicycle path that would bisect the management area (Brady and Associates, Inc. 1997). The bike path would be constructed in part from Federal funding provided by the Federal Highway Administration; an informal conference with the Service was initiated in 2000 (Service, *in litt.*, 2000). Since it was determined that the project is not likely to adversely affect *H. macradenia*, we did not need to convert the informal conference to a biological opinion. This unit is important because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. This unit and the Twin Lakes unit occur at the lowest elevation of the native populations in the northern Monterey Bay area (40 to 60 ft in elevation) and consequently the closest to the influence of the coastal climate. Moreover, these two units are within one half mile of each other and therefore could retain connectivity between them. It is also important for the recovery of the species because it is one of only three units that is being managed by an agency that has a mandate to conserve sensitive resources and is large enough to support management activities that may be necessary to maintain the population at this site.

Unit E: Twin Lakes

Unit E consists of grasslands on relatively flat coastal terrace prairie just north of Schwan Lagoon within the City of Santa Cruz. This entire unit of approximately 10 ha (26 ac) is on lands owned by the California Department of Parks and Recreation (CDPR) within Twin Lakes State Park. It is bounded on the west, north, and east sides by existing development, and on the south side by Schwan Lagoon. Since 1997, CDPR has been actively managing *Holocarpha macradenia* habitat by removing invasive, non-native species and attempting various methods to enhance the population (Service 2000). CDPR has also funded research on *H. macradenia* seed bank dynamics (Bainbridge 1999). This population has ranged in size from 120 in 1986 to just a few dozen individuals in the last few years. This unit is important because it currently supports a population of *H. macradenia* and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. As with the Arana Gulch unit, it occurs at the lowest elevation of the native populations in the northern Monterey Bay area (40 to 60 ft in elevation) and consequently the closest to the influence of the coastal climate. Moreover, the two units are within one half mile of each other and therefore could retain connectivity between them. This unit is also important because it is one of only three units that is being managed by an agency that has a mandate to protect sensitive resources.

Unit F: Rodeo Gulch

Unit F consists of sloping alluvial deposits and adjacent relatively flat coastal terrace prairie that straddles the Arana Gulch and Rodeo Gulch drainages north of the community of Soquel in Santa Cruz County. It is bounded on the north, east and south sides by existing development; the western side is bounded by lands that have not been developed. This entire unit of approximately 11 ha (27 ac) is on privately owned lands. This unit includes a parcel that has recently been proposed for a housing development known as Santa Cruz Gardens Subdivision Unit 12 (Denise Duffy and Associates 2001); this parcel was previously set aside in a ''temporary open space easement'' as mitigation for destroying a portion of the *H. macradenia* population by an earlier phase of the development in 1986 (Service 2000). The current development proposal calls for setting aside approximately 23 ha (56 ac) for conservation and recreation purposes, and includes much of the habitat that supports *H. macradenia*. Salvage of soil and a *H. macradenia* seed bank is being proposed for another portion of the project site that will be impacted by development (Lyons 1999). This population numbered approximately 60 individuals in 1993; none have been observed since then. However, a seed bank likely persists at this site. This unit is important because of the likely presence of a *H. macradenia* seed bank and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. In

addition, the seedbank for this population, this unit supports grassland habitat that provides for future expansion of the population. Also, it is within one half mile of the Soquel unit, and therefore could retain connectivity between the units.

Unit G: Soquel

Unit G consists of grasslands on sloping alluvial deposits and adjacent relatively flat coastal terrace prairie that straddles Rodeo Gulch and Soquel Creek drainages north of the community of Soquel in Santa Cruz County. It is bounded on the north, east, and south sides by existing development; the western side is bounded by lands that have not been developed. Approximately 22 ha (55 ac) of this 40 ha (100 ac) unit is within Anna Jean Cummings Regional Park (also known as O'Neill Ranch), which is managed by the County of Santa Cruz, and the remaining portion is privately owned. On the park lands, the population has been fenced, and portions of the habitat for the plant is being mowed and raked in accordance with a management plan (Ecosystems West 1999; Joe Rigney, consultant, pers. comm. 2001). The County of Santa Cruz approved a housing development for the privately owned parcel (known as Tan, but now called Seacrest) in 1997. The development included an approximately 4 ha (10 ac) parcel to be set aside for conservation and a plan to manage the habitat for *Holocarpha macradenia*. Although part of the same population, the CNDDB has maintained two separate entries (O'Neill and Tan) to reflect the two land ownerships. The total number of individuals in the combined population has never been larger than 200 individuals, with the private parcel supporting only a portion of those. To date, management activities have not resulted in an enhancement of the population of the species on either parcel. This unit is important because it has recently supported a population of *H. macradenia* and the seed bank is still present, and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. In addition to the seedbank for this population, this unit supports grassland habitat that provides for future expansion of the population. Also, it is within one half mile of the Rodeo Gulch unit, and therefore could retain connectivity between the units. Moreover, the acreage in Anna Jean Cummings Park represents one of the best remaining fragments of habitat on which to attempt recovery activities for *H. macradenia*, as it has been subject to fewer impacts than other sites and is managed by a public agency that is concerned about sensitive resources.

Unit H: Porter Gulch

Unit H consists of grasslands on gently sloping alluvial deposits derived from a coastal terrace that straddles the Bates Creek and Porter Gulch drainages north of the community of Soquel in Santa Cruz County. It is bounded on all sides by undeveloped lands. This entire unit of approximately 14 ha (35 ac) is on privately owned lands. The population of *Holocarpha macradenia* at this site includes an approximately 12 ha (30 ac) parcel that was proposed for a lot split. A management plan for the species was developed as part of the proposed split (Greening Associates 1995); however, the management plan for *H. macradenia* has not been fully implemented. This unit also includes adjacent coastal prairie habitat, of which approximately 7 ha (9 ac) was deeded in 2001 to the Land Trust of Santa Cruz County for preservation. In 1993, the population of *H. macradenia* numbered approximately 1,500 individuals. The population numbered only several hundred individuals in 2001 when the site was observed to support a large cover of rattlesnake grass that likely competed with *H. macradenia* (C. Rutherford, Service, pers. obs., 2001). This unit is important because it currently supports a population of *H. macradenia*, and because it is one of only seven populations in the cluster of populations that are found on the northern end of Monterey Bay. Also, along with the Graham Hill unit, this one occurs at the highest elevation of the native populations (400 ft in elevation) and consequently the farthest away from the influence of the coastal climate. Preserving genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions would be important for the long-term survival and conservation of the species.

Watsonville Area Units

Unit I: Watsonville

Unit I consists of a complex of grasslands and low-lying drainages on alluvial fans and marine terraces west of the city of Watsonville in Santa Cruz County. The northern and eastern boundaries reach toward the Corralitos Creek drainage except where it runs up against existing development. The southeastern and southern boundary is formed by the Pajaro River drainage. The western boundary is formed by the Harkins Slough drainage and then generally follows Buena Vista Drive north until it intersects with the northern perimeter of the Watsonville Airport (Airport). This unit excludes paved areas of the Airport, but includes the unpaved portions surrounding the runways. This approximately 662 ha (1,634 ac) unit is partly owned by the City of Watsonville (the Airport) (approximately 135 ha (330 ac)); a small portion is under easement to the California Department of Transportation (approximately 8 ha (20 ac)); a portion is designated as a Reserve by the CDFG (approximately 16 ha (40 ac)); and the remaining portion is privately owned (approximately 504 ha (1,245 ac)). This unit overlaps in part with an area that is targeted for regional conservation planning by the CDFG. Through its Conceptual Area Protection Plan process, CDFG, along with other Federal, State, and local agencies and organizations, are is identifying opportunities to preserve sensitive species and habitats, including the Harkins Slough and Watsonville Slough wetlands and adjacent habitats (J. DeWald, *in litt.* 2001). This unit is important because it currently supports multiple populations of *H. macradenia* including the populations known from the Airport, Harkins Slough, Apple Hill, and Bay Breeze; this unit also supports grassland habitat that is important for the expansion of existing populations and for maintaining connectivity between the populations. It is also one of only three areas that support populations of *H. macradenia* that are found in the central Monterey Bay area and in the southern end of the range of the species. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for the long-term survival and conservation of the species.

Unit J: Casserly

Unit J consists of open patches of grassland interspersed with golf course greens, cattle pastures, croplands, and orchards. This entire unit of approximately 450 ha (1,110 ac) consists of privately owned lands. It is the unit for which the least amount of information is available, particularly with respect to the extent of existing land uses in the area that support the primary constituent elements. The Spring Hills population of *Holocarpha macradenia* occurs within this unit. The population numbered approximately 4,000 individuals in 1990; the population was observed in 1995 and 2001, though not counted. The population was fragmented by development of the Spring Hills Golf Course, and now consists of five

separate occurrences. This unit is important because it currently supports multiple occurrences of *H. macradenia* that are found in the Monterey Bay area, including the five populations known from the Spring Hills Golf Course. This unit also supports grassland habitat that is important for the expansion of existing populations, and for maintaining connectivity between these populations. It is one of only three areas that support populations of *H. macradenia* that are found in the central Monterey Bay area and in the southern end of the range of the species as well as the most inland distribution of the species. Preserving genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions would be important for the long-term survival and conservation of the species.

Unit K: Elkhorn

Unit K consists of sloping terrain on the edges of a coastal terrace, just south of the Pajaro River in northern Monterey County. The population of *Holocarpha macradenia* that is found here is unusual in that it occurs on a canyon bottom; it is also the only population that occurs primarily on the Santa Ynez soil series. This unit of approximately 6970 ha (170 ac) is privately owned by the Elkhorn Slough Foundation (Foundation). The CDFG holds a conservation easement on an approximately 16 ha (40 ac) parcel that overlaps in part with this unit; the Foundation is managing the parcel for its biological values. Multiple Federal, State, and local government and private agencies have recently developed a conservation plan for the Elkhorn Slough watershed; this critical habitat unit is within the 18,210 ha (45,000 ac) area on which the conservation plan focuses (Scharffenberger 1999). In 1993, the population at this site comprised approximately 3,200 individuals (CNDDB 2001). This unit is important because it currently supports a population of *H. macradenia* and because it is one of only three areas that support populations of *H. macradenia* that are found on the central Monterey Bay area and in the southern end of the range of the species. Also, this is the only populations that occurs primarily on the Santa Ynez soil series. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for the long-term survival and conservation of the species. In addition to the current population, this unit comprises grassland habitat that is important for the expansion of the population.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Lands proposed are under private, county, State, and Federal jurisdiction.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)[1] OF PROPOSED CRITICAL HABITAT FOR *Holocarpha Macradenia* BY LAND OWNERSHIP

Unit name	State	Private	County/City	Federal	Total
A. Mezue	0 ha (0 ac)	0 ha (0 ac)	61 ha (150 ac)	0 ha (0 ac)	61 ha (150 ac)
B. Graham Hill	0 ha (0 ac)	14 ha (35 ac)	0 ha (0 ac)	0 ha (0 ac)	14 ha (35 ac)
C. De Laveaga	3 ha (7 ac)	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	3 ha (7 ac)
D. Arana Gulch	0 ha (0 ac)	0 ha (0 ac)	26 ha (65 ac)	0 ha (0 ac)	26 ha (65 ac)
E. Twin Lakes	10 ha (26 ac)	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	10 ha (26 ac)
F. Rodeo Gulch	0 ha (0 ac)	11 ha (27 ac)	0 ha (0 ac)	0 ha (0 ac)	11 ha (27 ac)
G. Soquel	0 ha (0 ac)	18 ha (45 ac)	22 ha (55 ac)	0 ha (0 ac)	40 ha (100 ac)
H. Porter Gulch	0 ha (0 ac)	14 ha (35 ac)	0 ha (0 ac)	0 ha (0 ac)	14 ha (35 ac)
I. Watsonville	24 ha (60 ac)	504 ha (1,245 ac)	134 ha (330 ac)	0 ha (0 ac)	662 ha (1,635 ac)
J. Casserly	0 ha (0 ac)	450 ha (1,110 ac)	0 ha (0 ac)	0 ha (0 ac)	450 ha (1,110 ac)
K. Elkhorn	0 ha (0 ac)	69 ha (170 ac)	0 ha (0 ac)	0 ha (0 ac)	69 ha (170 ac)
Total	37 ha (93 ac)	1,081 ha (2,667 ac)	243 ha (600 ac)	0 ha (0 ac)	1,360 ha (3,360 ac)

[1] Approximate acres from GIS map data have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping, approximate hectares and acres greater than or equal to 30 (≥ 30) have been rounded to the nearest 5; totals are sums of columns and rows.

Effects of Critical Habitat Designation

Section 7 Consultation

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 ''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 would not afford any additional protections under the Act against such activities.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat 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, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action(s). The conservation measures in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid 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 or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., National Guard Bureau or FAA funding), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of *Holocarpha macradenia.* Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

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 the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for 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 destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the species is present in the area of the proposed action. When the species is present in an area, designation of critical habitat for *Holocarpha macradenia* is not likely to result in regulatory requirements above those already in place due to the presence of the listed species. When the species is not present in an area, designation of critical habitat for *Holocarpha macradenia* may result in an additional regulatory burden when a federal nexus exists.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Holocarpha macradenia* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the coastal terrace prairie habitat. Such activities adverse to *Holocarpha macradenia* could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and

commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as harvesting firewood in the watershed upslope from *H. macradenia*;

(2) Activities that appreciably degrade or destroy coastal terrace prairie habitat, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use. As noted earlier in the rule, some form of grazing may be helpful if it maintains open habitat and decreases competition from other species.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, California Army National Guard activities funded by the National Guard Bureau on their lands or lands under their jurisdiction, activities of the Federal Aviation Authority on their lands or lands under their jurisdiction, the release or authorization of release of biological control agents by the U.S. Department of Agriculture, regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act, construction of communication sites licensed by the Federal Communications Commission, watershed management activities of the Natural Resource Conservation Service, and authorization of Federal grants or loans. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. Several other species that are listed under the Act occur in the same general areas as *Holocarpha macradenia*. Ohlone tiger beetle (*Ohlone cicendela*) also occurs in grassland habitats, and is in close proximity to *H. macradenia* in the Rodeo Gulch unit. Two amphibious species, the California red-legged frog (*Rana aurora draytonii*) and the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) occur in wetlands and adjacent uplands in the Watsonville unit. The Alameda whipsnake (*Masticophis lateralis euryxanthus*) occurs within the Mezue unit in Contra Costa County.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Holocarpha macradenia* as a covered species. In the event that future HCPs covering *H. macradenia* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *H. macradenia*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *H. macradenia* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Holocarpha macradenia* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Holocarpha macradenia* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values'', and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may submit written comments and information to the Field Supervisor at the address

provided in the **ADDRESSES** section above; (2) You may also comment via the electronic mail (e-mail) to *fw1sctarplant@r1.fws.gov*. Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [1018–AG73] and your name and return address in your e-mail message.'' If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766. Please note that the Internet address *''fw1sctarplant@r1.fws.gov''* will be closed out at the termination of the public comment period; and (3) You may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, CA.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearing on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal within the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) In the economic analysis, we will determine whether this rule will have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

Holocarpha macradenia was listed as endangered on March 20, 2000. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *H. macradenia.* Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat 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). Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, in areas where the species is present any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would also likely be considered as jeopardy to the species under the Act.

Accordingly, in areas where the species is present, we do not expect the designation of critical habitat to 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. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see Economic Analysis section of this rule) Non-federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to 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 *Holocarpha macradenia* since its listing in 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist when the species is present. We will evaluate any impact of designating areas where Section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential impacts on other Federal agency activities, will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, is not expected to significantly impact 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 incremental effects in areas where the species is present on any Federal entitlement, grant, or loan programs. We will evaluate any impact of designating areas where Section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 2.—IMPACTS OF HOLOCARPHA MACRADENIA LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, the National Guard Bureau, the Federal Aviation Authority, the Natural Resource Conservation Service, the Department of Housing and Urban Development, and any other Federal Agencies, including but are not limited to (1) altering watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water need to maintain the coastal terrace prairie habitat, thus adversely affecting the species and (2) appreciably degrade or destroy coastal terrace prairie habitat.	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Holocarpha macradenia* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Holocarpha macradenia.* If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to

avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, we have only completed a single informal conference on *Holocarpha macradenia* since it was proposed for listing. Since it was determined that the project is not likely to adversely affect *H. macradenia,* we did not need to convert the informal conference to a biological opinion. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because *Holocarpha macradenia* has been listed only a relatively short time and there have been few activities with Federal involvement in these areas during this time, there is not a detailed history of consultations based on the listed of this species. As mentioned above, we have conducted only a single, informal conference, and no formal consultations at all. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

Outside the existing developed areas, the projected land uses for the majority of the proposed critical habitat consist of recreation, military storage, housing development, agriculture, cattle grazing, conservation lands for natural resource values, and possible airport expansion. Of the 11 critical habitat units identified in this proposed rule, 9 consist of fewer than 10 parcels each, and 6 of these are only 3 parcels or fewer. Future development is not likely in six of these nine units because they are primarily park lands or lands dedicated to conservation. Future development has already been permitted in the remaining three of these nine units; in these cases, we are coordinating with the appropriate State, County, and City agencies. We do not anticipate that this designation of critical habitat, if finalized, will result in any additional regulatory impacts on development projects already permitted in these units, and we are not aware of any Federal activities in these units that would require consultation or reinitiation of already-completed consultations for ongoing projects. As these three units are small (35 acres or less), it is unlikely that additional development beyond that already permitted could occur here.

The two remaining units are significantly larger in acreage and therefore encompass a more diverse array of possible future land uses. At the current time, the 1,110–acre Casserly unit consists of lands primarily designated for non-commercial agriculture, and includes hobby farms, rural residences, cattle grazing, and small animal husbandry. It also includes two golf courses. Lands within this unit may be developed in the future, although we are not aware of any plans for development at this time. The 1,635–acre Watsonville unit primarily consists of lands zoned for commercial agriculture, including row crops as well as cattle grazing. The remaining portion of the unit is within the city limits of the City of Watsonville. We are aware of several possible future projects in this unit, including airport expansion, a high school development, FHWA highway projects (such as rebuilding bridges or widening freeways), and housing development. Future development projects in this area will also be affected by coastal zone permitting and other State and local planning and zoning requirements.

Several of these projects may have Federal involvement; including the airport expansion that is being funded and permitted by the FAA; a high school development that may recommend section 404 authorizations from the ACOE and an incidental take permit, pursuant to section 10(a)(1)(B) of the Act, from the Service; housing developments that may require 404 authorizations; and watershed and restoration management projects sponsored by NRCS. The requirement in section 7(a)(2) to avoid jeopardizing listed species and destroying or adversely modifying designated critical habitat may result in Federal agencies requiring certain modifications to proposed projects.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effects to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Holocarpha macradenia,* we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of

the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *Holocarpha macradenia* as an endangered species under the California Endangered Species Act in 1979, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously published analyses of the likely economic impacts of designating critical habitat for similar plant species found in similar areas, especially *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Like *Holocarpha macradenia, C. robusta* var. *hartwegii* is a native species restricted to certain specific habitat types along the central coast of California; the two species face similar threats, and require similar protective and conservation measures. Several of the units proposed as critical habitat for *C. robusta* var. *hartwegii* will likely face the same kinds of future land uses, especially residential development, that may occur in parts of the area proposed as critical habitat for *H. macradenia.* Our high-end estimate of the economic effects of designating one of the units ranged from $82,500 to $287,500 over ten years.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. The entire designation involves fewer than 180 parcels; many of these parcels are located in units where likely future land uses are not expected to result in Federal involvement or section 7 consultations. Six of the 11 critical habitat units consist of park lands or lands dedicated to conservation, and future development is already permitted in 3 small units, with additional Federal involvement unlikely. Even in the other units, Federal involvement— and thus section 7 consultations, the only trigger for economic impact under this rule— would be limited to a subset of the area proposed; land use in one of these units is largely devoted to non-commercial agriculture, where there is unlikely to be any Federal involvement. In one unit, Federal activities could include Corps of Engineers permits, permits we may issue under section 10(a)(1)(B) of the Act, FAA funding and permitting of airport improvements, and voluntary watershed management and restoration projects funded by NRCS. This rule would result in required project modifications only when proposed Federal activities would adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We anticipate that the kinds of reasonable and prudent alternatives we would provide can usually be implemented at very low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Holocarpha macradenia* will not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorization. Any such activity will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector 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

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications, and a takings implication assessment is not required. This rule would not take private property. As discussed above, the designation of critical habitat affects only Federal agency actions; it does not provide additional protection for the species on non-Federal lands or regarding actions that lack any Federal involvement. Furthermore, the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. The species was listed on March 20, 2000. We fully expect that, through section 7 consultation, such projects can be implemented consistent with the conservation of the species; therefore, this rule would not result in a takings.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. Where the species is present, the designation of critical habitat imposes no additional restrictions to those currently in place, and therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are 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 consultation to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Holocarpha macradenia.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have determined that there are no Tribal lands essential for the conservation of *Holocarpha macradenia* because they do not support populations, nor do they provide essential habitat. Therefore, critical habitat for *Holocarpha macradenia* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The author of this proposed rule is Constance Rutherford (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Holocarpha macradenia* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Holocarpha macradenia.	Santa Cruz tarplant	U.S.A. (CA)	Asteraceae-Sunflower	T	690	17.96(b)	NA
*	*	*	*	*	*	*	

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the Santa Cruz tarplant (*Holocarpha macradenia*) under paragraph (b) by adding an entry for *Holocarpha macradenia* in alphabetical order under Family Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) * * *

Family Asteraceae: *Holocarpha macradenia* (Santa Cruz tarplant)

(1) Critical habitat units are depicted for Contra Costa, Santa Cruz, and Monterey counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Holocarpha macradenia* are the habitat components that provide:

(i) Soils associated with coastal terraces prairies, including the Watsonville, Tierra, Elkhorn, Santa Inez, and Pinto series.

(ii) Plant communities that support associated species, including native grasses such as *Nassella* sp.(needlegrass) and *Danthonia californica* (California oatgrass); native herbaceous species such as members of the genus Hemizonia (other tarplants), *Perideridia gairdneri* (Gairdner's yampah), *Plagiobothrys diffusus* (San Francisco popcorn flower), and *Trifolium buckwestiorum* (Santa Cruz clover); and

(iii) Physical processes, particularly soils and hydrologic processes, that maintain the soil structure and hydrology that produce the seasonally

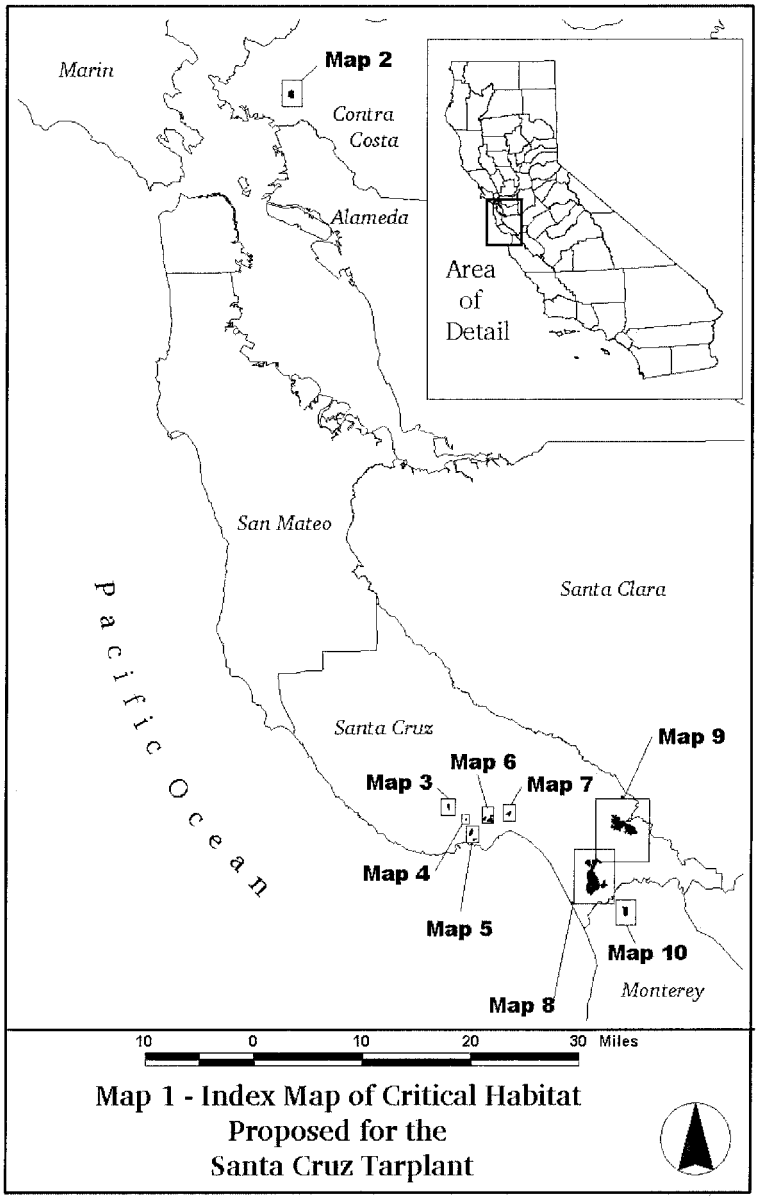
saturated soils characteristic of *Holocarpha macradenia* habitat.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

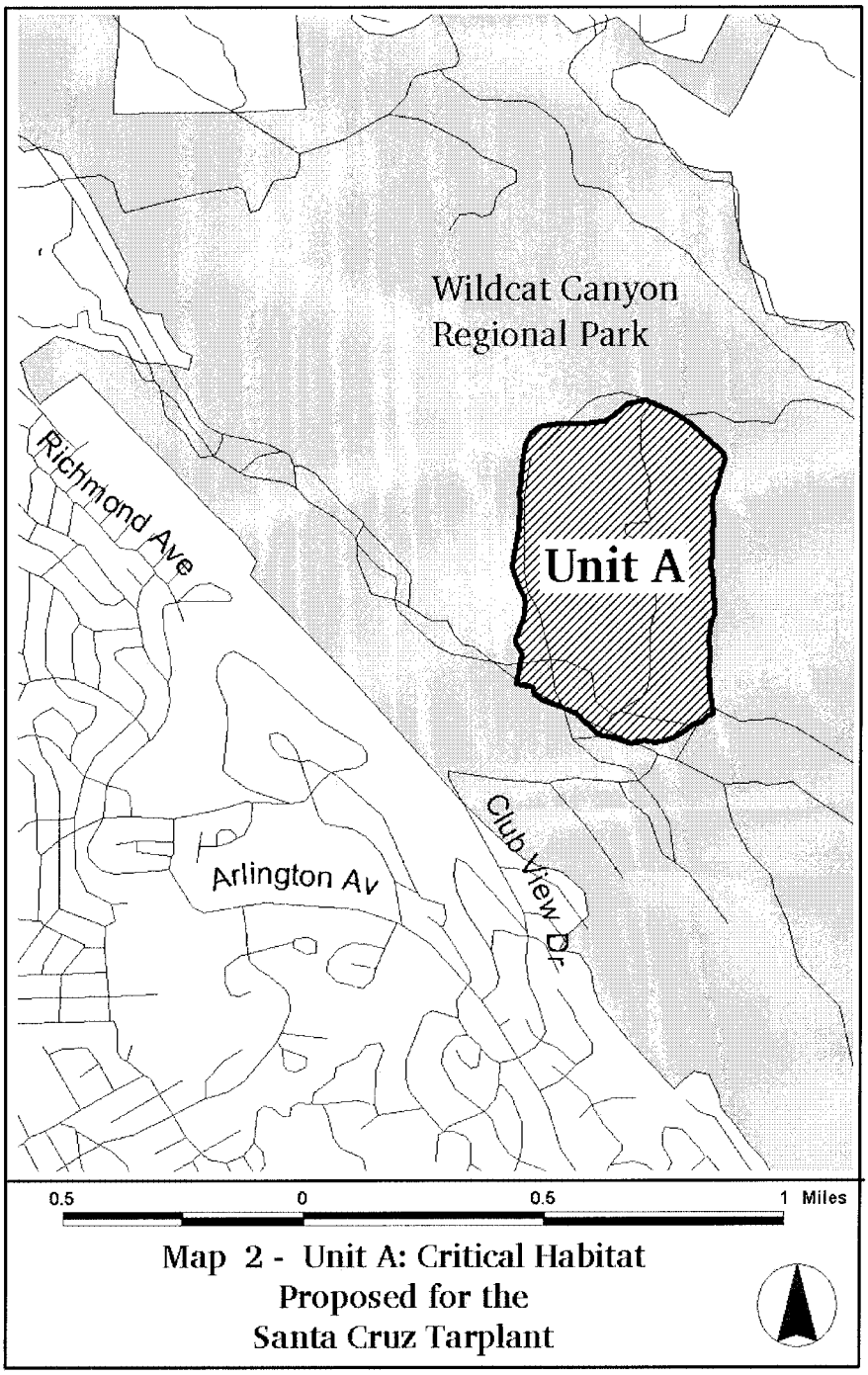
(ii) Map 1—Index map follows:



Map 1 - Index Map of Critical Habitat Proposed for the Santa Cruz Tarplant

(5) *Unit A: Mezue, Contra Costa County, California.* (i) From USGS 1:24,000 quadrangle map Richmond. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 562047, 4199460; 562049, 4199550; 562048, 4199580; 562054, 4199610; 562056, 4199670; 562069, 4199730; 562084, 4199760; 562114, 4199790; 562150, 4199790; 562185, 4199800; 562230, 4199800; 562270, 4199800; 562294, 4199800; 562324, 4199800; 562357, 4199820; 562382, 4199840; 562403, 4199860; 562461, 4199870; 562543, 4199840; 562574, 4199820; 562611, 4199790; 562698, 4199720; 562712, 4199700; 562718, 4199690; 562719, 4199680; 562717, 4199670; 562707, 4199640; 562700, 4199620; 562694, 4199600; 562685, 4199580; 562679, 4199550; 562682, 4199490; 562679, 4199440; 562678, 4199390; 562675, 4199340; 562681, 4199300; 562686, 4199190; 562673, 4199160; 562668, 4199110; 562669, 4199070; 562669, 4199000; 562670, 4198970; 562672, 4198950; 562679, 4198910; 562681, 4198870; 562660, 4198860; 562643, 4198840; 562615, 4198840; 562594, 4198820; 562557, 4198800; 562531, 4198790; 562496, 4198780; 562460, 4198790; 562413, 4198780; 562366, 4198800; 562309, 4198810; 562236, 4198870; 562188, 4198890; 562128, 4198910; 562101, 4198940; 562096, 4198950; 562091, 4198960; 562077, 4198960; 562060, 4198960; 562041, 4198970; 562044, 4198990; 562051, 4199030; 562057, 4199060; 562054, 4199070; 562038, 4199090; 562037, 4199110; 562043, 4199130; 562061, 4199170; 562065, 4199190; 562068, 4199230; 562065, 4199250; 562048, 4199280; 562035, 4199310; 562027, 4199340; 562028, 4199370; 562047, 4199460.

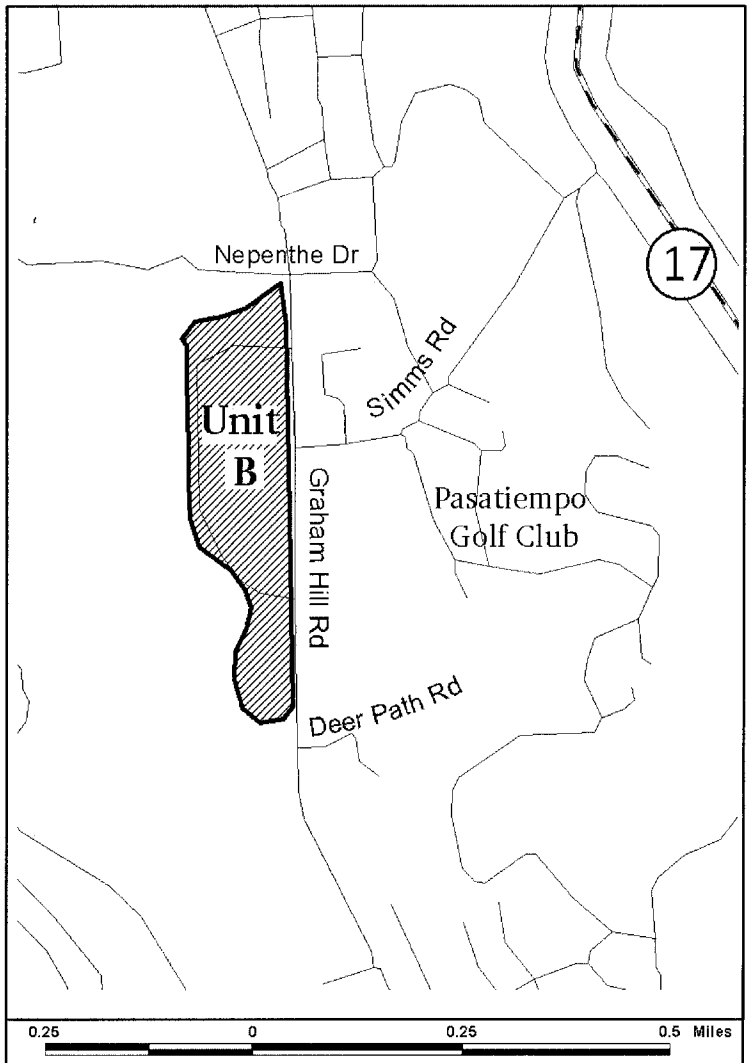
(ii) Map 2-Unit A follows:



Map 2 - Unit A: Critical Habitat Proposed for the Santa Cruz Tarplant

Unit B: Graham Hill, Santa Cruz County, California. (i) From USGS 1:24,000 quadrangle map Felton. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 585905, 4096930; 585915, 4096850; 585930, 4096130; 585912, 4096110; 585868, 4096100; 585833, 4096130; 585817, 4096180; 585819, 4096240; 585840, 4096280; 585850, 4096320; 585837, 4096350; 585810, 4096390; 585749, 4096430; 585731, 4096480; 585728, 4096550; 585726, 4096610; 585724, 4096750; 585723, 4096810; 585714, 4096820; 585739, 4096850; 585791, 4096860; 585839, 4096880; 585905, 4096930.

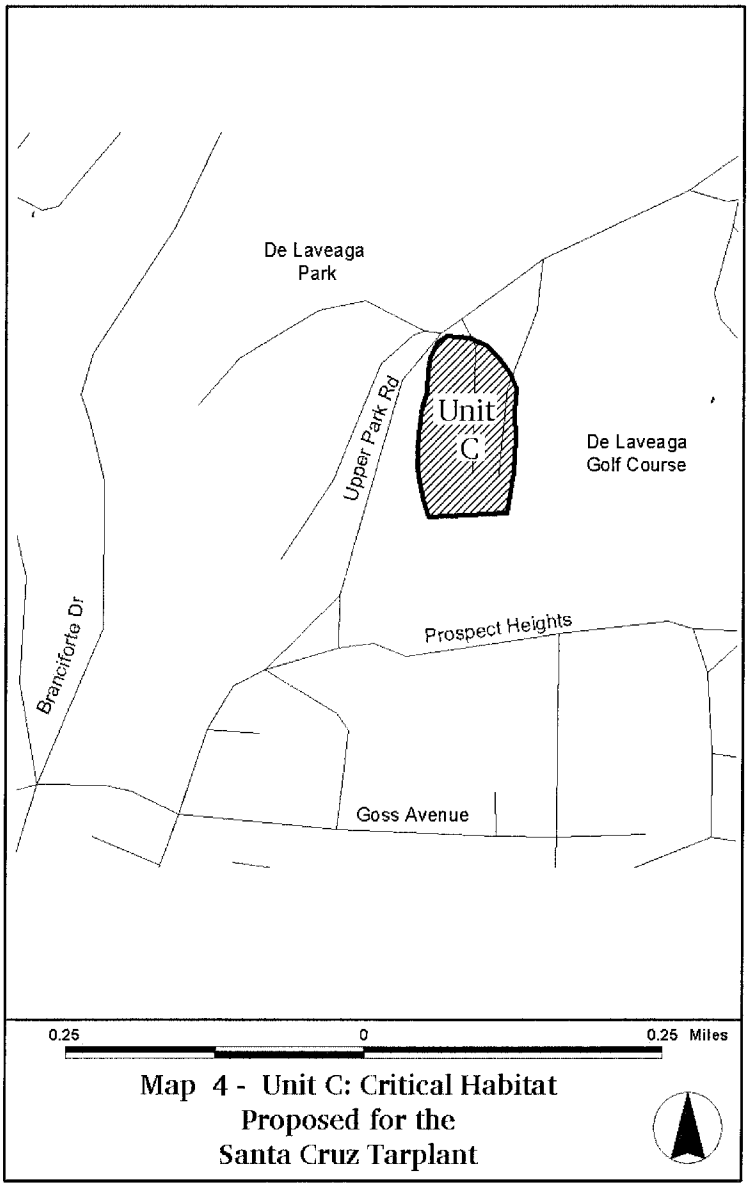
(ii) Map 3-Unit B follows:



Map 3 - Unit B: Critical Habitat Proposed for the Santa Cruz Tarplant

(7) *Unit C: De Laveaga, Santa Cruz County, California.* (i) From USGS 1:24,000 quadrangle map Santa Cruz. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 588439, 4094810; 588468, 4094810; 588492, 4094800; 588510, 4094780; 588523, 4094760; 588532, 4094740; 588530, 4094710; 588531, 4094670; 588529, 4094630; 588520, 4094580; 588415, 4094570; 588408, 4094600; 588402, 4094620; 588400, 4094640; 588399, 4094660; 588401, 4094690; 588406, 4094720; 588412, 4094740; 588413, 4094770; 588416, 4094780; 588426, 4094800; 588439, 4094810.

(ii) Map 4—Unit C follows:

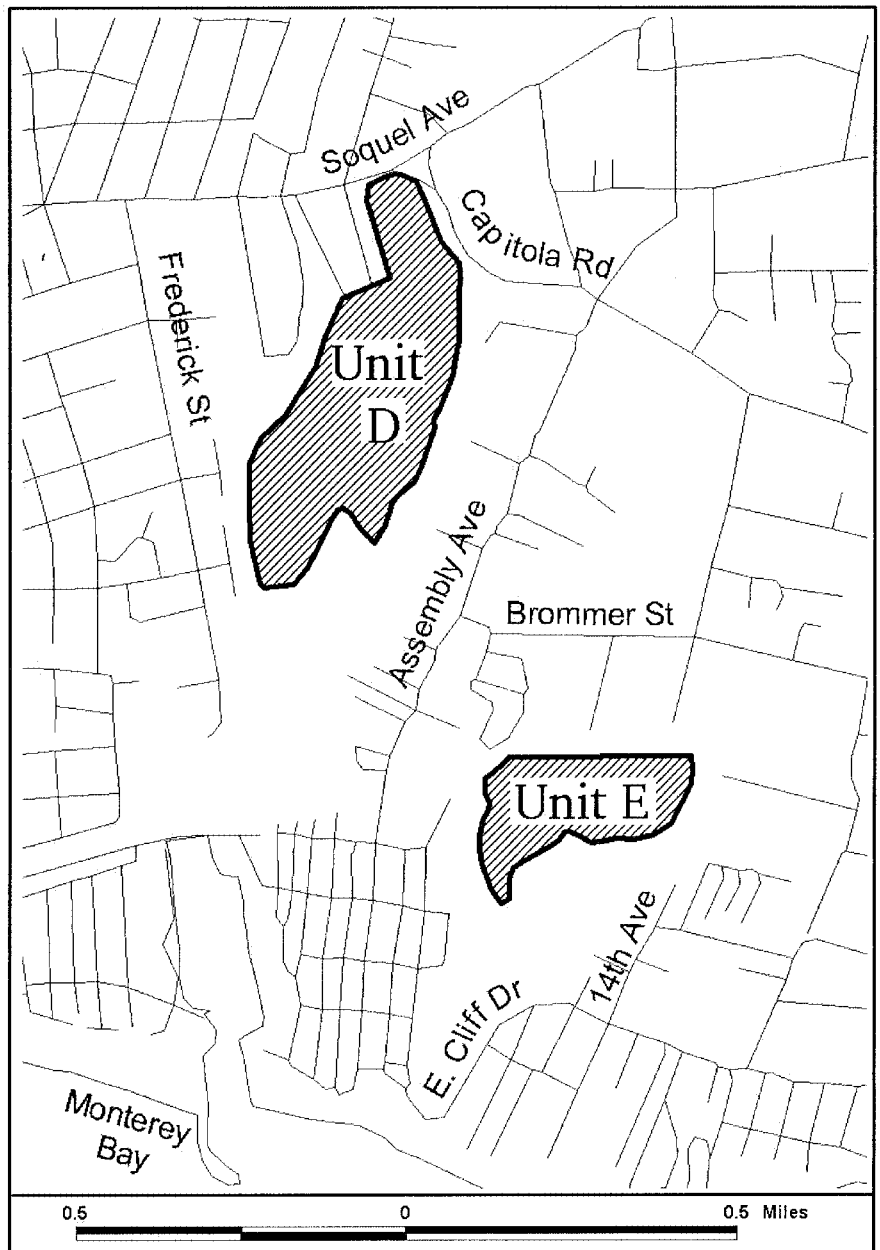


Map 4 - Unit C: Critical Habitat Proposed for the Santa Cruz Tarplant

(8) *Unit D: Arana Gulch, Santa Cruz County, California.* From USGS 1:24,000 quadrangle maps Santa Cruz and Soquel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 589295, 4093310; 589315, 4093270; 589338, 4093210; 589358, 4093170; 589399, 4093120; 589404, 4093100; 589399, 4093030; 589401, 4092990; 589400, 4092940; 589391, 4092900; 589386, 4092860; 589375, 4092830; 589353, 4092780; 589340, 4092750; 589340, 4092730; 589325, 4092690; 589310, 4092640; 589290, 4092600; 589272, 4092590; 589252, 4092570; 589238, 4092550; 589229, 4092530; 589221, 4092500; 589195, 4092460; 589161, 4092490; 589139, 4092530; 589120, 4092540; 589108, 4092540; 589092, 4092510; 589057, 4092450; 589033, 4092400; 588999, 4092360; 588929, 4092350; 588916, 4092360; 588894, 4092470; 588891, 4092560; 588890, 4092650; 588919, 4092710; 588946, 4092730; 588980, 4092760; 589053, 4092880; 589080, 4092950; 589119, 4093040; 589234, 4093080; 589178, 4093270; 589181, 4093310; 589214, 4093320; 589245, 4093330; 589268, 4093330; 589295, 4093310.

(9) *Unit E: Twin Lakes, Santa Cruz County, California.* From USGS 1:24,000 quadrangle map Soquel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 589964, 4091950; 589967, 4091930; 589964, 4091890; 589918, 4091800; 589899, 4091780; 589871, 4091770; 589823, 4091760; 589784, 4091760; 589744, 4091750; 589722, 4091750; 589692, 4091760; 589667, 4091780; 589656, 4091770; 589640, 4091750; 589616, 4091740; 589559, 4091710; 589532, 4091690; 589521, 4091660; 589521, 4091640; 589522, 4091620; 589504, 4091610; 589489, 4091620; 589476, 4091640; 589455, 4091700; 589450, 4091730; 589449, 4091770; 589458, 4091800; 589472, 4091830; 589473, 4091840; 589465, 4091860; 589464, 4091890; 589463, 4091900; 589482, 4091920; 589506, 4091940; 589522, 4091950; 589964, 4091950.

(10) *Units D and E map.* Map 5—Units D and E follow:



Map 5 - Units D & E: Critical Habitat Proposed for the Santa Cruz Tarplant

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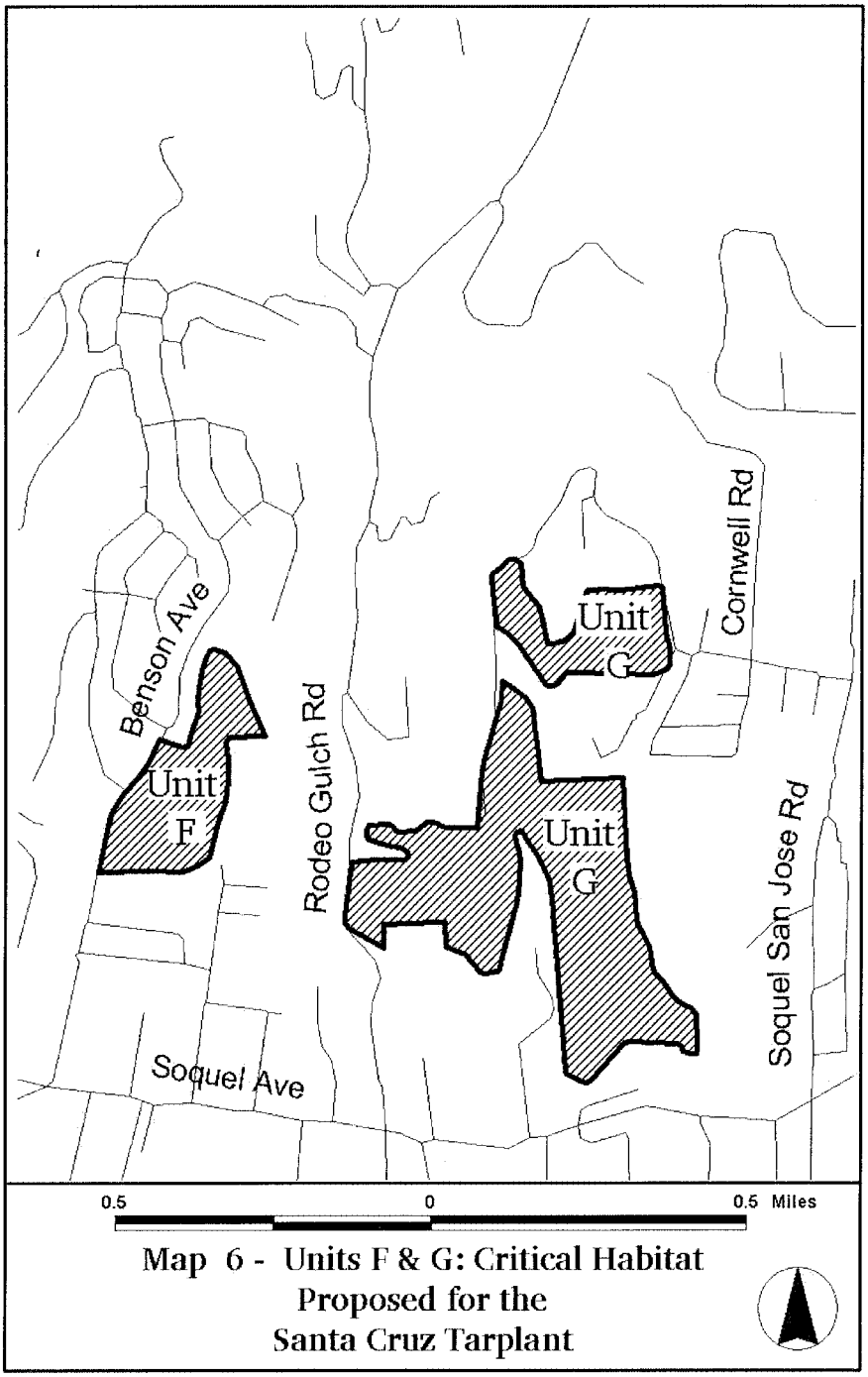
(11) *Unit F: Rodeo Gulch, Santa Cruz County, California.* From USGS 1:24,000 quadrangle map Soquel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 590971, 4094630; 590995, 4094740; 591007, 4094780; 591037, 4094830; 591069, 4094860; 591095, 4094900; 591125, 4094960; 591182, 4094940; 591196, 4094940; 591199, 4094950; 591207, 4094980; 591216, 4095000; 591225, 4095030; 591220, 4095050; 591225, 4095090; 591232, 4095130; 591241, 4095160; 591252, 4095180; 591265, 4095180; 591291, 4095170; 591321, 4095140; 591353, 4095050; 591393, 4094970; 591301, 4094960; 591293, 4094950; 591299, 4094910; 591300, 4094850; 591293, 4094810; 591275, 4094750; 591252, 4094660; 591224, 4094650; 591185, 4094630; 591097, 4094630; 590971, 4094630.

(12) *Unit G: Soquel, Santa Cruz County, California.*

(i) *Soquel south area.* From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 592076, 4095040; 592097, 4094850; 592304, 4094860; 592315, 4094660; 592322, 4094620; 592334, 4094580; 592341, 4094510; 592347, 4094490; 592354, 4094480; 592375, 4094440; 592378, 4094430; 592380, 4094400; 592385, 4094380; 592406, 4094360; 592430, 4094320; 592442, 4094310; 592460, 4094300; 592478, 4094290; 592491, 4094280; 592494, 4094210; 592495, 4094190; 592491, 4094180; 592478, 4094180; 592458, 4094180; 592452, 4094200; 592442, 4094200; 592326, 4094210; 592311, 4094210; 592224, 4094110; 592216, 4094110; 592204, 4094110; 592165, 4094130; 592161, 4094140; 592126, 4094560; 592123, 4094590; 592117, 4094610; 592105, 4094630; 592087, 4094670; 592074, 4094690; 592057, 4094720; 592047, 4094730; 592036, 4094730; 592032, 4094720; 592036, 4094700; 592043, 4094680; 592047, 4094650; 592043, 4094610; 592036, 4094550; 592000, 4094420; 591994, 4094390; 591987, 4094380; 591973, 4094380; 591957, 4094380; 591944, 4094380; 591904, 4094420; 591855, 4094440; 591853, 4094500; 591833, 4094500; 591696, 4094500; 591696, 4094440; 591606, 4094490; 591597, 4094510; 591596, 4094520; 591613, 4094650; 591617, 4094650; 591676, 4094660; 591718, 4094660; 591751, 4094660; 591759, 4094670; 591757, 4094680; 591749, 4094680; 591738, 4094690; 591704, 4094690; 591656, 4094710; 591651, 4094720; 591651, 4094730; 591657, 4094740; 591711, 4094750; 591720, 4094740; 591726, 4094730; 591736, 4094730; 591777, 4094730; 591790, 4094740; 591797, 4094740; 591806, 4094750; 591819, 4094750; 591831, 4094750; 591845, 4094740; 591856, 4094740; 591935, 4094740; 591946, 4094880; 591956, 4094930; 591995, 4095060; 591998, 4095100; 592017, 4095090; 592059, 4095060; 592076, 4095040.

(ii) *Soquel north area.* From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 592050, 4095340; 592094, 4095290; 592102, 4095240; 592112, 4095200; 592119, 4095200; 592130, 4095200; 592158, 4095210; 592173, 4095220; 592180, 4095230; 592193, 4095270; 592211, 4095320; 592218, 4095330; 592227, 4095330; 592257, 4095330; 592275, 4095330; 592299, 4095330; 592393, 4095340; 592404, 4095330; 592411, 4095220; 592423, 4095180; 592425, 4095140; 592414, 4095130; 592381, 4095120; 592290, 4095120; 592177, 4095120; 592165, 4095120; 592159, 4095120; 592149, 4095110; 592138, 4095100; 592129, 4095090; 592116, 4095090; 592109, 4095100; 592041, 4095190; 592009, 4095220; 591986, 4095240; 591980, 4095270; 591970, 4095360; 591971, 4095360; 591973, 4095370; 591995, 4095390; 592012, 4095400; 592021, 4095410; 592031, 4095400; 592046, 4095390; 592050, 4095340.

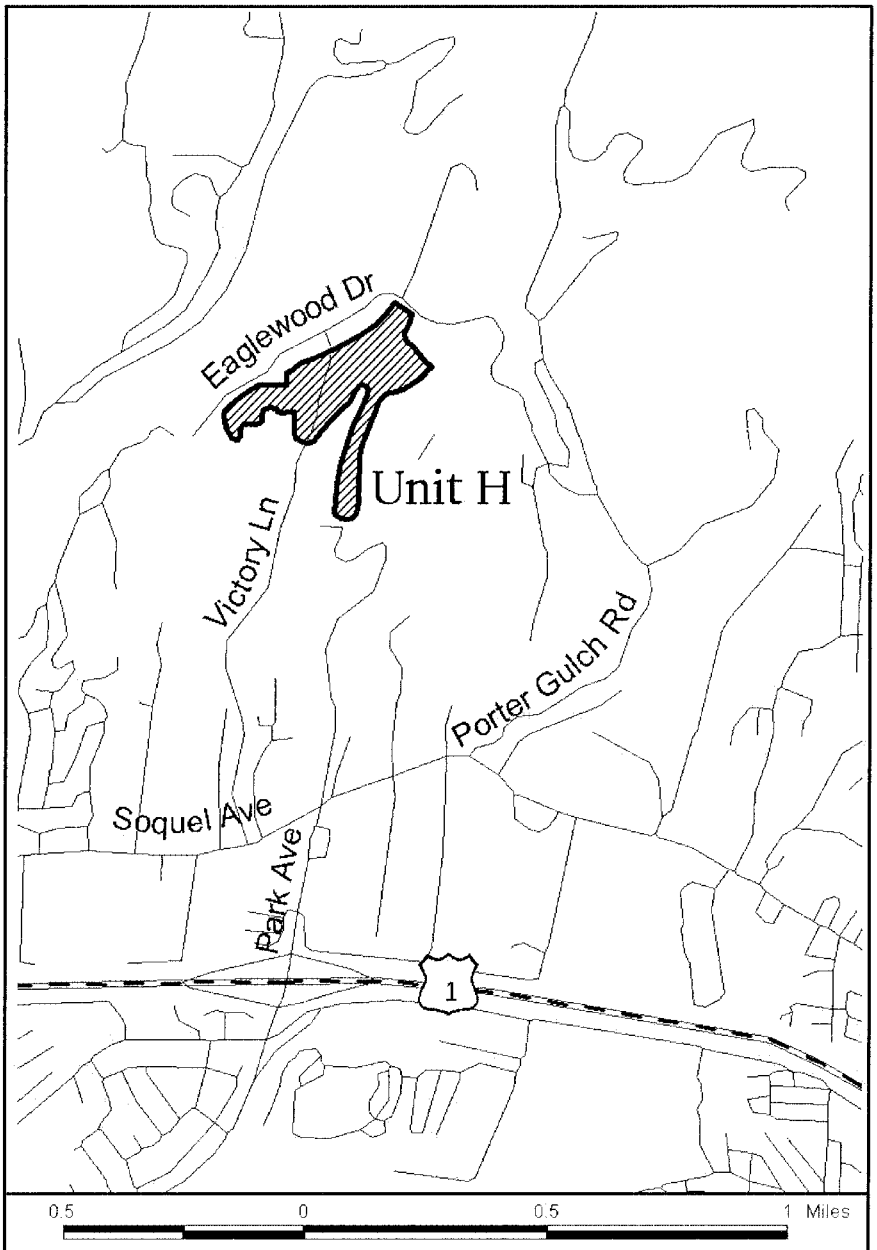
(13) *Units F and G map.* Map 6—Units F and G follows:



Map 6 - Units F & G: Critical Habitat Proposed for the Santa Cruz Tarplant

(14) *Unit H: Porter Gulch., Santa Cruz County, California.* (i) From USGS 1:24,000 quadrangle maps Soquel and Laurel. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 594615, 4095600; 594643, 4095630; 594684, 4095640; 594774, 4095680; 594850, 4095720; 594898, 4095750; 594929, 4095780; 594958, 4095820; 595017, 4095780; 595008, 4095760; 594990, 4095720; 594993, 4095700; 595020, 4095680; 595057, 4095630; 595081, 4095610; 595068, 4095600; 595061, 4095590; 595045, 4095580; 595013, 4095550; 594989, 4095540; 594967, 4095530; 594929, 4095520; 594917, 4095520; 594907, 4095500; 594893, 4095470; 594857, 4095380; 594846, 4095340; 594843, 4095320; 594842, 4095290; 594839, 4095250; 594838, 4095180; 594835, 4095150; 594828, 4095130; 594816, 4095120; 594800, 4095120; 594785, 4095120; 594772, 4095130; 594765, 4095130; 594760, 4095140; 594758, 4095150; 594760, 4095170; 594766, 4095230; 594779, 4095310; 594819, 4095420; 594856, 4095500; 594867, 4095520; 594869, 4095540; 594863, 4095550; 594848, 4095560; 594837, 4095550; 594833, 4095540; 594828, 4095540; 594810, 4095500; 594776, 4095470; 594747, 4095440; 594718, 4095410; 594689, 4095370; 594669, 4095370; 594652, 4095370; 594639, 4095380; 594627, 4095380; 594622, 4095400; 594624, 4095470; 594606, 4095470; 594587, 4095460; 594571, 4095470; 594565, 4095480; 594557, 4095480; 594549, 4095480; 594530, 4095480; 594518, 4095470; 594514, 4095460; 594517, 4095440; 594509, 4095430; 594498, 4095430; 594473, 4095430; 594462, 4095430; 594453, 4095430; 594444, 4095420; 594442, 4095410; 594441, 4095390; 594436, 4095380; 594427, 4095380; 594415, 4095380; 594411, 4095390; 594394, 4095420; 594390, 4095440; 594390, 4095450; 594391, 4095470; 594410, 4095490; 594457, 4095530; 594502, 4095550; 594542, 4095560; 594597, 4095560; 594597, 4095600; 594615, 4095600.

(ii) Map 7—Unit H follows:



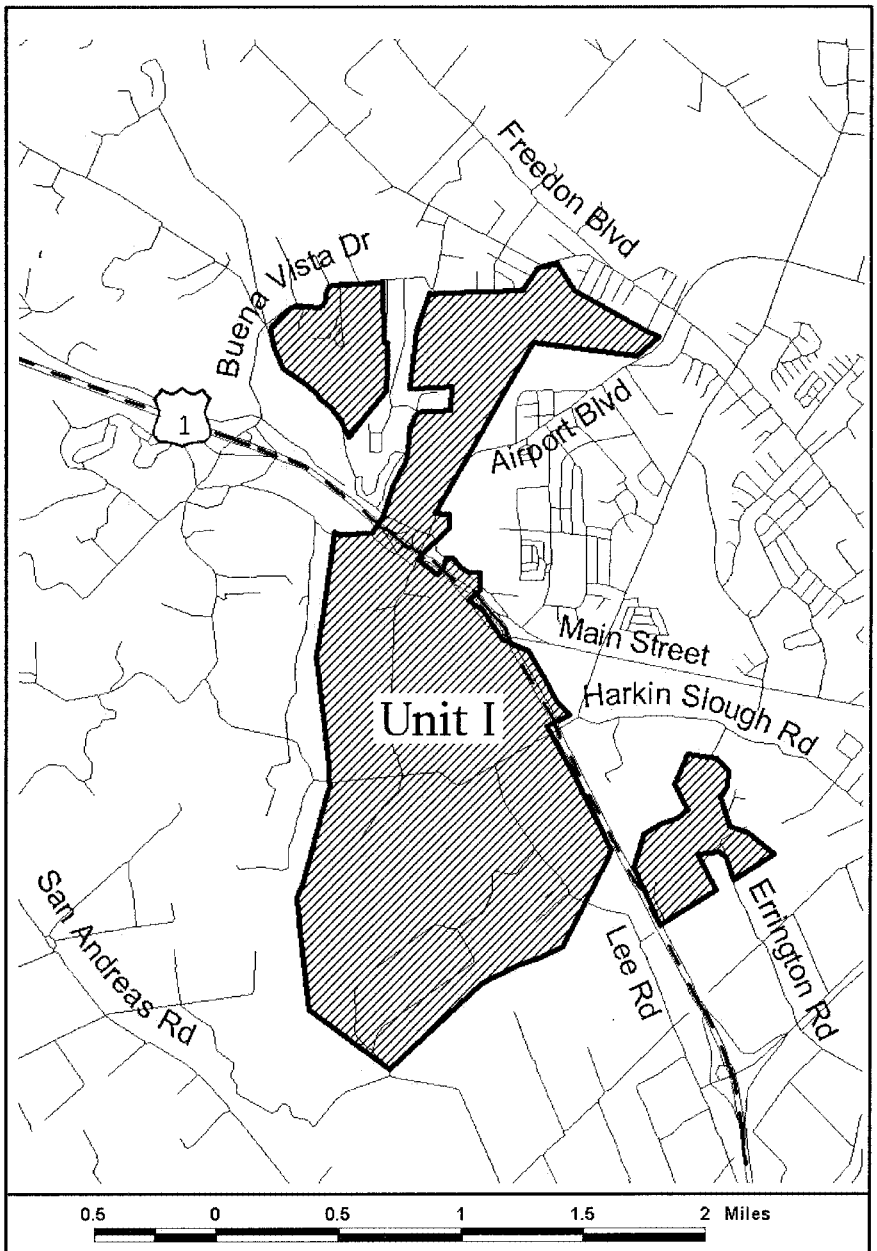
Map 7 - Unit H: Critical Habitat Proposed for the Santa Cruz Tarplant

(15) *Unit I: Watsonville, Santa Cruz County, California.* (i) *Watsonville north area.* From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 606195, 4088630; 606299, 4088730; 606331, 4088750; 606365, 4088760; 606454, 4088750; 606492, 4088750; 606515, 4088750; 606535, 4088760; 606555, 4088800; 606560, 4088840; 606580, 4088880; 606607, 4088890; 606660, 4088900; 606927, 4088910; 606938, 4088530; 606960, 4088530; 606955, 4088360; 606955, 4088220; 606829, 4088080; 606708, 4087920; 606689, 4087970; 606652, 4088040; 606596, 4088110; 606522, 4088170; 606490, 4088210; 606437, 4088250; 606362, 4088300; 606303, 4088340; 606274, 4088370; 606263, 4088390; 606252, 4088430; 606234, 4088450; 606219, 4088480; 606215, 4088520; 606199, 4088590; 606195, 4088630.

(ii) *Watsonville Airport area.* From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 607237, 4088850; 607246, 4088840; 607340, 4088840; 607846, 4088860; 607947, 4089000; 608079, 4089030; 608191, 4088860; 608649, 4088610; 608746, 4088570; 608600, 4088440; 607922, 4088530; 607689, 4088150; 607274, 4087440; 607370, 4087430; 607366, 4087340; 607157, 4087140; 607286, 4087040; 607333, 4087090; 607348, 4087150; 607389, 4087150; 607449, 4087090; 607498, 4087060; 607570, 4087060; 607570, 4086940; 607497, 4086880; 607591, 4086820; 607719, 4086630; 607894, 4086560; 608001, 4086380; 608080, 4086230; 608166, 4086140; 608011, 4086070; 608201, 4085740; 608315, 4085520; 608433, 4085280; 608416, 4085220; 608118, 4084660; 607969, 4084590; 607817, 4084540; 607586, 4084420; 606983, 4083880; 606447, 4084260; 606387, 4084810; 606386, 4084830; 606378, 4084910; 606374, 4084960; 606373, 4084980; 606405, 4085060; 606575, 4085650; 606583, 4085690; 606581, 4085740; 606581, 4085830; 606501, 4086490; 606495, 4086510; 606497, 4086540; 606543, 4086810; 606617, 4087320; 606659, 4087300; 606857, 4087310; 606927, 4087400; 606938, 4087430; 607005, 4087620; 607031, 4087670; 607046, 4087710; 607073, 4087750; 607092, 4087830; 607111, 4087990; 607128, 4088030; 607140, 4088050; 607166, 4088080; 607200, 4088090; 607292, 4088090; 607378, 4088100; 607383, 4088250; 607306, 4088240; 607112, 4088230; 607127, 4088360; 607156, 4088600; 607237, 4088850.

(iii) *Watsonville south area.* From USGS 1:24,000 quadrangle map Watsonville West. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 609195, 4085690; 609153, 4085610; 609208, 4085430; 609333, 4085390; 609504, 4085250; 609242, 4085080; 609191, 4085230; 609144, 4085260; 609006, 4085250; 609123, 4085020; 608761, 4084800; 608590, 4085160; 608651, 4085380; 608760, 4085450; 608869, 4085480; 608941, 4085530; 608893, 4085610; 608849, 4085700; 608941, 4085900; 609124, 4085870; 609201, 4085790; 609195, 4085690.

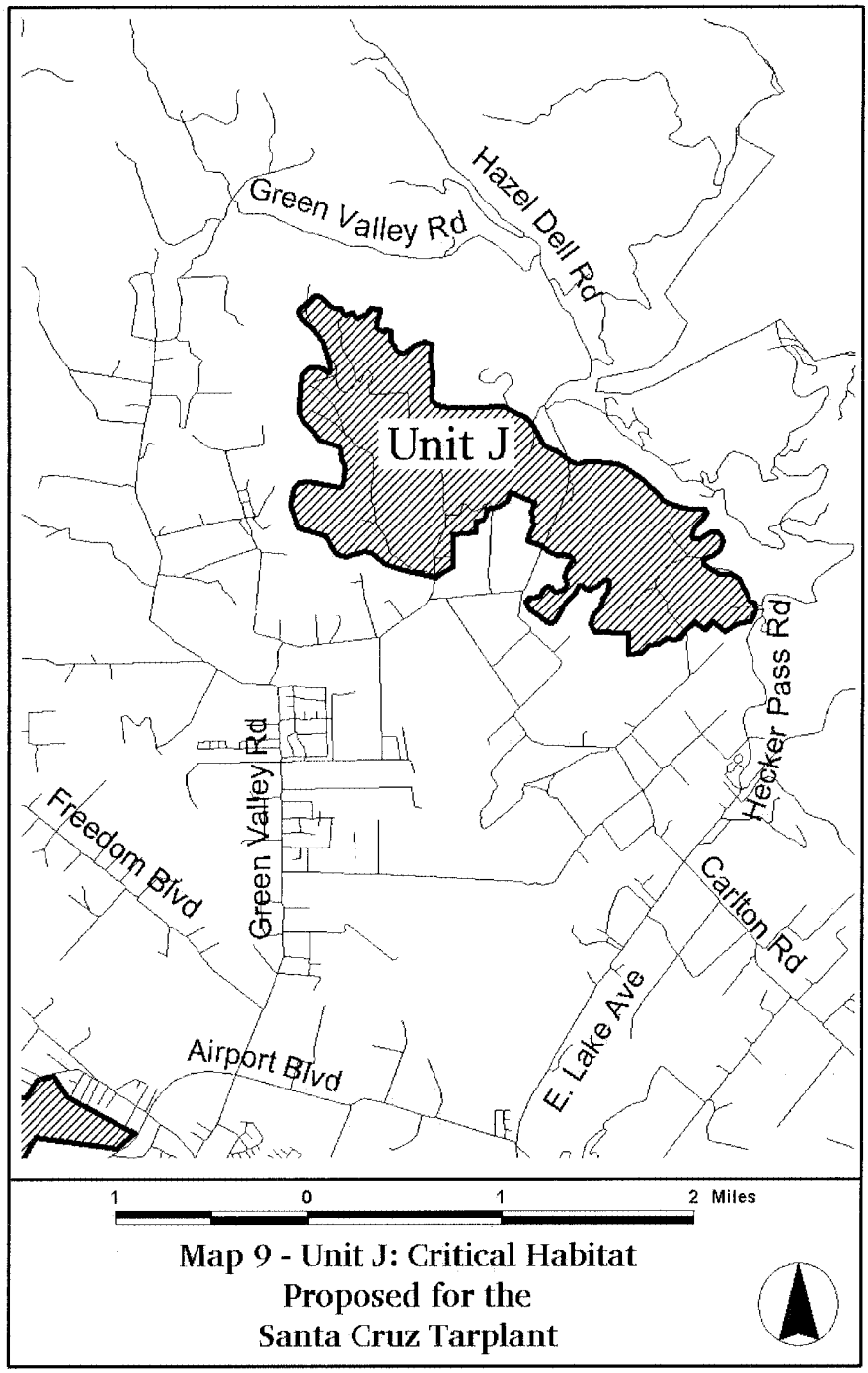
(iv) Map 8—Unit I follows:



Map 8 - Unit I: Critical Habitat Proposed for the Santa Cruz Tarplant

(16) *Unit J: Casserly, Santa Cruz County, California.* (i) From USGS 1:24,000 quadrangle maps Loma Prieta, Mt. Madona, Watsonville East, and Watsonville West. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 610201, 4094760; 610253, 4094770; 610315, 4094760; 610340, 4094730; 610351, 4094720; 610366, 4094730; 610368, 4094750; 610363, 4094780; 610346, 4094860; 610330, 4094910; 610300, 4094980; 610231, 4095070; 610143, 4095150; 610117, 4095190; 610107, 4095220; 610111, 4095230; 610169, 4095280; 610196, 4095290; 610217, 4095330; 610236, 4095340; 610262, 4095340; 610289, 4095330; 610366, 4095260; 610399, 4095240; 610412, 4095240; 610428, 4095240; 610453, 4095240; 610471, 4095210; 610499, 4095190; 610524, 4095200; 610548, 4095210; 610563, 4095200; 610577, 4095170; 610599, 4095160; 610619, 4095170; 610630, 4095180; 610659, 4095190; 610678, 4095200; 610695, 4095220; 610702, 4095240; 610711, 4095250; 610730, 4095240; 610750, 4095240; 610789, 4095230; 610783, 4095210; 610777, 4095180; 610768, 4095150; 610761, 4095120; 610763, 4095090; 610779, 4095070; 610809, 4095070; 610832, 4095070; 610851, 4095080; 610872, 4095070; 610880, 4095050; 610878, 4095010; 610879, 4094990; 610881, 4094980; 610911, 4094930; 610924, 4094910; 610946, 4094890; 610964, 4094890; 610982, 4094890; 611082, 4094950; 611126, 4094960; 611161, 4094970; 611190, 4094970; 611213, 4094950; 611216, 4094930; 611211, 4094870; 611210, 4094830; 611226, 4094710; 611217, 4094510; 611258, 4094460; 611358, 4094440; 611566, 4094440; 611639, 4094440; 611754, 4094460; 611806, 4094450; 611867, 4094430; 612002, 4094360; 612045, 4094320; 612071, 4094280; 612100, 4094230; 612136, 4094160; 612158, 4094130; 612214, 4094100; 612248, 4094090; 612354, 4094010; 612393, 4094000; 612433, 4093990; 612493, 4094000; 612575, 4094010; 612678, 4094000; 612764, 4093980; 612836, 4093950; 612974, 4093850; 613106, 4093720; 613136, 4093690; 613169, 4093670; 613269, 4093640; 613373, 4093620; 613483, 4093620; 613505, 4093590; 613499, 4093570; 613482, 4093550; 613451, 4093520; 613409, 4093480; 613386, 4093440; 613380, 4093410; 613391, 4093380; 613409, 4093380; 613441, 4093380; 613522, 4093420; 613553, 4093430; 613596, 4093430; 613625, 4093410; 613641, 4093360; 613631, 4093320; 613615, 4093290; 613563, 4093250; 613496, 4093210; 613479, 4093190; 613480, 4093170; 613542, 4093120; 613617, 4093090; 613699, 4093090; 613732, 4093080; 613772, 4093050; 613790, 4093020; 613855, 4092900; 613866, 4092870; 613909, 4092860; 613918, 4092810; 613905, 4092770; 613871, 4092710; 613783, 4092690; 613730, 4092670; 613661, 4092630; 613624, 4092650; 613555, 4092700; 613496, 4092640; 613468, 4092650; 613409, 4092710; 613316, 4092620; 613285, 4092580; 613240, 4092560; 613167, 4092570; 613101, 4092530; 613023, 4092520; 612958, 4092450; 612847, 4092450; 612846, 4092620; 612576, 4092620; 612538, 4092680; 612564, 4092770; 612630, 4092830; 612631, 4092890; 612676, 4092950; 612688, 4093020; 612680, 4093040; 612651, 4093040; 612603, 4093000; 612561, 4092980; 612529, 4092970; 612490, 4092980; 612464, 4093000; 612439, 4093000; 612409, 4092950; 612333, 4092870; 612269, 4092760; 612242, 4092710; 612214, 4092690; 612167, 4092710; 612109, 4092760; 612022, 4092810; 612003, 4092850; 612002, 4092880; 612023, 4092900; 612065, 4092900; 612111, 4092920; 612145, 4092970; 612159, 4092990; 612183, 4092990; 612212, 4092980; 612227, 4092960; 612259, 4092950; 612312, 4092970; 612336, 4093010; 612323, 4093080; 612339, 4093130; 612369, 4093180; 612390, 4093200; 612383, 4093220; 612353, 4093240; 612307, 4093250; 612235, 4093250; 612181, 4093280; 612123, 4093320; 612011, 4093360; 612028, 4093410; 612061, 4093490; 612043, 4093600; 612069, 4093670; 611870, 4093750; 611832, 4093680; 611760, 4093640; 611676, 4093620; 611667, 4093570; 611636, 4093530; 611587, 4093520; 611584, 4093430; 611398, 4093410; 611395, 4093160; 611331, 4093110; 611251, 4093060; 610986, 4093130; 610818, 4093180; 610752, 4093240; 610709, 4093270; 610662, 4093270; 610498, 4093240; 610429, 4093250; 610382, 4093310; 610351, 4093370; 610333, 4093410; 610109, 4093470; 610090, 4093520; 610066, 4093570; 610046, 4093640; 610050, 4093710; 610070, 4093790; 610114, 4093830; 610182, 4093840; 610443, 4093800; 610465, 4093800; 610477, 4093820; 610483, 4093860; 610489, 4093950; 610489, 4093980; 610467, 4094020; 610456, 4094100; 610442, 4094120; 610426, 4094130; 610385, 4094150; 610296, 4094180; 610278, 4094190; 610255, 4094210; 610220, 4094250; 610188, 4094290; 610152, 4094330; 610121, 4094380; 610115, 4094410; 610110, 4094460; 610121, 4094590; 610133, 4094680; 610140, 4094710; 610154, 4094730; 610175, 4094750; 610201, 4094760.

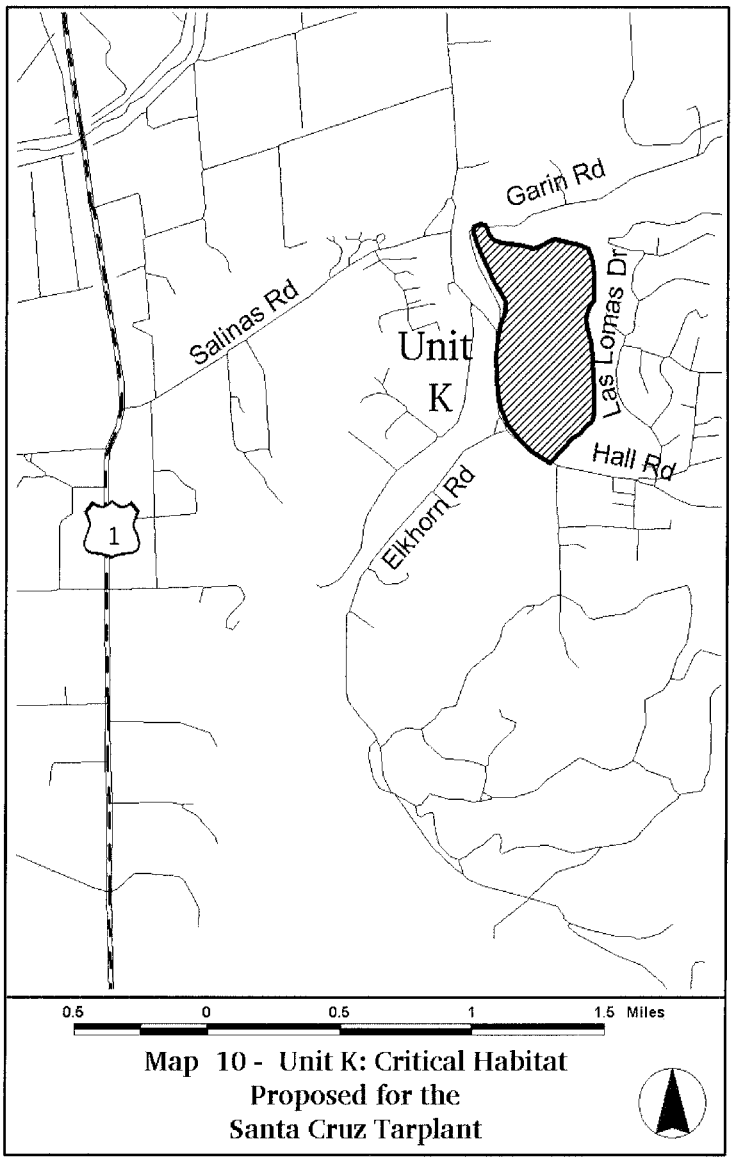
(ii) Map 9—Unit J follows:



Map 9 - Unit J: Critical Habitat Proposed for the Santa Cruz Tarplant

(17) *Unit K: Elkhorn, Monterey County, California.* (i) From USGS 1:24,000 quadrangle maps Watsonville East and Prunedale. Lands bounded by the following UTM zone 10 NAD83 coordinates (E, N). 611931, 4081300; 611930, 4081420; 611939, 4081530; 611956, 4081610; 611983, 4081680; 611981, 4081740; 611956, 4081790; 611918, 4081860; 611877, 4081940; 611839, 4082020; 611806, 4082090; 611787, 4082150; 611788, 4082180; 611796, 4082190; 611834, 4082200; 611862, 4082190; 611875, 4082170; 611885, 4082140; 611902, 4082110; 611916, 4082100; 611967, 4082090; 612005, 4082090; 612065, 4082080; 612155, 4082060; 612210, 4082080; 612247, 4082100; 612283, 4082110; 612348, 4082090; 612423, 4082080; 612481, 4082050; 612501, 4082000; 612519, 4081910; 612517, 4081840; 612517, 4081750; 612499, 4081720; 612478, 4081690; 612469, 4081640; 612473, 4081600; 612504, 4081490; 612509, 4081400; 612518, 4081210; 612520, 4081080; 612504, 4081040; 612475, 4081010; 612428, 4080960; 612393, 4080940; 612333, 4080880; 612255, 4080790; 612142, 4080860; 612070, 4080930; 6 12001, 4081020; 611957, 4081120; 611940, 4081200; 611931, 4081300.

(ii) Map 10—Unit K follows:



Map 10 - Unit K: Critical Habitat Proposed for the Santa Cruz Tarplant

* * * * *

Dated: November 2, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28040 Filed 11–14–01; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
November 15, 2001

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG88

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* [= *Hemizonia increscens* ssp. *villosa*] (Gaviota tarplant). Approximately 27,046 hectares (ha) (66,830 acres (ac)) in San Luis Obispo and Santa Barbara Counties, California, are proposed for designation of critical habitat. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until January 14, 2002. Public hearing requests must be received by December 31, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. You may also send comments by electronic mail (e-mail) to *fw1coastaltrio@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Ventura Fish and Wildlife Office at the address given above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford or Tim Thomas, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Cirsium loncholepis (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* [=*Hemizonia increscens* ssp. *villosa*] (Gaviota tarplant) occur along the south central California coast. They are restricted to a narrow area in northern and western Santa Barbara County and southern San Luis Obispo County, in declining or altered habitats including central dune scrub, central maritime chaparral, valley needlegrass grassland, coastal freshwater wetlands, and southern bishop pine forest (Holland 1986, Schoenherr 1992).

Cirsium loncholepis

Cirsium loncholepis (La Graciosa thistle) was collected by Eastwood in 1906 near the village site of La Graciosa (razed in 1877) in Santa Barbara County (Smith 1976), near present-day Orcutt. *Cirsium loncholepis* is a short-lived, spreading, mound-like or erect and often fleshy, spiny member of the sunflower family (Asteraceae). Plants are from 10 to 100 centimeters (cm) (4 to 39 inches (in)) tall, with one or more stems. The leaves are wavy-margined. The lower leaves are 10 to 30 cm (4 to 12 in) long, with spiny petioles (leaf stalks), and are usually deeply lobed with secondary lobes or teeth. The leaf base of the middle and upper leaves forms short, spiny wings along the petiole. Flowering heads are 2 to 4 cm (0.8 to 1.6 in) wide in tight clusters at the tips of the stems. The corollas are 25 to 30 millimeters (mm) (1 to 1.2 in) long and nearly white with a purplish tube containing purple anthers. The achenes (seeds) are 3 to 4 mm (0.01 to 0.02 in) long and topped by an umbrella of long (15 to 25 mm (0.6 to 1.0 in)) awns that are ideal for wind dispersal. This species distribution overlaps *C. brevistylum* (Indian thistle), a taller plant species with the upper portion covered with cobwebby hairs. The leaves of *C. brevistylum* are shallowly lobed, whereas the leaves of *C. loncholepis* are deeply lobed with secondary lobes (Keil and Turner 1993). Another species of thistle that is widespread in montane wetland areas in California, *C. scariosum*, occurs in the Mount Pinos region—one of the headwaters of the Santa Maria River. Keil is currently studying the taxonomic relationship between this species and *C. loncholepis* (Keil, California Polytechnic University, San Luis Obispo, California, pers. comm. 2001).

Cirsium loncholepis was originally thought to have a life span of only 1 to 2 years (Morey 1989). However, more recent observations indicate that this species is monocarpic (flowers and fruits once, then dies). While some individuals may flower and die within 1 year, other individuals may exist as a rosette for 2, 3, or more years before sending up flowering stalks (Hendrickson 1990; Mary Lea, California Polytechnic University, San Luis Obispo (CPU), pers. comm. 2001). A census of several populations at Guadalupe Dunes indicates that the species exhibits a typical ''inverse J'' distribution of age and size classes, with populations comprised of many young, small individuals and very few old, large individuals. The causes of seedling mortality include foraging by rabbits and gophers (Hendrickson 1990; J. Langford, consultant, *in litt.* 2001). Large individuals produce more flowering heads and more seeds per head (average = 473 seeds per plant) than smaller individuals (average =168 seeds per plant), and therefore contribute disproportionately to the future seedbank of the population. The number of years an individual persists before flowering may be related to stress, with more stressed individuals flowering sooner. In one population currently under study at the Guadalupe Dunes, the source of new seedlings was almost entirely from the previous year's seeds, and only a small portion was derived from the resident seed bank (Lea 2001). Because most recruitment is from the previous year's seeds rather than the seedbank, long-term viability of populations may be more difficult to maintain in smaller populations, which produce fewer seeds, than in larger ones. In addition, low seed viability rates have been reported by several workers (Lea 2001, Fross in Levine-Fricke-Recon 1998).

In general, thistle taxa with heads similar to *Cirsium loncholepis* are pollinated by bees (both native and the introduced honeybee), butterflies, flies, and beetles (D. Keil, CPU, *in litt.* 2001). Carrion beetles and black ants have also

been observed visiting heads of *C. loncholepis* (M. Lea, pers. comm. 2001). The variety and abundance of pollinators indicate that this species is a generalist (utilizes a wide variety of pollinators). The distribution of individual plants within populations is often an elongated pattern that is consistent with seed dispersal caused by the prevailing coastal winds.

Alice Eastwood first collected this species in 1906 and gave the location as ''La Graciosa.'' The town of Orcutt is likely built near the site of an old community named La Graciosa, and historic maps show the area dotted with extensive wetlands many of which no longer exist (Hendrickson 1990). However, Clifton Smith (1976) suggested that the name derived from marshes at the mouth of San Antonio Creek, named Laguna Graciosa, where the Anza expedition camped in the late 1700s. Smith's theory is plausible, since a recent occurrence of the thistle is found at the headwaters of San Antonio Creek, at Cañada de las Flores, 15 miles inland. Nevertheless, the theory that the probable type locality is near Orcutt is more accepted because maps available at the time Eastwood made her collection do not show the name Graciosa at the mouth of San Antonio Creek (Hendrickson 1990).

The Santa Maria River Valley is a broad floodplain that is bounded by Orcutt Creek along its southwestern edge, and by the Santa Maria River along its northeastern edge. Between the present-day city of Santa Maria and the coast 12 miles to the west, the valley floor is dotted with small settlements and a few oil fields, but the vast majority of the land has been converted to agriculture. A member of the Gaspar de Portola expedition to Monterey in 1769 notes that the expedition had problems getting through the Santa Maria valley because of all the marshes (Companys 1983 in Hendrickson 1990). As has been typical along the central coast of California, however, many of the valley's wetlands were drained or filled to maximize agricultural production; old maps show lakes such as Lake Guadalupe which no longer exist. *Cirsium loncholepis* most likely had a more widespread distribution in this area, but may have been eliminated by conversion to agriculture before it could be collected. However, even with such conversion, current aerial photos and topographic maps show the persistence of numerous small marshes, wetlands, and drainages in this area; some of these may still harbor small populations of the thistle.

Historical collections also indicate that *Cirsium loncholepis* also used to occur along the Santa Ynez River, somewhere between the towns of Surf and Lompoc, on Vandenberg Air Force Base. Collections of the plant had been made in 1949 and 1958; however, by 1988 when extensive surveys were launched to relocate this location, none could be found (Hendrickson 1990). Over the years, habitat for the thistle in the floodplain for the river has been altered. According to Smith's notes, agricultural fields have been plowed to the banks of the drainage, willows have been bulldozed, and herbicides were sprayed to eradicate bull thistle (Hendrickson 1990). Because this area historically supported the southernmost documented occurrence of *Cirsium loncholepis* and because some habitat still remains today, it is considered an important area to use for reestablishment attempts (Morey 1990). However, since plants have not been documented in this area for over 40 years, we are not including it in this critical habitat proposal.

One population of *Cirsium loncholepis* was recently reported from moist openings in coastal scrub habitat in a coastal drainage in southern Monterey County on lands managed by Los Padres National Forest. However, the identity of the population as *C. loncholepis* has been questioned. In addition, the habitat characteristics do not resemble those found at other sites that support this species (T. Thomas, *in litt.* 2001).

Cirsium loncholepis is currently occupies back dune and coastal wetlands of southern San Luis Obispo County and northern Santa Barbara County, from the Pismo Dunes Lake area and from one inland location at the head of Canada de las Flores, about 20 miles to the southeast. The Guadalupe Dune complex, in which the majority of the species occurs, is the largest coastal dune system in California, covering approximately 47 square kilometers (km) (18 square miles (mi)), but extends inland less than 3.2 km (2 (mi)). The Department of the Interior, recognizing the biological and physical diversity of the area (Schoenherr 1992), added the Guadalupe Dune region to the National Natural Landmark system in 1980. Subsequently, 1,033 ha (2,552 ac) of this area was designated as the Guadalupe-Nipomo Dunes National Wildlife Refuge in 2000.

The prevailing coastal winds are from the northwest, and active dune and swale systems are aligned with these winds. Deflation areas (swale areas between two parallel dunes) behind the foredunes are often at or near the water table, creating wetlands and back-dune lakes. *Cirsium loncholepis* is found in wet soils surrounding the dune lakes and in the moist dune swales, where it is often growing in a mat of low-growing herbaceous plants including *Juncus* species (spp.) (rush), *Carex praegracilis* (sedge), *Distichlis spicata* (salt grass), *Cynodon dactylon* (Bermuda grass), *Trifolium wormskioldii* (clover), *Anemopsis californica* (yerba mansa), *Potentilla anserina* (silverweed), and *Lotus corniculatus* (birdfoot trefoil) (J. Langford, *in litt.* 2001). At other dune swales where *Salix* spp. (willow) thickets have become established, *Cirsium loncholepis* is found scattered in openings among the willow, *Toxicodendron diversilobum* (poison oak), *Rubus spp.* (blackberry), and *Baccharis pilularis* (coyote brush) (Hendrickson 1990). At Cañada de las Flores, the most interior site for the thistle, the plants have been found primarily around gently sloping hillside seeps within a grassland community, and with fewer plants found at the edge of willows around a seep bordering an oak woodland community (Hendrickson 1990).

Soils where *Cirsium loncholepis* are found are somewhat variable, but always include a large component of sand. Coastal populations occur on dune sands, Oceano sands, Camarillo sandy loams, riverwash, and sandy alluvial soils at elevations less than 30.4 meters (m) (100 feet (ft)) (Hendrickson 1990; California Natural Diversity Data Base (CNDDB) 2001). Occasionally, individuals have been found on dune slopes or ridges, rather than in the more typical dune swale habitat; more stable dunes have been shown to act as reservoirs of moisture, and these individuals may be tapping into this moisture (Tim Thomas, Service, *in litt.* 2001). An inland population, at the headwaters of Cañada de las Flores, occurs on Camarillo sandy loam at an elevation of 182.9 m (600 ft) (CNDDB 2001).

There are approximately 17 known locations for *Cirsium loncholepis.* The populations in the dune systems are generally small and isolated. As of the last rangewide survey effort in 1990, many of these populations had fewer than 60 plants each and showed a low reproductive vigor (Hendrickson 1990); by 1998, five of these populations had fewer than 10 individuals each (John Chesnut, consultant, *in litt.* 1998; CNDDB 2001). Historically, only one population has had a substantial number of plants, fluctuating between 6,000 and 54,000 individuals. However, it is located at the mouth of the Santa Maria River in the floodplain, where it was significantly disrupted by flooding in 1998; in 2000, only approximately

100 individuals were observed in the floodplain (J. Langford, pers. comm. 2001).

On-going threats to this species include groundwater pumping, oil field development, oil field remediation, and competition from aggressive native and non-native plants (Hendrickson 1990, California Department of Fish and Game (CDFG) 1992, 65 FR 14888). The coastal dune habitats are highly disturbed and have been invaded by non-native plant species. Invasive weeds such as *Ehrharta calycina* (veldt grass), *Ammophila arenaria* (European beach grass), *Carpobrotus edulis* (iceplant), and *Mesembryanthemum crystalinum* (crystalline iceplant) are serious threats to the natural ecological processes of coastal sandy habitats and to the viability of native species in this habitat (Smith 1976, Zedler and Scheid 1988, Schoenherr 1992). Cattle grazing in the riparian habitat at the mouth of the Santa Maria River may reduce the competition from other species (Hendrickson 1990), but the long term effects of livestock use on the habitat are unknown. The trend for *Cirsium loncholepis* has been one of decline (CDFG 1992, CNDDB 1998). The State of California listed this species as threatened in 1990 (CDFG 1992). CDFG published a management strategy for the recovery of the thistle shortly after it was listed (Morey 1990). The strategy recommends four measures: (1) protect, maintain, and enhance existing and potential thistle habitat; (2) develop a long-term monitoring and reporting program for the existing populations; (3) conduct basic research on the ecology and biology of the species; and (4) establish additional populations of the thistle in appropriate habitat. Since the time the strategy was written, the most notable progress has been in securing protection for certain populations through acquisition and conservation easements, and research being conducted on thistle demography that was previously mentioned. Some restoration and habitat enhancement has also been undertaken at the Guadalupe Dunes as mitigation for damage that occurred to one population during the decommisioning of oil and gas facilities (Service 1998).

Cirsium loncholepis occurs on public lands owned and managed by the State of California (Pismo Dunes State Preserve and Oceano Dunes State Vehicular Recreation Area) and the Service (Guadalupe Dunes National Wildlife Refuge). The plant also occurs on privately owned lands. A portion of private land in the Dune Lakes area is under a conservation easement to the Land Conservancy of San Luis Obispo County. The Coastal Conservancy is currently negotiating a conservation easement for a portion of a private parcel owned by Unocal Corporation. The Trust for Public Lands manages a parcel owned by the County of Santa Barbara (Rancho Guadalupe Dunes Preserve) adjacent to the Unocal parcel; it supports suitable habitat, but no plants have been documented from that location.

Eriodictyon capitatum

Eriodictyon capitatum (Lompoc yerba santa) was collected by Hoffman in 1932, near Lompoc, growing under *Pinus muricata* (bishop pine), and described the following year (Eastwood 1933). *Eriodictyon capitatum* is a shrub in the waterleaf family (Hydrophyllaceae) with narrow, sticky stems up to 3 m (10 ft) tall. The head-like inflorescence has lavender corollas that are 6 to 15 mm (0.2 to 0.6 in) long. It is distinguished from related species by its narrow, entire leaves and its head-like inflorescence. The fruits are 4-valved capsules that are 1 to 3 mm (0.03 to 0.1 in) wide, and contain up to 5 seeds (Halse 1993). However, seed set is typically much less; Elam (1994) found that flowers that were intentionally cross-pollinated produced a mean of 1.77 seeds per fruit, while flowers that were intentionally self-pollinated produced an average of 0.03 seeds per fruit.

Eriodictyon capitatum occurs in maritime chaparral with *Dendromecon rigida* (bush poppy), *Quercus berberidifolia* (California scrub oak), *Q. parvula* (scrub oak), and *Ceanothus cuneatus* (buck brush), and in southern bishop pine forests that intergrade with chaparral comprised primarily of *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage) (Smith 1983). These maritime chaparral and bishop pine forests are found inland from the active dunes, where there are remnants of prehistoric uplifted dunes that have formed a weakly cemented sandstone that has weathered to produce a sandy, extremely well drained, and nearly infertile soil (Davis *et al.* 1988). This substrate has a limited distribution, occurring on the following mesas in San Luis Obispo and Santa Barbara Counties: Nipomo Mesa, Casmalia Hills, San Antonio Terrace, Burton Mesa, Lompoc Terrace, and Purisima Hills. Central coast maritime chaparral is the primary habitat that occurs on the sand hills and has been the focus of several studies (Ferren *et al.* 1984, Davis *et al.* 1988, Philbrick and Odion 1988, Davis *et al.* 1989, Odion *et al.* 1992). Seven local endemic plant species, and at least 16 other uncommon plant species, are also components of this habitat. This community type is an exceptional biological resource due to the concentration of rare plants found within it, but most of it has been converted to other land uses, fragmented, or degraded by non-native species invasion (Davis *et al.* 1988, Odion *et al.* 1992). Central coast maritime chaparral is considered threatened and sensitive by the CDFG's Natural Heritage Division (Holland 1986). Southern bishop pine forest is scattered in the Purisima Hills and intergrades with the central coast maritime chaparral (Holland 1986).

The soils associated with *Eriodictyon capitatum* are extremely variable, but all tend to be slightly to strongly acidic. Sites on ridgetops have very shallow soils that consist of exposed parent material. Permeability ranges from low (high clay content), in the Santa Ynez Mountains, to excessively drained (Arnold sands with a low clay content) in the Solomon Hills. The Burton Mesa population occurs on an upper highly permeable soil (Tangair sands) underlain by a shale substrate of low permeability. The Pine Canyon population occurs in the bottom of the drainage in a highly gullied landscape (Tim Thomas, pers. obs.).

The four known locations of *Eriodictyon capitatum* occur in western Santa Barbara County. Based on the presence of appropriate soils and associated species, we believe that other populations may well occur on the mesas listed above, but have not yet been detected by botanists.

Two of the known locations of *Eriodictyon capitatum* are on Vandenberg Air Force Base (VAFB). The other two locations are in oil fields south of Orcutt (comprised of one group), and at the western end of the Santa Ynez Mountains (comprised of three groups), all on private land. Based on enzyme analysis, Elam (1994) determined that all of the Santa Ynez Mountains colonies, and one of the VAFB groups, were multiclonal. A clone is composed of many stems produced by the vegetative spread of a single root system. The other two VAFB groups are apparently uniclonal, while the Orcutt location was not studied due to inaccessibility. The three Santa Ynez Mountains groups ranged from 11 to 20 clones each; the single multi-clonal group on VAFB had 18 clones. *Eriodictyon capitatum* is self-incompatible (i.e., it requires pollen from genetically different plants to produce seed), and its fruits appear to be parasitized by an insect (Elam 1994). A study of one of the apparently uniclonal groups at VAFB showed that

Eriodictyon capitatum resprouted successfully from the base of the plant after a prescribed fire. However, several stems died, and no seedling recruitment occurred (a uniclonal, self-incompatible plant would be expected to produce little or no seed) (Jacks *et al.* 1984).

Fire management practices, invasive non-native plant species, low seed productivity, and naturally occurring catastrophic events pose significant threats to the long-term survival of this species. None of the colonies are actively protected. *Eriodictyon capitatum* was listed as rare by the State of California in 1979 (CDFG 1992).

Deinandra increscens ssp. *villosa*

Deinandra increscesn ssp. *villosa* (Gaviota tarplant) is a member of the sunflower family. Tanowitz (1982) described this plant from collected material, as well as a specimen gathered from Gaviota in 1902 by Elmer, as *Hemizonia increscens* ssp. *villosa*. Recent studies on the evolution of a related group of the tarplants of North America have resulted in the reinstatement of the genus name *Deinandra* for *Hemizonia increscens* ssp. *villosa* (Baldwin 1999). *Deinandra increscesn* spp. *villosa* is a yellow-flowered, variable gray-green, soft, hairy annual that is 30 to 90 cm (12 to 35 in) tall with stems branching near the base. The lower leaves are 5 to 8.6 cm (2 to 3.4 in) long. The inflorescence is rounded to flat-topped with mostly 13-ray flowers and 18 to 31 usually sterile, disk flowers. The seeds produced by the ray flowers (achenes) are three-angled and about 2 mm (xx in); the seeds of this genus lack the long set of awns that assist in wind dispersal, as are found in many other members of the sunflower family (Keil 1993). The seeds most likely are dispersed by adhesion of the sticky bracts clasping the ray achenes to animal fur or feathers (Baldwin 2001). Two other subspecies, *D. increscens* ssp. *increscens* and *D. increscens* ssp. *foliosa,* differ from *D. increscens* ssp. *villosa* by their stiff-bristly, deep green foliage; however, chemical composition is the best means to differentiate these species (Keil 1993; Katherine Rindlaub, biological consultant, *in litt.* 1998). There are occasional observations of 13-rayed *Deinandra increscesn* ssp. *increscens* that are reported as *Deinandra increscesn* ssp. *villosa* (K. Rindlaub, *in litt.* 1998).

Deinandra increscesn ssp. *villosa* has a highly localized distribution in western Santa Barbara County, where it is associated with needlegrass grasslands comprised of native *Nassella* spp. (needlegrass), the non-native *Avena* spp. (wild oats) and *Bromus diandrus* (ripgut brome), and other herbs and grasses. The grasslands intergrade with coastal sage scrub composed of *Artemisia californica* (California sagebrush), *Baccharis pilularis* (coyote bush), *Hazardia squarrosa* (sawtooth golden bush), and *Eriogonum fasciculatum* (California buckwheat) (CNDDB 2001).

Until several years ago, populations of *Deinandra increscesn* ssp. *villosa* were only known from marine terraces in the vicinity of Gaviota. However, populations have recently been observed at approximately seven new locations ranging westward from Gaviota along the coast and in the Santa Ynez Mountains to Point Arguello (M. Meyer, CDFG, pers. comm. 2001; Hendrickson, Ferren, and Klug 1998). This species is found on sandy soils associated with marine terraces and uplifted marine sediments, ranging from 46 m (150 ft) in elevation along the lowest terraces to 305 m (1000 ft), where it occurs on sandy ridgelines in the Santa Ynez Mountains. One disjunct population occurs on a marine terrace just south of Point Sal on VAFB (C. Gillespie, botanist, VAFB, pers. comm. 2001).

Soil characteristics have been studied most extensively near the Gaviota population. There, the plant is restricted to Conception and Milpitas-Positas soils, which consist of acidic, fine, sandy loams (All American Pipeline Company (AAPC) 1990). A subsurface clay layer 2.5 to 90 cm (1 to 36 in) deep may serve as a reservoir of soil moisture in an area otherwise characterized by summer drought (Howald 1989). However, *Deinandra increscesn* ssp. *villosa* consistently occurs where the depth to clay is only 2.5 to 5 cm (1 to 2 in) (K. Rindlaub, *in litt.* 1998).

Deinandra increscesn ssp. *villosa* blooms from June through September. Pollinators observed on the flowers include several species of flies, bees, skippers, and butterflies (Tanowitz in Howald 1989). As is typical of annual plant species, the number of individuals present from one year to the next varies dramatically, most likely depending on climatic conditions such as amount of rainfall, timing of rainfall, and temperature regimes during critical stages of germination and seedling growth. There are some years when patches may contain few to no individuals (Howald 1989). In 1995 and 1997, the species was not abundant at the locations known at the time (K. Rindlaub, *in litt.* 1998).

The narrow coastal terrace at Gaviota is bisected lengthwise by Highway 101, a railroad, and several pipelines. Most of the habitat for *Deinandra increscesn* ssp. *villosa* lies on the north side of the highway on private lands owned by the petroleum industry; CDFG is in the process of acquiring an 86 ha (35 ac) parcel to establish a tarplant preserve. A few colonies occur on the south side of Highway 101 on land owned by California Department of Parks and Recreation. Most of the other populations west of Gaviota are located on private land; certain petroleum companies have leased land for their facilities and access to them at Government Point, just east of Point Conception. Two populations, one near Point Arguello and one near Point Sal, are located on VAFB (CNDDB 2001; C. Gillespie, pers. comm. 2001).

Deinandra increscens ssp. *villosa* is threatened by destruction of individual plants, habitat loss, and habitat degradation from the development and decommissioning of oil and gas facilities, including pipelines, and competition with non-native weeds. Within the last 5 years, two aggressive non-native grasses, *Ehrharta calycina* (veldt grass) and *Phalaris aquaticus* (harding grass), have invaded the Gaviota site and pose a serious threat to *D. increscens* ssp. *villosa* and the remaining coastal prairie habitat at this site (K. Rindlaub, consultant, pers. comm. 2001; M. Meyer, CDFG, pers. comm. 2001). Until recently, the overall trend for this species has been characterized as one of decline (CDFG 1992); this was based primarily on impacts occurring on the Gaviota populations. The populations in the vicinity of Point Conception and Government Point were discovered in the year 2000. The populations in this area face similar threats to those in the Gaviota area, specifically from activities associated with the decommissioning of oil and gas facilities, and from alteration of habitat due to the spread of iceplant (M. Meyer, pers. comm. 2001). However, some of the populations found within the last 3 years are in remote areas in the Santa Ynez Mountains and do not appear to be threatened at this time.

Deinandra increscens ssp. *villosa* was listed as endangered by the State of California in 1990 (CDFG 1992). In 1989 when the species was first proposed for state listing, CDFG recommended several recovery and management actions including: 1) research on the reproductive biology and habitat requirements so that essential habitat can be more clearly defined and protection requirements can be formulated; 2) working with Santa Barbara County and private landowners to establish a long-term monitoring program and protected status for the tarplant; and 3) working with Santa

Barbara County and private landowners to assure that future impacts to the tarplant are avoided or adequately mitigated (Howald 1989). In their role as the lead permitting agency for the California Environmental Quality Act, the County has worked with CDFG and the petroleum industry over the past decade to develop a strategy to mitigate for impacts to the tarplant resulting from oil and gas activities in the Gaviota area. This has resulted in establishment of a tarplant preserve with CDFG as the landowner, and mitigation bank established to assist in the funding of habitat restoration efforts on the preserve.

At least two decommissioning efforts will be undertaken in the near future in areas where the tarplant has been found within the last three years. These include the decommissioning of Texaco's Hollister Ranch facility pipelines that stretch from Gaviota west to Saint Augustine, and Unocal's facilities at Government Point just east of Point Conception. The County will be working with CDFG, the Service, and the California Coastal Commission to ensure appropriate measures are taken to conserve the tarplant as well as other federally listed wildlife species that occur in these areas.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Cirsium loncholepis* and *Eriodictyon capitatum* as endangered. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act), and our intention to review the status of the plant species named therein.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Cirsium loncholepis* and *Eriodictyon capitatum* were included in that **Federal Register** publication. Comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals more than two years old be withdrawn. A one year grace period was given to those proposals already more than two years old. On December 10, 1979 (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Cirsium loncholepis* and *Eriodictyon capitatum* as category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing activities of higher priority. On November 28, 1983, we published a supplement to the 1980 NOR (48 FR 53640), in which *C. loncholepis* was included as a category 2 candidate. Category 2 species were those species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support proposed rules.

The NOR for plants was again revised on September 27, 1985 (50 FR 39526). In this notice, *Eriodictyon capitatum* was included as a category 1 candidate, and *Cirsium loncholepis* remained a category 2 candidate. On February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised NORs were published that included *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* as category 1 candidates. On February 28, 1996, the Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) discontinued the designation of category 2 species as candidates. The notice included as candidates only those species meeting the former definition of category 1, and included *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.*

A proposed rule to list *Cirsium loncholepis, Eriodictyon capitatum, Deinandra increscens* ssp. *villosa,* and a fourth species, Lupinus nipomensis, as endangered was published in the **Federal Register** on March 30, 1998 (63 FR 15164). The final rule listing *Cirsium loncholepis, Eriodictyon capitatum, Deinandra increscens* ssp. *villosa,* and *Lupinus nipomensis* as endangered species was published on March 20, 2000 (65 FR 14888).

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* were listed, we found that designation of critical habitat for these taxa was prudent but not determinable, and that designation of critical habitat would occur once we had gathered the necessary data.

On June 17, 1999, our failure to issue final rules for listing *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* and six other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 9 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. Plaintiffs agreed to two brief extensions of this due date until November 2, 2001.

Critical Habitat

Critical habitat is defined in section 3(5)(A) 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. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to

bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we designate critical habitat at the time of listing, as required under Section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. 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), which 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, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs. In this case, the best scientific and commercial data has demonstrated that some unoccupied areas are essential for the conservation of the species, and accordingly, we have included within this designation some areas currently unoccupied 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 our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* This information included information from the CNDDB (CNDDB 2001), soil survey maps (U.S. Soil Conservation Service 1971 and 1983) aerial photographs available through TerraServer (http://terraserver.homeadvisor.msn.com), recent biological surveys and reports, additional information provided by interested parties, and discussions with representatives of CDFG, the County of Santa Barbara Planning Department, and other botanical experts. We also conducted site visits at several locations managed by local, State or Federal agencies, including VAFB, Guadalupe-Nipomo Dunes National Wildlife Refuge, Gaviota State Beach, Oceano Dunes State Vehicle Recreation Area, and Pismo Dunes State Preserve; we have also visited the portion of Guadalupe Dunes owned by the Unocal Corporation.

Because *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* were federally listed in the year 2000, the Service has not yet had the opportunity to develop recovery plans for these taxa. As mentioned earlier, CDFG developed a management strategy document for the thistle. Because *Eriodictyon capitatum* has been state-listed since 1979 and the other two taxa have been state-listed since 1990, the conservation needs of these taxa have been considered during the review of individual projects by the two counties, as lead CEQA agencies, and CDFG.

Certain areas, such as the Gaviota Coast, have been the target of broader planning efforts because the presence of *Deinandra increscens* ssp. *villosa* overlaps in large part with the Gaviota Consolidated Planning Area, which is a designation conferred by the County of Santa Barbara Planning and Development Energy Division (SBPDED) on areas where multiple oil and gas facilities already exist and additional oil and gas production and processing could occur (L. Perez, SBPDED, pers. comm 2001). One result of collaboration between numerous agencies and the oil and gas industry in this planning area has been the establishment of the Gaviota Tarplant Reserve.

The stretch of coast between Pismo Dunes State Preserve and Point Sal has recently been the focus of a regional conservation planning effort spearheaded by The Nature Conservancy (TNC) (TNC n.d.). They consider this area, referred to as the Guadalupe-Nipomo Dunes, to be one of only four out of the thirteen dune areas in California that remain relatively natural and undisturbed. Their vision document includes a four-point plan that calls for: (1) Protection of specific parcels that support floodplain habitat, the Unocal Guadalupe Oil Field, the dune scrub lands east of the State Vehicular Recreation Area, and areas where dune margins interface with agricultural and ranching lands. This area overlaps in large part with one of the proposed critical habitat units in this rule. Other measures call for: (2) ensuring the health of the dune ecosystem through eradication of non-native species, restoration of damaged areas, management of sensitive resources, and maintaining ecologic processes such as sand movement; (3) enhancement of visitor services; and (4) community outreach and education programs (TNC n.d.).

Recently, the U.S. Congress directed the National Park Service to initiate a feasibility study for the Gaviota coast to determine whether the area, or a portion of it, is eligible and suitable to be managed as a unit of the National Park System according to specific criteria, including the determination as to

whether the resources in the area are nationally significant (http://www.nps.gov/pwro/gaviota/). The stretch of coast being studied ranges from Coal Oil Point (east of Gaviota) west to Point Arguello and continuing north to the northern boundary of Vandenberg Air Force Base; this area overlaps with all or a portion of seven of the nine units being proposed for critical habitat designation in this rule. The results of the feasibility study will be available in early 2002.

These numerous initiatives and planning efforts all recognize the sensitivity of the coastal habitats and the sensitive resources along this portion of the central California coast. Due to the historic loss of the habitats that supported *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa,* we believe that future conservation and recovery of these taxa depends not only on protecting them in the limited areas that they currently occupy, but also on providing the opportunity to increase their distribution by designating currently unoccupied habitat within their historic ranges.

Some of the critical habitat units being proposed for *Cirsium loncholepis* and *Deinandra increscens* ssp. *villosa* include areas that are currently unoccupied by the taxa. Determining the specific areas that these taxa occupy is difficult for several reasons: (1) The methods for mapping the current distributions of *Cirsium loncholepis and Deinandra increscens* ssp. *villosa* can be variable, depending on the scale at which groups of individuals are recorded (e.g., many small groups versus one large group); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Therefore, the inclusion of currently unoccupied habitat interspersed with patches of occupied habitat in the critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of these taxa. For *Cirsium loncholepis,* we have also included a larger area of currently unoccupied habitat in the Pismo-Orcutt unit, extending from the known coastal locations of the species inland to Orcutt. This unoccupied habitat is essential to the conservation of the species because it provides connectivity between the known locations on the coast and the Cañada de las Flores location further inland and potentially suitable habitat for introductions needed for recovery of the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* are within each species' historic range and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of each species.

The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* throughout each species' range, and provide those habitat components essential for the conservation of each species. Habitat components that are essential for *Cirsium loncholepis* are found in, but not limited to, coastal dune, coastal scrub, and wetland communities where physical processes, such as occasional soil disturbance and the pattern of prevailing coastal winds, support natural dune dynamics in coastal areas, or occasional floodplain depositional events in inland areas. Habitat components that are essential for *Eriodictyon capitatum* are found in vegetation communities classified as maritime chaparral and in southern bishop pine forests that intergrade with chaparral where physical processes, such as occasional naturally-occurring or controlled fires, support patch dynamics within the pine forest and chaparral communities. Habitat components that are essential for *Deinandra increscens* ssp. *villosa* are found in needlegrass grassland and coastal sage scrub communities with a clay layer found below the sandy soil surface.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Cirsium loncholepis* consist of, but are not limited to:

(1) Moist sandy soils associated with dune swales, margins of dune lakes and marshes, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(2) Plant communities that support associated species including, coastal dune, coastal scrub, and wetland communities, particularly where the following associated species are found: *Juncus* spp (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), and *Baccharis pilularis* (coyote brush); and

(3) Hydrologic processes, particularly the maintenance of a stable groundwater table that supports the soil moisture regime that appears to be favored by *Cirsium loncholepis.*

Eriodictyon capitatum

Based on our knowledge to date, the primary constituent elements of critical habitat for *Eriodictyon capitatum* consist of, but are not limited to:

(1) Soils with a large component of sand and that tend to be acidic;

(2) Plant communities that support associated species, including maritime chaparral, particularly where the following associated species are found: *Dendromecon rigida* (bush poppy), California scrub oak, *Quercus parvula* (Santa Cruz Island oak), and *Ceanothus cuneatus* (buck brush); and in southern bishop pine forests that intergrade with chaparral *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage); and

(3) Habitat directly adjacent upslope and downslope from known populations, as this species appears to spread primarily through vegetative reproduction.

Threats to the habitat of *Eriodictyon capitatum* include: incompatible fire management practices; invasive nonnative plant species; low seed productivity; and naturally occurring catastrophic events (65 FR 14888). Some of the sites proposed for critical habitat may be degraded by the presence of non-native species, such as *Ehrhardta calcina* (veldt grass), that may compete with native vegetation. This fast-spreading species is difficult to control, particularly after an area has been denuded by wildfire. Controlling veldt grass poses a special management need within proposed critical habitat for *Eriodictyon capitatum.* The areas we are proposing to designate as critical habitat provide some or all of the habitat

components essential for the conservation of *Eriodictyon capitatum.*

Deinandra increscens ssp. villosa

Based on our knowledge to date, the primary constituent elements of critical habitat for *Deinandra increscens* ssp. *villosa* are:

(1) Sandy soils associated with coastal terraces adjacent to the coast or uplifted marine sediments at interior sites up to 5.6 km (3.5 mi) inland from the coast; and

(2) Plant communities that support associated species, including needlegrass grassland and coastal sage scrub communities, particularly where the following associated species are found: needlegrass species, California sagebrush, coyote bush, sawtooth golden bush, and California buckwheat.

Threats to the habitat of *Deinandra increscens* ssp. *villosa* include: habitat loss and degradation from the development of oil and gas facilities; including pipelines; competition with nonnative weeds; and naturally occurring catastrophic events (65 FR 14888). The presence of non-native species which compete for resources available for growth and reproduction of *Deinandra increscens* ssp. *villosa* may pose a special management need for the areas proposed as critical habitat for this species. Portions of these units being proposed for critical habitat may be degraded by the presence of non-native species such as veldt grass, ripgut, and harding grass, that may compete with native vegetation. This is particularly true for the sites where most of the coastal populations are found, particularly in the vicinity of Gaviota, as they have been subject to more human disturbance than the inland sites. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *Deinandra increscens* ssp. *villosa.*

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for the three taxa within the units being proposed as critical habitat. In some cases, protection of existing habitat and current ecologic processes may be sufficient to ensure that populations of the plants are maintained at those sites, and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for the three taxa. We have outlined below the most likely kinds of special management and protection that these three taxa may require. Not all of these will apply to each plant taxon.

1. Existing soil conditions may need to be protected by avoiding activities that cause the erosion of soils from areas with slopes; on flat areas, maintaining an intact soil profile may be necessary to maintain edaphic features such as a perched water table atop a clay layer, or a horizon of permeable sandy soils on the surface layer.

2. In near-coastal areas (dunes) the supply and movement of sand along the coast must be maintained to create the mosaic of wetlands, swales, and marshes that are needed for *Cirsium loncholepis.*

3. Existing hydrologic conditions may need to be protected by avoiding activities that cause a change in surface or subsurface water flows upon which the plant taxa depend.

4. The quality of water must also be maintained to keep it free from deleterious levels of herbicides or chemical or organic contaminants.

5. The associated plant communities must be maintained to ensure that the habitat needs of pollinators and dispersal agents are maintained. For some grassland areas, it may be important to maintain openings between coastal scrub communities that might otherwise encroach upon grassland patches that support *Deinandra increscens* ssp. *villosa.* Along the coast, the growth of willow thickets may encroach upon the margins of dune swales and wetlands, and shade out *Cirsium loncholepis.*

6. In all plant communities where these taxa occur, invasive, non-native species such as harding grass and veldt grass need to be actively managed. Once these grasses have become established, they cannot be removed without great expenditure of time and effort.

7. Certain areas where these taxa occur may need to be fenced to protect them from accidental or intentional trampling by humans and livestock.

Criteria Used to Identify Critical Habitat

The proposed critical habitat units for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of the three taxa using information from the CNDDB (CNDDB 2001), aerial photographs available through TerraServer (*http://terraserver.homeadvisor.msn.com*), recent biological surveys and reports, representatives of CDFG, the County of Santa Barbara Planning Department, and discussions with botanical experts. These data layers were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using roads and known landmarks and, where necessary, township, range, and section numbers from the public land survey.

We also considered the status of habitat conservation plan (HCP) efforts in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although ''take'' of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. At the time we prepared this proposed rule, there were no approved HCPs covering any of these three species within the areas being proposed for critical habitat.

The Air Force has developed an Integrated Natural Resources Management Plan (INRMP) for VAFB. The INRMP is intended to provide an adaptive management approach to natural resource issues on the base (Tetra Tech, Inc. 1997). Although the INRMP calls for annual monitoring of *Eriodictyon capitatum,* it does not provide any specific measures to ensure the conservation and recovery of this species. The INRMP calls for surveys for *Cirsium loncholepis,* which has not been seen on the base since 1958; *Deinandra increscens* ssp. *villosa* is not discussed in the plan. The INRMP is currently being revised. However, because measures to provide for the conservation of these species are not currently in place, we are not excluding from the proposed critical habitat unit those portions of the base that support *Eriodicyton capitatum,* or those portions of the Point Sal and Point Arguello-Gaviota units that support *Deinandra increscens* ssp. *villosa.*

Critical habitat includes habitat throughout the species' current ranges in the United States (Santa Barbara and San Luis Obispo counties, California). Lands proposed are under Federal, State, local, and private ownership.

Federal lands include areas owned and managed by Vandenberg Air Force Base and the Service. State lands include areas owned and managed by the California Department of Parks and Recreation and the California Department of Fish and Game. Local lands include parks owned by the County of Santa Barbara. Private lands include areas that are being managed for conservation by private landowners, as well as those that are being managed for agriculture, ranchlands, or oil production. We are proposing to designate critical habitat on lands that are considered essential to the conservation of each of the three species. Each of the critical habitat units is considered to be occupied by either seeds as part of the seed bank or standing plants, and contain habitat that includes the specific soils, hydrology, and plant communities that are associated with each of the three species.

Throughout this designation, in selecting areas of proposed critical habitat, we made an effort to avoid developed areas, such as housing developments, and other areas that are unlikely to contribute to the conservation of *Cirsium loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. However, due to mapping and time constraints, we did not map critical habitat in sufficient detail to exclude all developed areas or other lands unlikely to contain the primary constituent elements essential for the conservation of these taxa. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore would not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below include all of the primary constituent elements described above and constitute our best assessment at this time of the areas needed for the conservation of each of the three taxa:

Cirsium loncholepis

Critical habitat being proposed for *Cirsium loncholepis* includes two units that currently sustain the species. Protection of this proposed critical habitat is essential for the conservation of the species because the geographic range that *Cirsium loncholepis* occupies has been reduced to so few sites that the species is threatened with extinction. The areas being proposed as critical habitat contain the appropriate dune, wetland, marsh, and riparian habitat that supports *Cirsium loncholepis*, including the sandy soils, the associated plant communities, and a groundwater table that maintains wet soil conditions. We propose to designate approximately 17,934 ha (44,315 acres) of land as critical habitat for *Cirsium loncholepis*. Approximately 6 percent of this area consists of Federal lands, while State lands comprise approximately 5 percent, County lands comprise approximately 1 percent, and private lands comprise approximately 88 percent of the proposed critical habitat (Table 1). Both of the two units being proposed for *Cirsium loncholepis* support standing plants or seedbank of the species. In addition to these areas, both units contain additional habitat that is needed to maintain the ecologic processes that support the primary constituent elements, and habitat that is needed to allow expansion of existing populations and to maintain connectivity through pollinators and dispersal agents between the two units.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT UNIT AREAS FOR *Cirsium loncholepis* IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP [1]

Unit Name	State	Private	County and other local jurisdictions	Federal	Total
Pismo-Orcutt	869 ha (2,148 ac)	14,592 ha (36,058 ac)	240 ha (592 ac)	1,033 (2,553 ac)	16,734 ha (41,351 ac)
Cañada de las Flores	0 ha (0 ac)	1,200 ha (2,964 ac)	0 ha (0 ac)	0 ha (0 ac)	1,200 ha (2,964 ac)
Total	869 ha (2,148 ac)	15,792 ha (39,022 ac)	240 ha (592 ac)	1,033 ha (2,553 ac)	17,934 ha (44,315 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac).

A brief description of each critical habitat unit is given below:

Pismo-Orcutt Unit

The Pismo-Orcutt Unit consists of coastal dunes, swales, and wetlands extending from Grover City south to Mussel Point, just north of Point Sal, and then extends inland across the Santa Maria Valley to the area of Orcutt. This unit includes a portion of the Pismo Dunes State Preserve, Oceano Dunes State Vehicular Recreation Area, the Guadalupe Dunes National Wildlife Refuge, Rancho Guadalupe Dunes Preserve, and privately owned lands. In the vicinity of Orcutt, some of the private lands included in this unit have been designated as open space by the County of Santa Barbara (1998). The coastal portion of this unit contains almost all the known populations of *Cirsium loncholepis,* including the largest population known to exist anywhere on privately owned lands, the Unocal parcel near the mouth of the Santa Maria River, as well as numerous smaller populations that are scattered along the coast north to Grover City. Maintaining all of these populations is important for this species to survive through a variety of natural and environmental changes as well as stochastic events. The more interior portions of this unit are primarily within the lower portion of the Santa Maria River valley (below 80 ft in elevation) and have been placed in agricultural production. However, fragments of numerous small marshes, wetlands, and drainages can still be found interspersed with agricultural fields. The prevailing winds from the stretch of coast between Pismo Beach and the mouth of the Santa Maria River blow southeast across the lower Santa Maria River Valley in the direction of Orcutt and beyond to Cañada de las Flores. This intervening habitat is therefore important to maintain connectivity between the coastal populations and the Cañada de Las Flores unit through pollinator activity and seed dispersal mechanisms and to provide suitable habitat for introduction efforts needed for recovery of the species.

Cañada de Las Flores Unit

The Cañada de Las Flores Unit consists of marsh and wetland habitat at the head of La Cañada de las Flores, northwest of the town of Los Alamos. All of the lands in this unit are privately owned. The two known populations of *Cirsium loncholepis* in this unit encompasses the easternmost distribution of the species; consequently they occur under slightly different environmental conditions, specifically at a higher elevation (200 ft elev.) and warmer climate than the coastal populations. Preserving any genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions would be important for the long-term survival and conservation of the species.

Eriodictyon capitatum

We are proposing critical habitat for *Eriodictyon capitatum* in three units currently occupied by the species. Protection of this proposed critical habitat is essential for the conservation of the species because the geographic range that *Eriodictyon capitatum* occupies has been reduced to so few sites that the species is threatened with extinction (65 FR 14888). The areas being proposed as critical habitat are found in three locations in northern Santa Barbara County and include the appropriate sandy, acidic soils and chaparral and southern bishop pine forest chaparral habitat that supports *Eriodictyon capitatum*. We propose to designate approximately 3,438 ha (8,495 ac) of land as critical habitat for *Eriodictyon capitatum*. Approximately 13 percent of this area consists of Federal lands, and private lands comprise approximately 87 percent of the proposed critical habitat (Table 2). The three units being proposed for *Eriodictyon capitatum* support standing populations of the species. In addition to these areas, both units contain additional habitat that is needed to maintain the ecologic processes that support the primary constituent elements, and habitat that is needed to allow expansion of existing populations.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT UNIT AREAS FOR ERIODICTYON CAPITATUM IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP [1]

Unit Name	State	Private	County and other local jurisdictions	Federal	Total
Solomon Hills	0 ha (0 ac)	1,311 ha (3,239 ac)	0 ha (0 ac)	0 ha (0 ac)	1,311 ha (3,239 ac)
Vandenberg	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	443 ha (1,094 ac)	443 ha (1,094 ac)
Santa Ynez Mountains	0 ha (0 ac)	1,684 ha (4,162 ac)	0 ha (0 ac)	0 ha (0 ac)	1,684 ha (4,162 ac)
Total	0 ha (0 ac)	2,995 ha (7,401 ac)	0 ha (0 ac)	443 ha (1,094 ac)	3,438 ha (8,495 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac).

A brief description of each critical habitat unit is given below:

Solomon Hills Unit

The Solomon Hills Unit consists of a low hill (locally known as Orcutt Hill) located southeast of the community of Orcutt and west of Highway 1. The unit includes watersheds from the ridgelines downslope to the bottoms of the nearest drainages. It supports scattered Bishop pine and live oak, along with maritime chaparral species, and has been dissected by roads, pads, and pipelines associated with oil well drilling. This entire unit is privately owned. This unit is important because it represents one of only four known locations of *Eriodictyon capitatum.* The population that occurs here also includes the northernmost and most inland distribution of the species. Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for its long-term survival and conservation.

Vandenberg Unit

The Vandenberg Unit consists of two subunits, Vandenberg West and Vandenberg East, located approximately 3 km (2 mi) apart on the southern portion of Vandenberg Air Force Base in areas that are zoned as open space (C. Gillespie, VAFB, *in litt.* 2001). Vandenberg West consists of relatively flat terrain within Burton Mesa chaparral, and contains the largest population of *Eriodictyon capitatum* on the base. Vandenberg East is comprised of a finger of mesa top, along with surrounding eroded areas that slope toward Pine Canyon and Lake Canyon. The site supports Burton Mesa chaparral and scattered Bishop pine. Based on currently available data (Elam 1994), Pine Canyon in Vandenberg East contains more genetically different individuals than any other known location of *Eriodictyon capitatum.* The unit is considered essential to the conservation of the species because it contains two of the four known locations of *Eriodictyon capitatum.* The populations that occur here encompass the westernmost and most coastally influenced (low elevation and coastal climate) distribution of the species, and includes the location with the greatest number of known genetically different individuals. Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for its long-term survival and conservation.

Santa Ynez Mountains Unit

The Santa Ynez Mountains Unit consists of an 8-km (5 mi) long segment of the Santa Ynez Mountains between the Cañada del Coho and Arroyo Bullito drainages. Several populations of *Eriodictyon capitatum* are scattered among (*Lithocarpus densiflorus*) tanbark oak, (*Quercus agrifolia*) live oak, and numerous chaparral species. The downslope limit of this unit on the south-facing side lies along the shift in vegetation from chaparral at the higher elevations to grasslands at the lower elevations. The entire unit is privately owned. This unit is important because it represents one of only four known locations of *Eriodictyon capitatum.* The populations that occur here includes the southernmost distribution of the species as well as those at the highest elevations (1600 ft in elevation). Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for its long-term survival and conservation.

Deinandra increscens ssp. villosa

We are proposing critical habitat for *Deinandra increscens* ssp. *villosa* in five units that are currently occupied by the species. Protection of these areas is essential for the conservation of the species because the geographic range that *Deinandra increscens* ssp. *villosa* occupies has been reduced to so few sites that the species is threatened with extinction (65 FR 14888). The areas being proposed as critical habitat are coastal terraces found between Point Sal south to the Gaviota area and include the appropriate soils and associated grassland and coastal sage scrub plant communities habitat that supports *Deinandra increscens* ssp. *villosa*. We propose to designate approximately 5,674 ha (14,020 ac) of land as critical habitat for *Deinandra increscens* ssp. *villosa*. Approximately 24.5 percent of this area consists of Federal lands, private lands comprise approximately 73 percent of the proposed critical habitat, State lands comprise approximately 2.5 percent, and County lands comprise less than 1 percent (Table 3). The five units being proposed for *Deinandra increscens* ssp. *villosa* support standing plants or seedbank of the species. In addition to these areas, each unit contains additional habitat that is needed to maintain the ecologic processes that support the primary constituent elements, and habitat that is needed to allow expansion of existing populations and to maintain connectivity through pollinators and dispersal agents between the populations within each unit, and between the five units.

TABLE 3.—APPROXIMATE PROPOSED CRITICAL HABITAT UNIT AREAS FOR DEINANDRA INCRESCENS SSP. VILLOSA IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP [1]

Unit name	State	Private	County and other local jurisdictions	Federal	Total
Point Sal	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	95 ha (234 ac)	95 ha (234 ac)
Point Arguello	0 ha (0 ac)	0 ha (0 ac)	0 ha (0 ac)	702 ha (1,734 ac)	702 ha (1,734 ac)
Sudden Peak	0 ha (0 ac)	310 ha (765 ac)	0 ha (0 ac)	384 ha (950 ac)	694 ha (1,715 ac)
Santa Ynez	0 ha (0 ac)	495 ha (1,222 ac)	0 ha (0 ac)	0 ha (0 ac)	495 ha (1,222 ac)
Conception-Gaviota	129 ha (319 ac)	3,339 ha (8,252 ac)	10 ha (24 ac)	210 ha (520 ac)	3,688 ha (9,115 ac)
Total	129 ha (319 ac)	4,144 ha (10,239 ac)	10 ha (24 ac)	1,391 ha (3,438 ac)	5,674 ha (14,020 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac).

A brief description of each critical habitat unit is given below:

Point Sal Unit

Point Sal Unit consists of a portion of coastal blufftop approximately 6 km (4 mi) southeast of Point Sal. It is comprised of serpentine soils and outcrops, and supports coastal grassland vegetation along with species more typically found on outcrops. The entire unit is under the Federal jurisdiction of VAFB in an area that is zoned as open space (C. Gillespie, VAFB, *in litt.* 2001). This unit supports the northernmost population of *Deinandra increscens* ssp. *villosa*; as of 1998, this population comprised approximately 500 individuals. Given its geographic isolation from the remaining populations, it may be genetically different from other populations and, therefore, important for the long-term survival and conservation of *Deinandra increscens* ssp. *villosa*.

Point Arguello Unit

The Point Arguello Unit consists of a 5-km (3-mi) long stretch of coastal terrace habitat from near Point Pedernales, south to Rocky Point, and east to approximately the 500-foot contour line. This unit is comprised entirely of lands under Federal jurisdiction at VAFB in an area that is zoned as open space (C. Gillespie, VAFB, *in litt.* 2001). This unit supports one population of *Deinandra increscens* ssp. *villosa* comprising several hundred individuals as of the year 2000 (C. Gillespie, VAFB *in litt.* 2001) as well as suitable habitat that is important for the expansion of this population and conservation of the species.

Sudden Peak Unit

The Sudden Peak Unit consists of a 5 km (3 mi) stretch of ridgeline in the western portion of the Santa Ynez Mountains west of Sudden Peak and generally includes grasslands above the 1,200-foot contour line. This unit is comprised in part of lands under Federal jurisdiction of VAFB in an area that is zoned as open space (C. Gillespie, VAFB, *in litt.* 2001) (about 55 percent), and of privately owned lands (about 45 percent). VAFB holds an easement on a portion of these private lands. This unit includes two populations of *Deinandra increscens* ssp. *villosa* that comprised over 1,000 individuals in 1998. This is one of only two units that are known to support populations away from the immediate coast and at higher elevations (1400 ft in elevation). Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for its long-term survival and conservation. It also supports suitable habitat that is important for the expansion of existing populations and conservation of the species.

Santa Ynez Unit

The Santa Ynez Unit consists of a 9.7-km (6-mi) stretch of ridgeline of the Santa Ynez Mountains, ranging from Cañada de las Agujas east to Cañada del Agua Caliente. This unit of 495 ha (1,222 ac) is comprised entirely of privately owned lands. This unit supports two populations of *Deinandra increscens* ssp. *villosa* that comprised approximately 400 individuals as of 1998. Along with the Sudden Peak unit, this is the only unit that supports populations away from the immediate coast and at higher elevations (1400 ft in elevation). Preserving the genetic variability within the species that has allowed it to adapt to these slightly different environmental conditions is important for its long-term survival and conservation. This unit also includes habitat that is important for the expansion of existing populations and

connectivity between the two populations, and conservation of the species.

Conception-Gaviota Unit

The Conception-Gaviota Unit consists of a 51.5-km (23-mi) long stretch of habitat along the coast from Point Conception, east to Gaviota, and encompasses 3,688 hectares (9,115 ac). At its widest point, this unit extends inland approximately 3.2 km (2 mi). This unit is comprised of State lands at Gaviota State Beach and lands in the process of being transferred to CDFG for the Gaviota Tarplant Preserve (about 3.5 percent), County of Santa Barbara lands at Jalama County Park (less that 1 percent), and privately owned lands (about 91 percent). This unit supports most of the known populations of *Deinandra increscens* ssp. *villosa* that occur along the immediate coast. This includes the Gaviota population which was once abundant but is currently in decline, two small patches discovered in 1998 between Gaviota and Point Conception, and an extensive population discovered in 2000 that ranges from Government Point to the area near Jalama Beach County Park. This unit is important because it supports multiple populations that occur along a stretch of coastline that consists of marine terraces supporting coastal grasslands, as well as intervening suitable habitat that is important for the expansion of existing populations, maintaining connectivity for pollinators and dispersal between these populations, and conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

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 Federal agencies to confer with the Service on any 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 ''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 would not afford any additional protections under the Act against such activities.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that the actions they fund, authorize, permit, 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, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action[s]. The conservation measures in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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 jeopardize the continued existence of the species or 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, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. 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 or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal agencies are to confer with us on any action which is likely to jeopardize the continued existence of any proposed species, or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10(a)). We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section

10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway Administration, Environmental Protection Agency, or Federal Emergency Management Authority funding), 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 and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) of the Act jeopardy standard and the applicable prohibitions of section 9 of the Act, 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.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe within any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* We note that such activities may also jeopardize the continued existence of the species.

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 of the Act 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 the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for 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 destroy or adversely modify 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. Designation of critical habitat in areas occupied by *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not currently occupied by these species may result in an additional regulatory burden when a Federal nexus exists.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Cirsium loncholepis* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the coastal dune swale, marsh, and riparian habitat within the range of *Cirsium loncholepis.* Such activities adverse to *Cirsium loncholepis* could include, but are not limited to, water drawdown or water diversions that drop the water table, agricultural activities that would affect the quality of water through contamination, agricultural activities and grading activities that destroy the attendant native vegetation and make these areas more susceptible to invasion by nonnative plant species, off-highway vehicle activity that alters vegetation cover and topography, road building and maintenance or modification that alters runoff patterns, oil field development, oil contamination remediation activities, construction of pipelines and utility corridors, golf course and residential development, and certain recreational activities.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Eriodictyon capitatum* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the ability of the chaparral habitat to maintain a mosaic of stands in different age classes, such as maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as brush clearance in the watershed upslope from *Eriodictyon capitatum;* and

(2) Activities that appreciably degrade or destroy native maritime chaparral and oak woodland communities at interior sites, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Deinandra increscens* ssp. *villosa* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the ability of the coastal terraces to maintain healthy grassland communities, such as maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing, oil field development, oil contamination remediation, and construction and decommissioning of pipelines and utility corridors.

Designation of critical habitat could affect the following agencies and actions: development on private lands requiring permits from Federal agencies, such as authorization by the Corps pursuant to section 404 of the Clean Water Act, or permits from other Federal agencies; activities of the U.S.

Fish and Wildlife Service on its Refuge lands; the funding of projects by agencies such as Housing and Urban Development; military activities of the U.S. Department of Defense (Vandenberg Air Force Base) on their lands or lands under their jurisdiction; activities of the Federal Aviation Authority on their lands or lands under their jurisdiction; the release or authorization of release of biological control agents by the U.S. Department of Agriculture; regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; watershed management activities sponsored by the Natural Resources Conservation Service; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process, a process which would consider all federally listed species affected by the HCP including plants.

Several other species that are listed under the Act occur in the same general areas as *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* Western snowy plovers (*Charadrius alexandrinus nivosus*), tidewater gobies (*Eucyclogobius newberryi*), California least terns (*Sterna antillarum browni*), California red-legged frogs (*Rana aurora draytonii*), *Arenaria paludicola* (marsh sandwort), *Rorippa gambelii* (Gambel's watercress), and *Lupinus nipomensis* (Nipomo lupine) occur within the coastal portions of the Pismo-Orcutt unit being proposed for *Cirsium loncholepis;* in addition, critical habitat for the Western snowy plover and the California red-legged frog overlaps with that being proposed for *Cirsium loncholepis.* California tiger salamanders (*Ambystoma californiense*) occur on the more inland portion of the Pismo-Orcutt unit in the vicinity of Orcutt, as well as in the vicinity of the Cañada de las Flores unit being proposed for *Cirsium loncholepis.* Along the coast between Jalama Beach County Park and Gaviota, Western snowy plovers and their critical habitat, California red-legged frogs and their critical habitat, and tidewater gobies overlap with the Conception-Gaviota unit being proposed for *Deinandra increscens* ssp. *villosa.*

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* as covered species. However, we believe that, in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify appropriate management for the long-term conservation of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of including such areas as critical habitat. We cannot exclude areas from critical habitat if the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analyses and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* habitat, and what habitat is essential to the conservation of these species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values'', and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in

accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [1018–AG88]'' and your name and return address in your Internet message. Please note that the Internet address ''*fw1coastaltrio@r1.fws.gov*'' will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we may withhold from the rulemaking record a respondent's identity, to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the 60-day public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal in the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Please send any comments that concern how we could make this notice easier to understand to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

The three species for which critical habitat is proposed were listed as endangered on March 20, 2000 (65 FR 14888). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat 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 4). Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and their needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would be considered as jeopardy under the Act in areas occupied by the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to 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.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the three listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to 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 *Cirsium loncholepis, Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* since the species' listing in 2000. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, is not expected to significantly 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 incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 4.—IMPACTS OF *Cirsium loncholepis, Eriodictyon capitatum,* AND *Deinandra increscens* SSP. *villosa* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional acivities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, the Department of Defense, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and any other Federal Agencies, including, but not limited to, grading, construction, road building, oil field development, oil contaminants remediation, herbicide application, fill of wetlands, control of water table levels, and recreational activities that would destroy habitat for these species or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, or fragmentation.).	Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exoitc plants or animals, fragmentation of habitat.	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa.* If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* have only been listed since March 2000, there have only been two formal consultations involving the species. Both consultations were conducted with the ACOE on restoration activities being undertaken by Unocal to clean up and restore beach habitat contaminated by oil production activities. In these consultations, restoration of CILO habitat was proposed as part of the project because Unocal had to fulfill permit requirements imposed by the County of San Luis Obispo and the Coastal Commission. There have not been any consultations on the other two species. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* have been listed a relatively short time and there have been few activities with Federal involvement in these areas where the species area not clearly present during this time. As mentioned above, we have conducted only two formal consultations under section 7 involving any of the species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

Projected land uses for the majority of the proposed critical habitat consists of farming, cattle grazing, low impact recreation, military activities on VAFB, low density development, set-asides for conservation of natural resources (including Federal lands at Guadalupe-Nipomo Dune National Wildlife Refuge as well as non-federal lands), and continuing use and decommissioning of oil production facilities. On the Federal lands included in this proposed critical habitat designation, the only commercial activity that we are aware of is the leasing of several cattle grazing allotments by the Federal Penitentiary in Lompoc on VAFB lands. However, we do not consider the Penitentiary to be a small entity for this analysis.

On non-federal lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are likely to occur on non-federal lands in the area encompassed by this proposed designation are primarily farming, cattle grazing, recreation, housing, and oil production. On lands that are in agricultural production the types of activities that might trigger a consultation include water delivery projects that may require section 404 authorizations and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary and the water delivery projects are rare and would only affect a small percentage of the small entities within this proposed critical habitat designation. Some of the lands encompassed in the Cañada de las Flores unit support populations of California tiger salamander; a change in land use on these lands could require authorization from the ACOE or section 10(a)(1)(B) permits from the Service. However, there are fewer than ten landowners in this entire unit. The proposed rule would not affect a substantial number of small agricultural entities.

On lands that are currently or have been under oil production, expansion of operations or decommissioning of facilities may require section 404 authorizations from the ACOE, section 10(a)(1)(B) permits from the Service for federally listed species including the California red-legged frog, snowy plover and the tidewater goby, or approvals or funding from the EPA. Oil production activities within the area proposed as critical habitat are largely conducted by large firms, including Chevron, Unocal, Texaco, and Nuevo Energy. This rule would not affect a substantial number of small entities involved in oil production. On lands that are zoned for rural residential, some amount of development may occur which may require section 404 authorizations from the ACOE or section 10(a)(1)(B) permits from the Service for federally listed species. Projected land uses in much of these areas are continued agriculture, low-density development, and recreation. In many cases, these kinds of land uses do not require Federal permits. We are not aware of a significant number of future activities that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities involved in rural development.

We also considered the likelihood that this rule would result in significant economic impacts to small entities. In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative

actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *Eriodictyon capitatum* as rare in 1979, and *Cirsium loncholepis*, and *Deinandra increscens* ssp. *villosa* as threatened and endangered species, respectively, in 1990 under the California Endangered Species Act, therefore, we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed. In the absence of this economic analysis, we have reviewed our previously published analyses of the likely economic impacts of designating critical habitat for other California plant species, such as *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Like *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa, C. robusta* var. *hartwegii* is a native species restricted to certain specific habitat types along the central coast of California and requires similar protective and conservation measures. Our high-end estimate of the economic effects of designating one critical habitat unit of *C. robusta* var. *hartwegii* ranged from $82,500 to $287,500 over ten years.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Many of the parcels within this designation are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private parcels within the proposed designation are currently being used for agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for ACOE permits and EPA permits related to oil development and remediation. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, since we are certifying that the proposed designation of critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis we will determine 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.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorization. Any such activity will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector 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

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. This rule will not take private property. As discussed above, the designation of critical habitat affects only Federal agency actions; it does not provide additional protection for the species on non-Federal lands regarding actions that lack any Federal involvement. Further, the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of species, including the avoidance of destruction or adverse modification of designated critical habitat. Should projects be proposed which require Federal funding, permitting or authorization, we anticipate that, through section 7 consultation, such projects can be implemented in ways consistent with the conservation of the species and the avoidance of destruction or adverse modification to critical habitat. Therefore, this rule would not result in takings.

Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival and recovery of *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Cirsium loncholepis*, *Eriodictyon capitatum*, or *Deinandra increscens* ssp. *villosa* imposes no additional restrictions to those currently in place, and therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of these 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).

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Any development that lacked Federal involvement would not be affected by the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Cirsium loncholepis, Eriodictyon capitatum,* or *Deinandra increscens* ssp. *villosa* because they do not support populations, nor do they provide essential habitat. Therefore, critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entries for *Cirsium loncholepis, Eriodictyon capitatum,* remove the entry for *Hemizonia increscens* ssp. *villosa,* and add an entry for *Deinandra increscens* ssp. *villosa* in alphabetical order under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Cirsium loncholepis	La Graciosa thistle	U.S.A. (CA)	Asteraceae-sunflower.	E	691	17.96(b)	NA
*	*	*	*	*	*		*
Deinandra increscens ssp. *villosa*.	Gaviota tarplant	U.S.A. (CA)	Asteraceae-sunflower.	E	691	17.96(b)	NA
*	*	*	*	*	*		*
Eriodictyon capitatum.	Lompoc yerba santa	U.S.A. (CA)	Hydrophyllaceae-waterleaf.	E	691	17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding entries for *Cirsium loncholepis, Deinandra increscens* ssp. *villosa,* in alphabetical order under Family Asteraceae and adding an entry for *Eriodictyon capitatum* under Family Hydrophyllaceae to read as follows:

Sec. 17.96 Critical Habitat—Plants.

* * * * *

(b) * * *

Family—Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

(1) Critical habitat units are depicted for San Luis Obispo and Santa Barbara counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Cirsium loncholepis* are those habitat components that provide:

(i) Moist sandy soils associated with dune swales, margins of dune lakes and marshes, and river margins from the Guadalupe Dune complex along the coast and inland to Cañada de las Flores;

(ii) Plant communities that support associated species, including coastal dune, coastal scrub, and wetland communities, particularly where the following associated species are found: *Juncus* species (spp.) (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), and *Baccharis pilularis* (coyote brush); and

(iii) Hydrologic processes, particularly the maintenance of a stable groundwater table that supports the soil moisture regime that appears to be favored by *Cirsium loncholepis.*

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, oil pads, railroads, airports, other paved areas, lawns, large areas of closed canopy chaparral, agricultural fields, and other urban landscaped areas not containing one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat map units.

(i) Township/Range/Section boundaries are based upon Public Land Survey System. Within the historical boundaries of former Spanish Land Grants, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center.

(ii) Map 1-Index follows:

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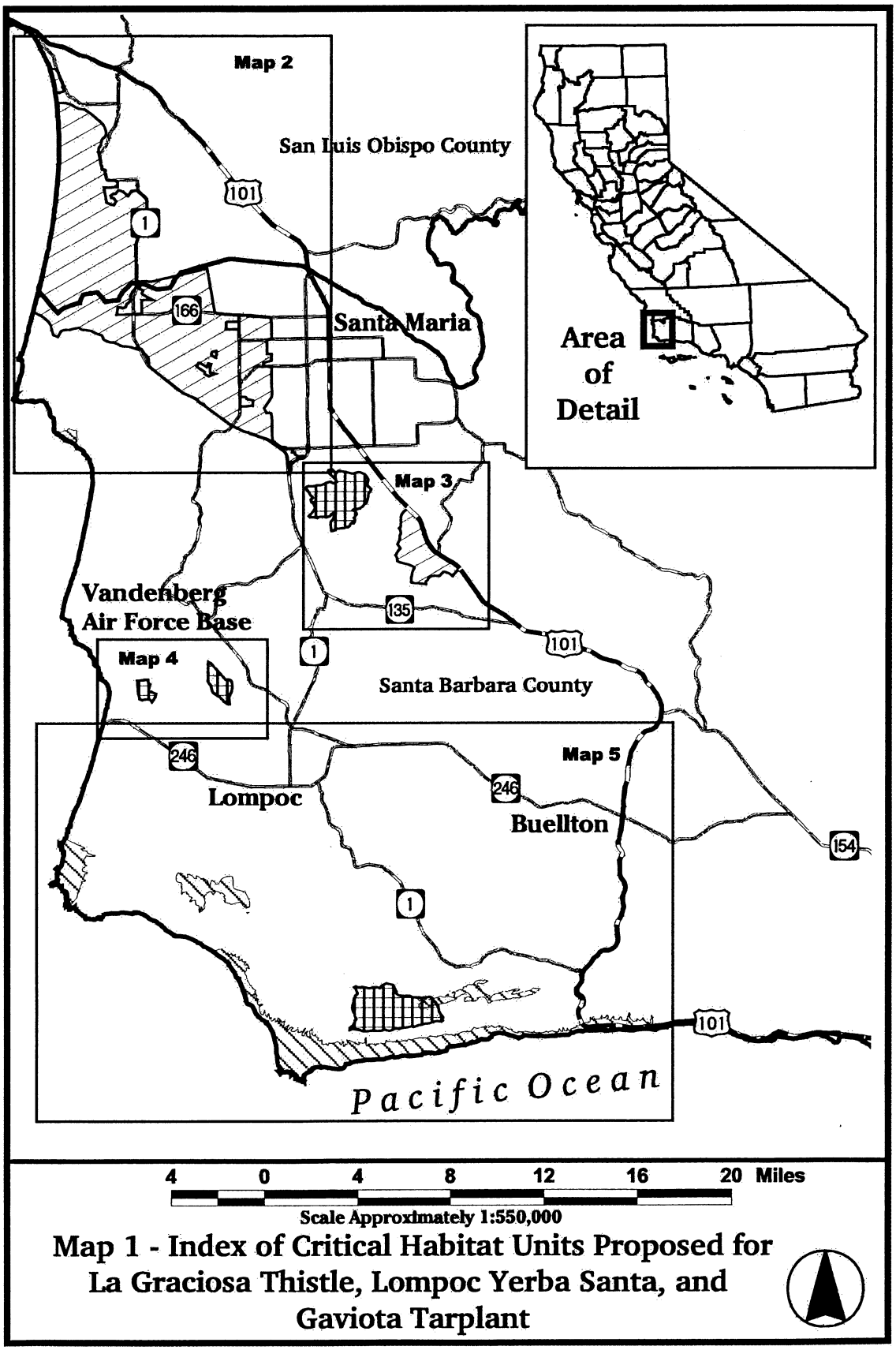


Map 1 - Index of Critical Habitat Units Proposed for La Graciosa Thistle, Lompoc Yerba Santa, and Gaviota Tarplant

(5) *Pismo-Orcutt Unit, San Luis Obispo and Santa Barbara counties, California.*

(i) From USGS 1:24,000 quadrangle maps Pismo Beach, Oceano, Point Sal, Guadalupe, Santa Maria, and Orcutt lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 715523,3889170; 715666,3889170; 715853,3889160; 715917,3889140; 715964,3889140; 715962,3889080; 716218,3888440; 716230,3888410; 716243,3888380; 716463,3887840; 716386,3887810; 716452,3887640; 716473,3887520; 716482,3887490; 716209,3887390; 716196,3887450; 715938,3887410; 715885,3887710; 715816,3888060; 715764,3888240; 715651,3888700; 715597,3888960; 715537,3889120; 715523,3889170; 727233,3868210; 726320,3867460;

728344,3870470; 729322,3864880; 722196,3872490; 722175,3872580; 722251,3872780; 719503,3880390; 719421,3880380; 719592,3879290; 720078,3879100; 720208,3879190; 720271,3879400; 720122,3879630; 719918,3879640; 719909,3879790; 720102,3879960; 720259,3879970; 720447,3880190; 720725,3880140; 720797,3880100; 721171,3879780; 721413,3880180; 721836,3880180; 721985,3880020; 722408,3879620; 722470,3879550; 722474,3879500; 722481,3879060; 722491,3878750; 722307,3878080; 721995,3877100; 721713,3876200; 721695,3876160; 721693,3876120; 721725,3875150; 721745,3874170; 721728,3873420; 722105,3873470; 722854,3873430;

723618,3873600; 724862,3873910; 726929,3874380; 727500,3871120; 729109,3870940; 730036,3870930; 731607,3870790; 731658,3870500; 731676,3869190; 731315,3869130; 731295,3868100; 731645,3868100; 731642,3867580; 731052,3867430; 731054,3867150; 731647,3867160; 731659,3866150; 731671,3865510; 731682,3864900; 731410,3864520; 731110,3864070; 731279,3863710; 731599,3863710; 731661,3863640; 731676,3863300; 731684,3862630; 731683,3862230; 731703,3861840; 731711,3861650; 732128,3861310;

732393,3861180; 732484,3861150; 732663,3861180; 732735,3861130; 732741,3861030; 733229,3861050; 733161,3860760; 733338,3860770; 733358,3860650; 733408,3860560; 733516,3860490; 733646,3860470; 733988,3860480; 734106,3860450; 734047,3860390; 733964,3860350; 733843,3860320; 733695,3860310; 733521,3860290; 733525,3860120; 733391,3860090; 733283,3860000; 733171,3859900; 733096,3859760; 733095,3859610; 733102,3859410; 732973,3859390; 732931,3859770; 732806,3860190; 732780,3860510; 732694,3860710; 732524,3860880; 732374,3861000; 732261,3861080; 731979,3861290; 731654,3861530; 731410,3861710; 730729,3861950; 729739,3862310; 729591,3862370; 729274,3862520; 728747,3862760; 726799,3864220; 726592,3864370;

726318,3864530; 726167,3864690; 726078,3864780; 725830,3864890; 725285,3865120; 725080,3865220; 723084,3866840; 722642,3867210; 722667,3867420; 722650,3867700; 722570,3867860; 722439,3868000; 722298,3868130; 722239,3868290; 722128,3868480; 721998,3868450; 721858,3868430; 721318,3868610; 720735,3868660; 720375,3868850; 720085,3868950; 719877,3868950; 719566,3869040; 719335,3869200; 719253,3869470; 719008,3869550; 718688,3869700; 718485,3869790; 717985,3869870; 717816,3869890; 717554,3870030; 717147,3869950; 717030,3869920; 716879,3869860; 716683,3869880; 716430,3869850; 716270,3869750; 716038,3869360;

715703,3869490; 715603,3869830; 715518,3870220; 715322,3870500; 714916,3870830; 714267,3871190; 714477,3871970; 714694,3872690; 714777,3872980; 715220,3874940; 715678,3877370; 715933,3879070; 715974,3879300; 716128,3881100; 716227,3882870; 716081,3886670; 716498,3886650; 716686,3886620; 716998,3886530; 717353,3886310; 717589,3886210; 717846,3886190; 718021,3886190; 718563,3885760;

719201,3885210; 719327,3885070; 719455,3884870; 719537,3884650; 719566,3884460; 719573,3884310; 719522,3884170; 719455,3884100; 719346,3884010; 719260,3883920; 719236,3883840; 719195,3883690; 719182,3883570; 719151,3883490; 719050,3883360; 719001,3883250; 718998,3883120; 719043,3882830; 719068,3882660; 719193,3882010; 719221,3881950; 719245,3881820; 719267,3881740; 719311,3881710; 719416,3881720; 719445,3881710; 719469,3881680; 719557,3881060; 719589,3880990; 719636,3880950; 719693,3880930; 719762,3880920; 720195,3880940; 720367,3880790; 720374,3880420; 719826,3880410; 719503,3880390; 715523,3889170.

(ii) Excluding lands bounded by: 722251,3872780; 722004,3872860; 722048,3873080; 721743,3873040; 721484,3872710; 721323,3872370; 721362,3872120; 721154,3871830; 721033,3871810; 720961,3871540; 720858,3871510; 720744,3871460; 720552,3871560; 720398,3871530; 720372,3871320; 720344,3870990; 722145,3871020; 722131,3872070; 722948,3872080; 722251,3872780.

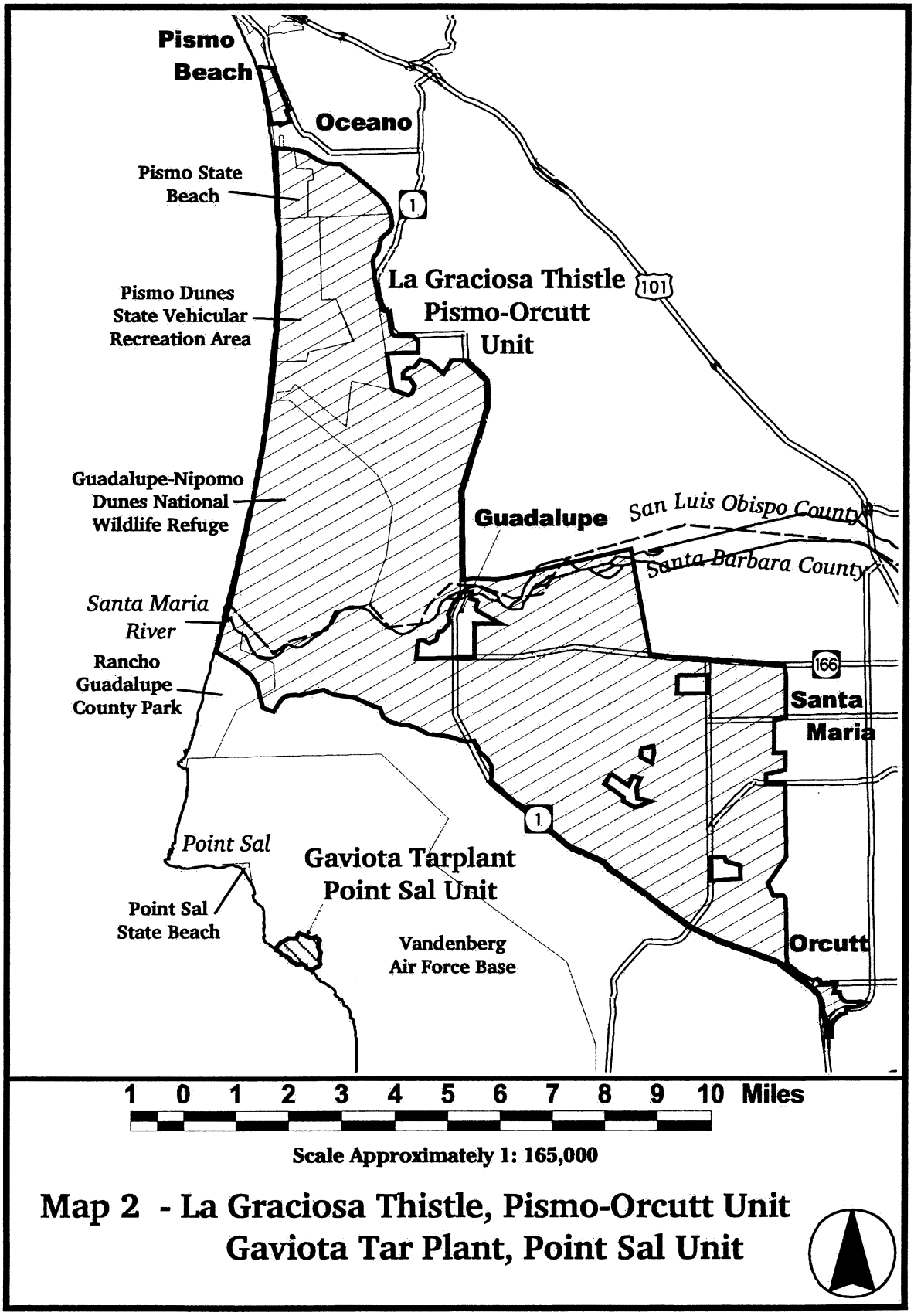
(iii) Excluding lands bounded by: 728326,3869910; 729252,3869920; 729230,3870480; 728344,3870470; 728326,3869910.

(iv) Excluding lands bounded by: 727237,3867980; 727569,3867780; 727637,3868070; 727613,3868310; 727233,3868210;727237,3867980.

(v) Excluding lands bounded by: 726119,3867150; 726736,3866720; 726723,3866620; 727074,3866420; 727539,3866610; 727137,3866710; 727118,3867030; 727229,3867320; 727007,3867370; 726890,3867090; 726320,3867460; 726119,3867150.

(vi) Excluding lands bounded by: 729324,3864170; 729324,3864160; 730275,3864230; 730265,3864640; 729817,3864760; 729804,3864850; 729771,3864900; 729322,3864880; 729324,3864170.

(vii) Map 2 follows:

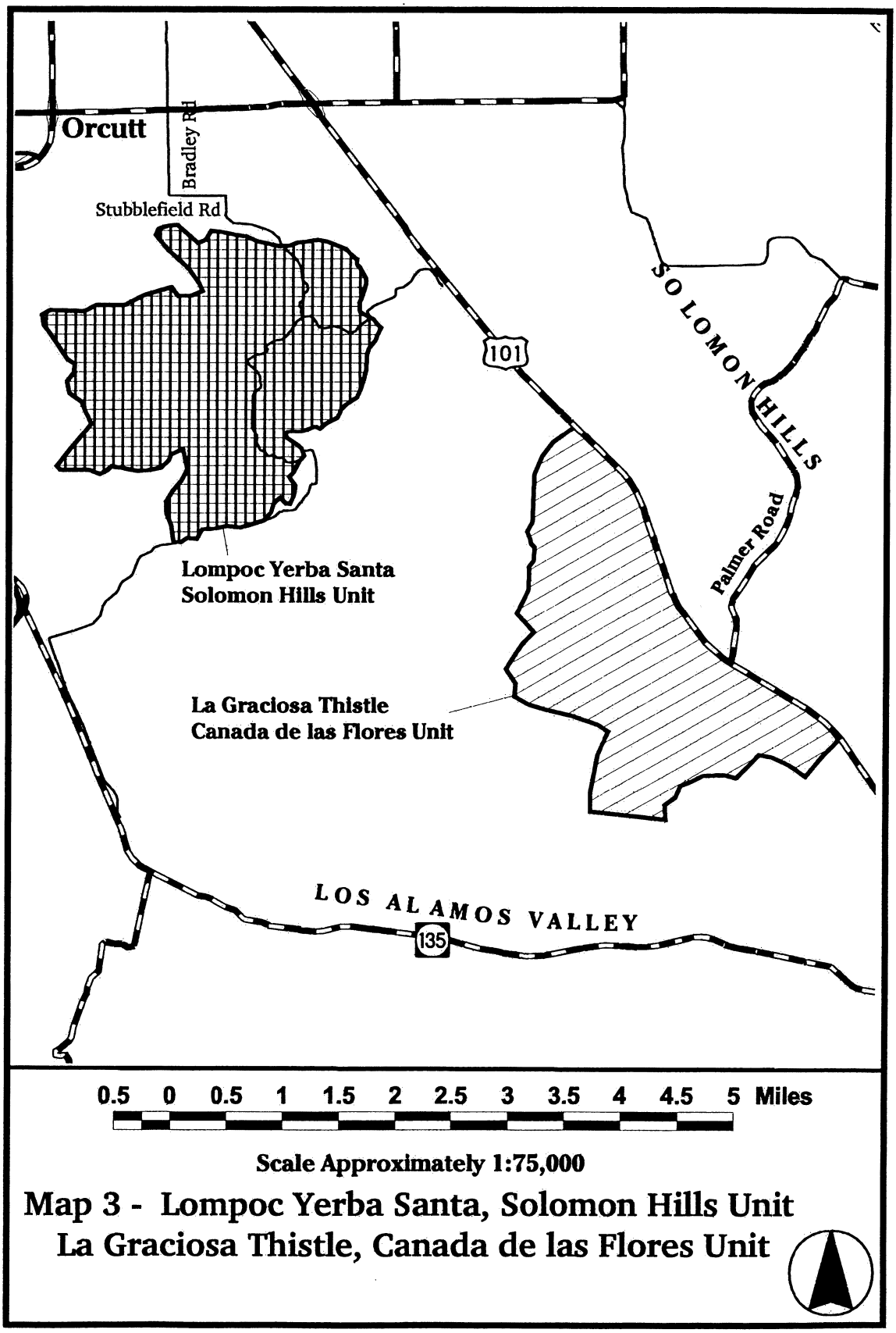


(6) *Cañada de Las Flores Unit, Santa Barbara County, California.*

(i) From USGS 1:24,000 quadrangle map Sisquoc, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 743242,3854050;

743285,3853980; 743460,3853740; 743664,3853460; 743740,3853390; 743801,3853340; 743927,3853240; 744013,3853180; 744017,3853180; 744471,3852900; 744646,3852800; 744649,3852800; 744755,3852730; 744783,3852710; 744846,3852680; 745005,3852590; 745012,3852580; 745026,3852570; 745122,3852520; 745235,3852440; 745424,3852280; 745580,3852070; 745321,3851810; 745104,3851550; 744861,3851710; 744617,3851820; 744438,3851850; 744110,3851530; 743959,3851570; 743794,3851570; 743626,3851550; 743477,3851470; 743313,3851410; 743244,3851240; 743088,3851130; 743105,3850920; 742033,3851040; 742029,3851290; 742145,3851860; 742218,3852020; 742293,3852190; 742144,3852290; 741773,3852410; 741394,3852500; 741139,3852580; 740945,3852690; 740959,3852880; 740822,3853080; 741050,3853450; 741214,3853620; 741089,3853760; 740973,3853890; 741127,3854220; 741136,3854370; 741142,3854470; 741137,3854560; 741203,3854650; 741221,3854840; 741163,3854900; 741154,3854980; 741111,3855070; 741186,3855200; 741212,3855890; 741324,3856150; 741478,3856350; 741807,3856590; 742081,3856310; 742528,3855890; 742624,3855720; 742758,3855430; 742983,3854780; 742988,3854760; 743059,3854550; 743072,3854510; 743072,3854510; 743076,3854500; 743084,3854480; 743139,3854310; 743181,3854180; 743196,3854160; 743242,3854050;743242,3854050.

(ii) Map 3 follows:



Map 3 - Lompoc Yerba Santa, Solomon Hills Unit
La Graciosa Thistle, Canada de las Flores Unit

Family—Asteraceae: *Deinandra increscens* ssp. *villosa* (Gaviota tarplant).

(1) Critical habitat units are depicted for Santa Barbara County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Deinandra increscens* ssp. *villosa* are the habitat components that provide:

(i) Sandy soils associated with coastal terraces adjacent to the coast or uplifted marine sediments at interior sites up to 5.6 km (3.5 mi) inland from the coast and

(ii) Plant communities where it is associated with needlegrass grasslands, which support *Nassella* spp. (needlegrass), and other herbs and grasses; and coastal sage scrub communities where the grasslands intergrade with and support *Artemisia californica* (California sagebrush), *Baccharis pilularis* (coyote bush), *Hazardia squarrosa* (sawtooth golden bush), and *Eriogonum fasciculatum* (California buckwheat).

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, oil pads, railroads, airports, other paved areas, lawns, large areas of closed canopy chaparral, agricultural fields, and other urban landscaped areas not containing one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Point Sal Unit*. Santa Barbara County, California.

(i) See Family Asteraceae: Cirsium loncholepis (La Graciosa thistle), paragraph (5)(vii) Map 2.

(ii) From USGS 1:24,000 quadrangle maps Point Sal, Guadalupe, Casmalia, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 716072,3862070; 716140,3862150; 716181,3862170; 716202,3862190; 716221,3862240; 716255,3862290; 716355,3862330; 716441,3862380; 716489,3862410; 716602,3862410; 716686,3862400; 716745,3862420; 716777,3862520; 716843,3862570; 717002,3862500; 717111,3862450; 717211,3862420; 717333,3862470; 717437,3862360; 717391,3862150; 717467,3861980; 717433,3861750; 717459,3861620; 717417,3861540; 717361,3861540; 717287,3861510; 717257,3861500; 717213,3861430; 717183,3861450; 717124,3861480; 717073,3861500; 717045,3861530; 717027,3861570; 716980,3861610; 716926,3861630; 716872,3861650; 716852,3861630; 716813,3861620; 716792,3861620; 716731,3861630; 716682,3861660; 716641,3861670; 716630,3861680; 716635,3861710; 716605,3861720; 716585,3861710; 716563,3861720; 716542,3861740; 716528,3861780; 716530,3861810; 716510,3861830; 716486,3861830; 716445,3861850; 716428,3861870; 716409,3861890; 716373,3861900; 716342,3861900; 716310,3861900; 716296,3861900; 716297,3861930; 716274,3861950; 716261,3861970; 716180,3862030; 716072,3862070.

(5) *Sudden Peak Unit, Santa Barbara County, California*. From USGS 1:24,000 quadrangle maps Tranquillon Mountain, Lompoc Hills, Santa Rosa Hills, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 724666, 3829350; 724689, 3829390; 724710, 3829420; 724742, 3829500; 724748, 3829510; 724772, 3829520; 724802, 3829490; 724864, 3829440; 724894, 3829450; 724903, 3829460; 724923, 3829490; 724952, 3829510; 724982, 3829500; 724993, 3829460; 725000, 3829450; 725013, 3829430; 725045, 3829430; 725100, 3829430; 725105, 3829430; 725116, 3829420; 725120, 3829410; 725124, 3829350; 725129, 3829320; 725139, 3829300; 725145, 3829290; 725167, 3829280; 725196, 3829290; 725210, 3829290; 725229, 3829280; 725242, 3829270; 725252, 3829260; 725266, 3829230; 725267, 3829200; 725289, 3829140; 725294, 3829130; 725325, 3829110; 725354, 3829110; 725367, 3829140; 725375, 3829150; 725383, 3829160; 725444, 3829140; 725450, 3829140; 725456, 3829150; 725460, 3829160; 725460, 3829180; 725452, 3829200; 725437, 3829230; 725430, 3829260; 725427, 3829310; 725432, 3829350; 725431, 3829380; 725425, 3829400; 725425, 3829400; 725406, 3829410; 725427, 3829420; 725435, 3829420; 725466, 3829420; 725496, 3829400; 725526, 3829410; 725556, 3829420; 725581, 3829410; 725586, 3829410; 725617, 3829380; 725651, 3829330; 725679, 3829310; 725708, 3829340; 725738, 3829340; 725774, 3829300; 725786, 3829260; 725796, 3829240; 725862, 3829220; 725869, 3829220; 725888, 3829190; 725912, 3829130; 725917, 3829120; 725956, 3829090; 725986, 3829080; 726017, 3829070; 726048, 3829070; 726056, 3829090; 726061, 3829130; 726069, 3829170; 726090, 3829220; 726100, 3829280; 726112, 3829300; 726130, 3829310; 726163, 3829290; 726242, 3829220; 726253, 3829200; 726284, 3829170; 726314, 3829160; 726322, 3829160; 726333, 3829160; 726478, 3829080; 726500, 3829060; 726529, 3829020; 726558, 3829050; 726570, 3829080; 726584, 3829090; 726616, 3829100; 726651, 3829100; 726738, 3829050; 726768, 3829040; 726799, 3829020; 726830, 3829000; 726907, 3828970; 726925, 3828950; 726935, 3828920; 726942, 3828910; 726964, 3828860; 726961, 3828830; 726952, 3828800; 726953, 3828770; 726957, 3828760; 726995, 3828750; 727013, 3828740; 727022, 3828720; 727026, 3828680; 727046, 3828620; 727053, 3828560; 727074, 3828570; 727083, 3828570; 727121, 3828590; 727140, 3828600; 727145, 3828620; 727143, 3828660; 727168, 3828720; 727186, 3828780; 727223, 3828840; 727232, 3828870; 727242, 3828940; 727251, 3828960; 727273, 3828970; 727281, 3828970; 727291, 3828960; 727312, 3828930; 727343, 3828910; 727414, 3828880; 727433, 3828870; 727521, 3828760; 727579, 3828670; 727659, 3828660; 727724, 3828680; 727806, 3828720; 727873, 3828820; 728014, 3829090; 728073, 3829130; 728179, 3829170; 728262, 3829210; 728345, 3829230; 728412, 3829250; 728414, 3829240; 728688, 3829280; 728783, 3829210; 728830, 3829050; 728820, 3828900; 728839, 3828590; 728863, 3828400; 728940, 3828300; 729160, 3828270; 729685, 3828110; 729721, 3828100; 729755, 3828070; 730049, 3827400; 730060, 3827360; 730064, 3827300; 730050, 3827010; 730041, 3826980; 729787, 3826900; 729757, 3826900; 729583, 3827060; 729460, 3827270; 729422, 3827310; 729355, 3827330; 729230, 3827330; 729012, 3827280; 728672, 3827130; 728667, 3827170; 728648, 3827200; 728584, 3827250; 728565, 3827260; 728504, 3827260; 728474, 3827270; 728413, 3827300; 728357, 3827320; 728321, 3827350; 728302, 3827350; 728291, 3827350; 728261, 3827350; 728230, 3827340; 728201, 3827330; 728198, 3827330; 728196, 3827340; 728204, 3827360; 728204, 3827370; 728210, 3827390; 728233, 3827490; 728246, 3827520; 728268, 3827580; 728254, 3827610; 728235, 3827620; 728187, 3827640; 728171, 3827650; 728152, 3827670; 728163, 3827700; 728212, 3827760; 728221, 3827780; 728218, 3827820; 728196, 3827860; 728185, 3827870; 728155, 3827890; 728142, 3827910; 728123, 3827970; 728102, 3827970; 728062, 3827980; 728055, 3827990; 728018, 3828020; 728000, 3828050; 727970, 3828030; 727941, 3827990; 727912, 3827970; 727882, 3827960; 727870, 3827980; 727864, 3827990; 727865, 3828080; 727859, 3828090; 727848, 3828090; 727818, 3828090; 727788, 3828080; 727759, 3828070; 727740, 3828100; 727727, 3828120; 727671, 3828140; 727646, 3828140; 727606,

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(6) *Arguello Unit, Santa Barbara County, California.* From USGS 1:24,000 quadrangle map Point Arguello and Tranquillon Mountain, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 716887, 3827050; 716862, 3827070; 716821, 3827070; 716812, 3827110; 716799, 3827120; 716754, 3827110; 716712, 3827070; 716686, 3827100; 716663, 3827100; 716654, 3827140; 716642, 3827130; 716615, 3827090; 716594, 3827090; 716585, 3827160; 716542, 3827140; 716524, 3827160; 716523, 3827200; 716561, 3827230; 716602, 3827200; 716693, 3827230; 716733, 3827270; 716764, 3827320; 716758, 3827380; 716707, 3827480; 716671, 3827510; 716587, 3827530; 716596, 3827570; 716588, 3827610; 716567, 3827630; 716580, 3827710; 716618, 3827740; 716660, 3827790; 716667, 3827910; 716644, 3827940; 716615, 3827950; 716559, 3827950; 716515, 3827990; 716537, 3828020; 716591, 3828010; 716624, 3828010; 716646, 3828060; 716645, 3828110; 716593, 3828130; 716570, 3828170; 716519, 3828170; 716364, 3828170; 716348, 3828190; 716355, 3828240; 716326, 3828260; 716320, 3828290; 716284, 3828330; 716271, 3828360; 716229, 3828400; 716229, 3828410; 716193, 3828430; 716195, 3828450; 716270, 3828480; 716273, 3828500; 716257, 3828510; 716194, 3828490; 716141, 3828490; 716122, 3828500; 716117, 3828540; 716134, 3828570; 716131, 3828590; 716118, 3828610; 716010, 3828660; 715949, 3828640; 715929, 3828630; 715863, 3828610; 715790, 3828620; 715771, 3828640; 715763, 3828670; 715745, 3828680; 715730, 3828680; 715713, 3828630; 715691, 3828610; 715665, 3828600; 715626, 3828570; 715605, 3828570; 715612, 3828610; 715604, 3828620; 715559, 3828600; 715531, 3828600; 715507, 3828620; 715501, 3828670; 715514, 3828690; 715567, 3828680; 715605, 3828710; 715620, 3828790; 715663, 3828830; 715719, 3828840; 715765, 3828790; 715819, 3828800; 715904, 3828840; 715941, 3828880; 715961, 3828890; 715973, 3828940; 715962, 3828980; 716015, 3829000; 716024, 3829030; 716011, 3829050; 715941, 3829100; 715927, 3829150; 715970, 3829300; 715980, 3829310; 715977, 3829420; 715936, 3829430; 715928, 3829450; 715937, 3829500; 715964, 3829540; 716000, 3829550; 715983, 3829590; 715960, 3829620; 715975, 3829640; 716032, 3829670; 716027, 3829690; 715976, 3829700; 715965, 3829710; 715964, 3829770; 715902, 3829820; 715959, 3829890; 716024, 3829910; 716068, 3829900; 716098, 3829910; 716123, 3829930; 716179, 3829940; 716216, 3829970; 716250, 3830060; 716252, 3830080; 716289, 3830130; 716319, 3830240; 716329, 3830380; 716357, 3830450; 716357, 3830490; 716370, 3830550; 716369, 3830590; 716411, 3830680; 716410, 3830700; 716432, 3830740; 716445, 3830830; 716434, 3830880; 716395, 3830920; 716389, 3830970; 716373, 3831000; 716372, 3831020; 716420, 3831040;

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(7) *Conception-Gaviota Unit, Santa Barbara County, California.* From USGS 1:24,000 quadrangle maps Gaviota, Lompoc Hills, Point Conception, Sacate, and Tranquillon Mountain, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 731814, 3817560; 731795, 3817620; 731774, 3817650; 731751, 3817730; 731736, 3817760; 731617, 3818030; 731519, 3818180; 731389, 3818380; 731332, 3818440; 731316, 3818460; 731306, 3818460; 731297, 3818470; 731249, 3818490; 731184, 3818550; 731168, 3818590; 731134, 3818630; 731068, 3818660; 731065, 3818660; 730979, 3818710; 730956, 3818720; 730869, 3818760; 730848, 3818790; 730782, 3818870; 730689, 3818940; 730666, 3818960; 730559, 3819070; 730477, 3819200; 730432, 3819360; 730424, 3819390; 730344, 3819520; 730314, 3819580; 730299, 3819600; 730264, 3819650; 730225, 3819710; 730189, 3819740; 730139, 3819790; 730054, 3819820; 729980, 3819830; 729906, 3819850; 729880, 3819880; 729787, 3820160; 729779, 3820210; 729772, 3820260; 729750, 3820310; 729723, 3820380; 729713, 3820440; 729707, 3820490; 729678, 3820530; 729677, 3820540; 729672, 3820550; 729643, 3820620; 729623, 3820670; 729617, 3820730; 729586, 3820820; 729584, 3820840; 729583, 3820850; 729546, 3820910; 729515, 3821020; 729514, 3821030; 729483, 3821100; 729480, 3821120; 729477, 3821140; 729421, 3821270; 729411, 3821300; 729393, 3821360; 729383, 3821390; 729367, 3821410; 729274, 3821600; 729271, 3821720; 729246, 3821710; 729239, 3821670; 729221, 3821670; 729153, 3821770; 729137, 3821800; 729067, 3821870; 729054, 3821890; 729018, 3821970; 729008, 3821970; 728997, 3822020; 728962, 3822080; 728927, 3822190; 728867, 3822250; 728716, 3822490; 728713, 3822500; 728676, 3822570; 728634, 3822610; 728585, 3822660; 728519, 3822750; 728521, 3822770; 728509, 3822770; 728487, 3822810; 728476, 3822850; 728423, 3822950; 728397, 3822980; 728289, 3823040; 728241, 3823090; 728166, 3823160; 728128, 3823180; 728113, 3823190; 728041, 3823210; 727929, 3823300; 727808, 3823360; 727651, 3823470; 727478, 3823630; 727414, 3823680; 727484, 3823820; 727490, 3823820; 727501, 3823810; 727509, 3823810; 727514, 3823810; 727521, 3823810; 727542, 3823810; 727544, 3823810; 727545, 3823810; 727548, 3823810; 727574, 3823820; 727581, 3823820; 727594, 3823830; 727603, 3823830; 727615, 3823830; 727621, 3823830; 727633, 3823830; 727648, 3823830; 727649, 3823830; 727663, 3823830; 727674, 3823840; 727688, 3823840; 727693, 3823850; 727695, 3823850; 727699, 3823850; 727713, 3823860; 727722, 3823860; 727733, 3823870; 727752, 3823880; 727773, 3823890; 727782, 3823890; 727795, 3823900; 727799, 3823900; 727811, 3823900; 727821, 3823900; 727832, 3823900; 727841, 3823900; 727855, 3823900; 727862, 3823890; 727875, 3823890; 727883, 3823880; 727896, 3823880; 727902, 3823880; 727911, 3823880; 727924, 3823880; 727932, 3823880; 727937, 3823880; 727944, 3823890; 727955, 3823890; 727962, 3823900; 727972, 3823910; 727981, 3823920; 727986, 3823920; 727991, 3823930; 728004, 3823930; 728007, 3823930; 728021, 3823930; 728027, 3823930; 728030, 3823920; 728035, 3823900; 728040, 3823890; 728043, 3823880; 728048, 3823860; 728049, 3823860; 728050, 3823860; 728054, 3823840; 728056, 3823830; 728057, 3823830; 728061, 3823820; 728066, 3823810; 728073, 3823800; 728078, 3823790; 728085, 3823790; 728094, 3823780; 728108, 3823770; 728113, 3823770; 728116, 3823770; 728119, 3823770; 728144, 3823770; 728146, 3823770; 728147, 3823770; 728148, 3823770; 728165, 3823780; 728175, 3823790; 728188, 3823790; 728193, 3823790; 728205, 3823790; 728212,

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(8) *Santa Ynez Unit, Santa Barbara County, California.* From USGS 1:24,000 quadrangle maps Santa Rosa Hills and Sacate, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 747710, 3821530; 747708, 3821520; 747676, 3821490; 747651, 3821470; 747601, 3821430; 747545, 3821390; 747491, 3821350; 747409, 3821330; 747383, 3821320; 747323, 3821300; 747288, 3821300; 747240, 3821300; 747204, 3821310; 747150, 3821330; 747123, 3821340; 747104, 3821350; 747051, 3821380; 747023, 3821380; 746956, 3821370; 746929, 3821340; 746918, 3821330; 746903, 3821290; 746900, 3821270; 746909, 3821240; 746925, 3821220; 746945, 3821200; 746980, 3821180; 746998, 3821150; 747011, 3821140; 747023, 3821130; 747042, 3821120; 747072, 3821090; 747081, 3821080; 747092, 3821050; 747102, 3820980; 747108, 3820960; 747124, 3820950; 747134, 3820940; 747194, 3820930; 747216, 3820900; 747220, 3820890; 747230, 3820860; 747231, 3820820; 747257, 3820730; 747344, 3820660; 747492, 3820540; 747783, 3820400; 747831, 3820350; 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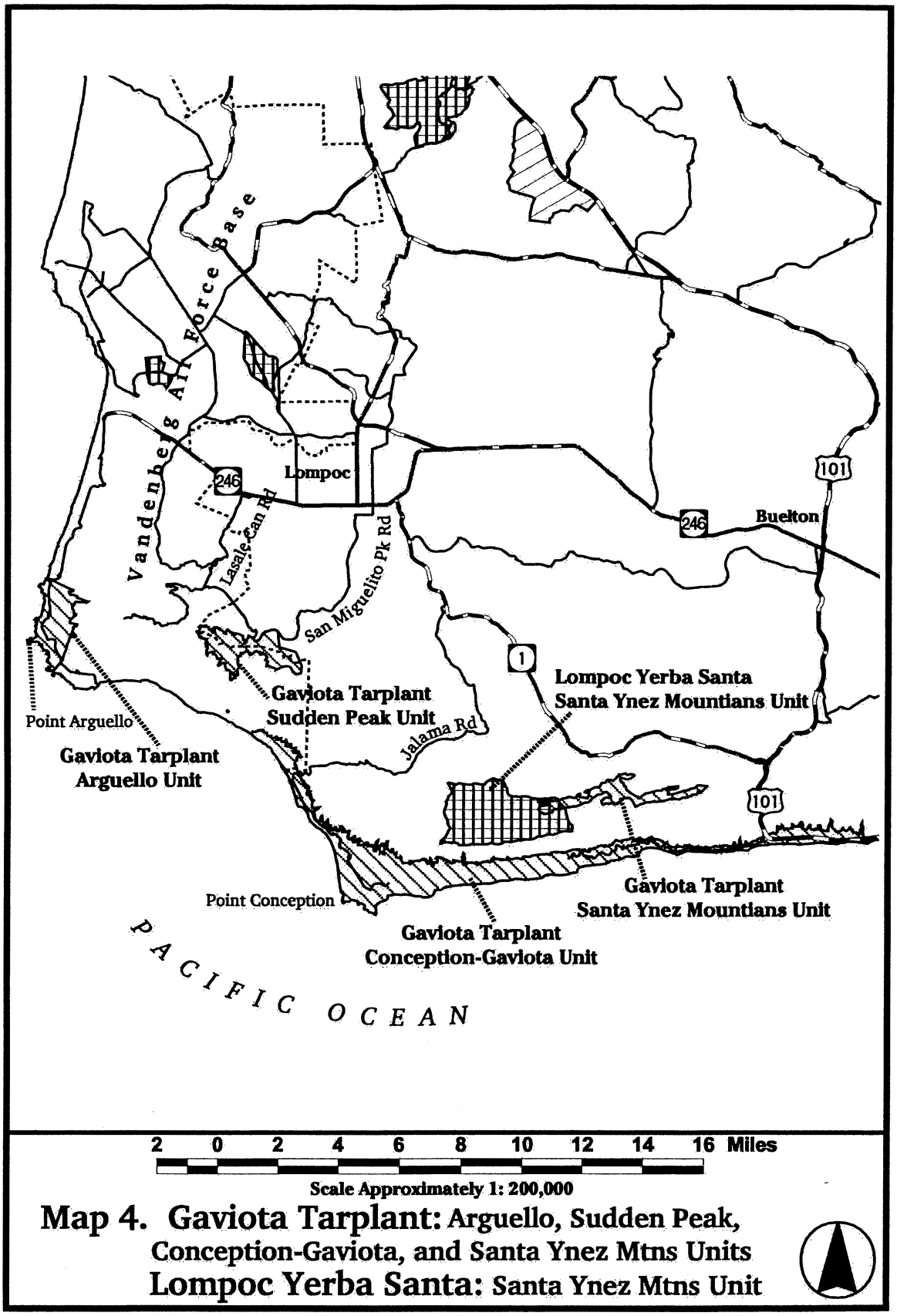
(9) Map 4 follows:



Map 4. Gaviota Tarplant: Arguello, Sudden Peak, Conception-Gaviota, and Santa Ynez Mtns Units
Lompoc Yerba Santa: Santa Ynez Mtns Unit

Family Hydrophyllaceae: *Eriodictyon capitatum* (Lompoc yerba santa)

(1) Critical habitat units are depicted for Santa Barbara County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Eriodictyon capitatum* are the habitat components that provide:

(i) Soils with a large component of sand and that tend to be acidic;

(ii) Plant communities that support associated species, including maritime chaparral, particularly where the following associated species are found: *Dendromecon rigida* (bush poppy), California scrub oak, Santa Cruz Island scrub oak, and *Ceanothus cuneatus* (buck brush); and in southern bishop pine forests that intergrade with chaparral *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage); and

(iii) Habitat directly adjacent upslope and downslope from known populations, as this species appear to spread primarily through vegetative reproduction.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, oil pads, railroads, airports, other paved areas, lawns, large areas of closed canopy chaparral, agricultural fields, and other urban landscaped areas not containing one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) *Santa Ynez Unit, Santa Barbara County, California.*

(i) See Family-Asteraceae: *Deinandra increscens* ssp. *villosa* (Gaviota tarplant), paragraph (9).

(ii) From USGS 1:24,000 quadrangle maps Lompoc Hills, Point Conception, Sacate, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 739493,3817820; 739352,3817850; 739008,3817860; 738828,3817800; 738440,3817810; 738377,3817820; 738294,3817900; 738288,3817900; 738104,3817960; 738034,3817960; 738028,3817900; 738026,3817900; 737925,3817940; 737892,3817950; 737726,3817950; 737666,3818000; 737619,3817970; 737540,3817910; 737423,3817890; 737416,3817960; 737414,3818040; 737489,3818070; 737612,3818160; 737622,3818190; 737676,3818230; 737715,3818280; 737744,3818320; 737757,3818380; 737791,3818440; 737809,3818500; 737838,3818550; 737862,3818600; 737916,3818660; 737924,3818710; 737903,3818760; 737865,3818820; 737823,3818880; 737791,3818950; 737804,3819010; 737791,3819100; 737774,3819180; 737701,3819270; 737662,3819360; 737624,3819450; 737611,3819560; 737633,3819670; 737661,3819750; 737679,3819800; 737708,3819870; 737731,3819930; 737729,3820000; 737717,3820070; 737725,3820140; 737753,3820210; 737777,3820240; 737816,3820290; 737829,3820360; 737868,3820430; 737942,3820490; 738005,3820560; 738019,3820610; 737996,3820700; 737947,3820820; 737893,3820930; 737840,3821030; 737813,3821090; 737897,3821130; 738005,3821060; 738136,3821070; 738167,3821060; 738214,3821020; 738264,3821030; 738308,3821050; 738328,3821090; 738373,3821110; 738439,3821080; 738520,3821060; 738581,3821060; 738652,3821060; 738698,3821030; 738759,3821030; 738830,3821010; 738891,3821010; 738951,3821010; 739027,3821020; 739077,3821020; 739111,3821060; 739161,3821090; 739227,3821090; 739288,3821070; 739384,3821050; 739541,3821060; 739607,3821020; 739669,3820990; 739714,3821020; 739762,3821080; 739796,3821140; 739825,3821180; 739969,3821260; 740158,3821340; 740234,3821350; 740295,3821320; 740387,3821280; 740453,3821280; 740503,3821280; 740575,3821270; 740631,3821250; 740677,3821220; 740710,3821150; 740767,3821070; 740784,3821010; 740786,3820950; 740822,3820930; 740869,3820870; 740917,3820790; 740919,3820720; 740917,3820630; 740945,3820540; 741007,3820480; 741084,3820430; 741186,3820400; 741298,3820400; 741383,3820400; 741510,3820380; 741666,3820390; 741747,3820400; 741808,3820400; 741863,3820390; 741990,3820390; 742184,3820310; 742250,3820300; 742356,3820290; 742458,3820280; 742554,3820270; 742604,3820280; 742645,3820260; 742690,3820260; 742741,3820260; 742817,3820270; 742907,3820270; 742973,3820280; 743029,3820250; 743100,3820250; 743139,3820280; 743224,3820310; 743315,3820320; 743406,3820320; 743461,3820320; 743528,3820300; 743579,3820260; 743632,3820200; 743644,3820130; 743686,3820090; 743727,3820040; 743779,3819990; 743826,3819960; 743857,3819910; 743889,3819860; 743926,3819820; 743958,3819770; 743999,3819720; 744026,3819680; 744028,3819620; 744039,3819570; 744061,3819530; 744067,3819490; 744074,3819420; 744096,3819360; 744108,3819300; 744104,3819260; 744146,3819210; 744162,3819170; 744190,3819080; 744211,3819050; 744228,3819020; 744244,3818970; 744300,3818940; 744347,3818910; 744373,3818900; 744394,3818840; 744417,3818780; 744403,3818730; 744383,3818720; 744395,3818650; 744401,3818620; 744407,3818580; 744388,3818560; 744376,3818540; 744260,3818520; 744138,3818530; 744059,3818550; 743870,3818540; 743706,3818470; 743584,3818440; 743363,3818350; 743096,3818380; 742902,3818290; 742736,3818260; 742563,3818270; 742371,3818150; 742218,3818120; 742033,3818130; 741925,3818110; 741699,3818060; 741574,3818050; 741405,3818040; 741236,3817980; 741084,3817970; 740947,3817980; 740756,3817980; 740697,3817920; 740515,3817850; 740279,3817860; 740080,3817930; 739907,3817850; 739493,3817820.

(5) *Solomon Hills Unit, Santa Barbara County, California.*

(i) See Family Asteraceae: *Cirsium lonchlolepis* (La Graciosa thistle), paragraph (6)(ii) Map 3.

(ii) From USGS 1:24,000 quadrangle map Orcutt, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 737509, 3855480; 37459, 3855350; 737375, 3855230; 737166, 3855160; 737013, 3855120; 736836, 3855140; 736656, 3855100; 736471, 3855090; 736395, 3854960; 736258, 3854970; 736172, 3854910; 736061, 3854910; 736031, 3855160; 735966, 3855310; 735963, 3855490; 736052, 3855640; 736183, 3855800; 736258, 3855950; 736195, 3856240; 736031, 3856170; 735998, 3856080; 735887, 3855980; 735693, 3855940; 735521, 3855930; 735325, 3855970; 735168, 3855990; 735107, 3855930; 735014, 3855880; 734852, 3855950; 734450, 3855950; 734404, 3856000; 734591, 3856250; 734780, 3856480; 734889, 3856610; 734811, 3856770; 734747, 3856930; 734572, 3857050; 734537, 3857220; 734640, 3857350; 734649, 3857470; 734545, 3857540; 734298, 3857910; 734208, 3858030; 734184, 3858180; 734302, 3858250; 734780, 3858230; 734952, 3858320; 735359, 3858320; 735625, 3858450; 736033, 3858570; 736122, 3858450; 736313, 3858450; 736465, 3858520; 736418, 3858630; 736270, 3858830; 735988, 3859100; 735804, 3859320; 735840, 3859410; 735973, 3859460; 736109, 3859460; 736397, 3859210; 736510, 3859250; 736585, 3859390; 736761, 3859360; 736922, 3859330; 737107, 3859300; 737240, 3859240; 737430, 3859200; 737572, 3859160; 737722, 3859170; 737827, 3859210; 737948, 3859230; 738117, 3859260; 738254, 3859230; 738509, 3859130;

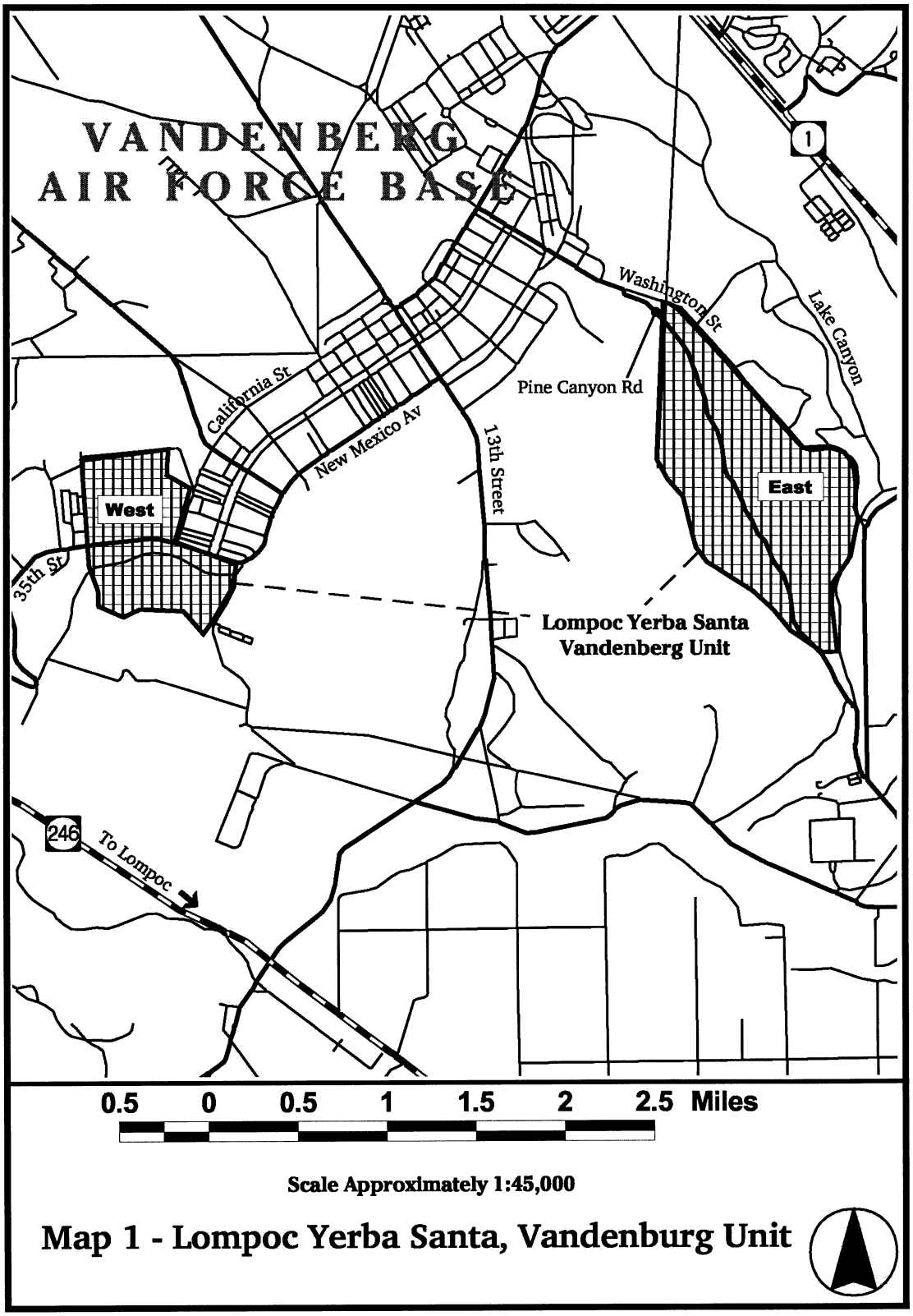
738564, 3859070; 738664, 3858970; 738666, 3858910; 738711, 3858860; 738794, 3858710; 738796, 3858610; 738752, 3858470; 738707, 3858350; 738711, 3858230; 738780, 3858190; 738903, 3858120; 738952, 3858050; 739019, 3858000; 738964, 3857890; 738941, 3857820; 738843, 3857700; 738808, 3857600; 738811, 3857490; 738800, 3857370; 738770, 3857240; 738734, 3857130; 738675, 3857000; 738613, 3856960; 738509, 3856890; 738452, 3856830; 738398, 3856710; 738240, 3856630; 738188, 3856580; 738149, 3856550; 738100, 3856580; 738059, 3856570; 737904, 3856510; 737701, 3856500; 737656, 3856460; 737687, 3856410; 737833, 3856320; 737890, 3856260; 737928, 3856160; 737869, 3856080; 737787, 3855920; 737720, 3855850; 737812, 3855720; 737788, 3855590; 737737, 3855460; 737672, 3855470; 737590, 3855550; 737509, 3855480;

(6) *Vandenberg Unit,* Santa Barbara County, California.

(i) Vandenberg East Unit. From USGS 1:24, 000 quadrangle map Surf, lands bounded by the following UTM zone 10 NAD83 coordinates (E, N): 728773, 3843190; 728752, 3843100; 728702, 3842860; 728550, 3842620; 728537, 3842430; 728563, 3842200; 728584, 3841990; 728454, 3841990; 728168, 3842190; 728011, 3842380; 727829, 3842550; 727683, 3842640; 727530, 3842740; 727417, 3842810; 727321, 3842930; 727290, 3843050; 727202, 3843400; 727064, 3843550; 726965, 3843740; 727025, 3845150; 727087, 3845130; 727157, 3845090; 727210, 3845030; 727586, 3844620; 728074, 3844050; 728279, 3843840; 728519, 3843850; 728588, 3843830; 728647, 3843790; 728684, 3843740; 728716, 3843700; 728734, 3843640; 728747, 3843540; 728751, 3843440; 728744, 3843340; 728744, 3843280; 728773, 3843190;

(ii) Vandenberg West Unit. From USGS 1:24,000 quadrangle map Surf, lands bounded by the following UTM zone 10 NAD83 coordinates (E, N): 722619, 3843000; 723176, 3842790; 723134, 3842570; 722964, 3842290; 722874, 3842160; 722696, 3842370; 722307, 3842390; 722158, 3842320; 721938, 3842410; 721930, 3842550; 721850, 3842780; 721783, 3843730; 722561, 3843830; 722552, 3843710; 722549, 3843600; 722760, 3843480; 722619, 3843000;

(iii) Map 1 follows:



Map 1 - Lompoc Yerba Santa, Vandenburg Unit

* * * * *

Dated: November 2, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–28041 Filed 11–14–01; 8:45 am]

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Thursday,
November 15, 2001

Part V

Securities and Exchange Commission

17 CFR Part 270

Investment Company Mergers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25259, File No. S7–21–01]

RIN 3235–AH81

Investment Company Mergers

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits mergers and other business combinations between certain affiliated investment companies. The proposed amendments would expand the types of business combinations exempted by the rule, codifying the relief provided in Commission exemptive orders. The amendments also would make the rule, for the first time, available for mergers between registered investment companies and certain unregistered entities. The proposed amendments are designed to reduce burdens on investment companies by eliminating the need to obtain Commission approval while protecting investors in these companies.

DATES: Comments must be received on or before January 18, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–21–01; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Hester M. Peirce, Senior Counsel, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or the ''Act'').

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Executive Summary

The Commission is proposing amendments to rule 17a–8 under the Investment Company Act, the rule that permits affiliated registered investment companies and series or portfolios of registered investment companies (''funds'') to merge without first obtaining an exemptive order from the Commission. Currently, rule 17a–8 permits such a merger only when the participating funds are affiliated solely because they have a common investment adviser, common directors, and/or common officers.[2] The amendments that we propose today would expand the availability of the rule to include the merger of funds that are affiliated for other reasons, such as when the funds have common large shareholders. The amendments also would permit a fund and an affiliated bank common trust fund or collective trust fund to merge under the rule. Under the proposed amendments, funds would have to comply with certain new conditions for relief.

I. Introduction

Section 17(a) of the Investment Company Act prohibits an affiliated person[3] of a fund[4] from selling any security or other property (''assets'') to or buying assets from the fund (''affiliated transactions''). This prohibition was intended to prevent self-dealing and other forms of overreaching of a fund by its affiliates.[5] Section 17(a) protects investors by prohibiting a purchase or sale transaction when a party to the transaction has both the ability and the pecuniary incentive to influence the actions of the fund.[6]

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, all references to ''rule 17a–8'' or any paragraph of the rule will be to 17 CFR 270.17a–8.

[3] The Act defines an ''affiliated person'' of another person as:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

15 U.S.C. 80a–2(a)(3). Unless otherwise noted, in this release, we will use the term ''affiliate'' to include both affiliated persons of the fund (sometimes referred to as ''first-tier affiliates'') and affiliated persons of those affiliated persons (sometimes referred to as ''second-tier affiliates''). Section 17(a) also reaches transactions with a promoter of or a principal underwriter for a fund and affiliated persons of a fund's promoter or principal underwriter. In this release, we will use the term ''affiliates'' to encompass these persons also.

[4] Unless otherwise noted, we use the term ''fund'' in this release to refer to both registered investment companies and series or portfolios of registered investment companies.

[5] 15 U.S.C. 80a–17(a). This purpose is clear from section 17(b), which directs the Commission to grant an application for an exemption from section 17(a) if, along with other factors, the terms of the transaction at issue ''are reasonable and fair, and do not involve overreaching on the part of any person concerned.'' *See also* Adoption of Rules and a Related Form Applicable to Small Business Investment Companies Licensed by the Small Business Administration to Provide Exemption From Certain Requirements of Sections 17(a), 17(d) and 18(c) of the Investment Company Act of 1940, Investment Company Act Release No. 3361 (Nov. 17, 1961) [26 FR 11238 (Nov. 29, 1961)] (''One of the basic purposes of Section 17(a) is to protect investment companies against overreaching by affiliated persons.''); In the Matter of Union Securities Corporation, Investment Company Act Release No. 136 (May 28, 1941) [6 FR 2638 (May 29, 1941)] (''The general purpose of Section 17(a) . . . is of course to eliminate dealings by ''insiders'' and intercompany transactions of the type which have too often, in the past served to facilitate 'unloading', 'bail-outs', 'milking', and similar abuses.'').

[6] *See* Mergers and Consolidations Involving Registered Investment Companies, Investment Company Act Release No. 10886 at text accompanying n.8 (Oct. 2, 1979) [44 FR 58521 (Oct. 10, 1979)] (''1979 Proposing Release'') (citing Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess., at 256–59 (1940) (testimony by

Mergers[7] of affiliated funds[8] involve the purchase or sale of fund assets from or to an affiliated person and thus are prohibited by section 17(a).[9] Section 17(b) of the Investment Company Act authorizes the Commission to issue orders permitting affiliated transactions, including affiliated mergers, if (i) The terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, (ii) the proposed transaction is consistent with the policy of each fund, and (iii) the proposed transaction is consistent with the general purposes of the Act.[10]

After issuing numerous exemptive orders under the statute, we adopted rule 17a–8 in 1980 to permit mergers between funds if they are affiliated solely because they have common investment advisers, officers, and/or directors.[11] We concluded that investors in affiliated funds merging under the rule would be protected because affiliates of the merging funds whose interests were limited to serving as adviser, director or officer of the merging funds would not have both the ability and the pecuniary incentive to affect the terms of the merger, and because compliance with the rule's conditions would preclude the types of abuses that occurred in connection with fund mergers before 1940.[12]

The relief afforded by rule 17a–8, however, was conditioned upon the directors of each merging fund, including a majority of the independent directors,[13] concluding that the merger is in the best interests of the fund, and that the merger does not dilute the interests of existing fund shareholders.[14] In connection with our recent fund governance initiative, we further conditioned the rule's relief on a majority of the board of directors of each fund relying on the rule being independent directors and these directors selecting and nominating any other independent directors.[15] In addition, any legal counsel for the independent directors of a fund relying on the rule must be an independent legal counsel.[16]

Since we adopted rule 17a–8, fund mergers have been occurring with increasing frequency.[17] These mergers can benefit funds and their shareholders by, for example, lowering expenses and improving performance.[18] Although many mergers of affiliated funds qualify for relief under the rule, a growing number do not, and therefore require exemptive relief to proceed. Based on our experience in evaluating these requests for exemptive relief, we are proposing to amend the rule to make it available for an expanded range of affiliated mergers, and to incorporate conditions designed to protect investors of merging funds under the expanded rule. The proposed amendments, which we discuss in more detail below, would (i) make the rule available to affiliated funds regardless of the source of affiliation, (ii) make the rule available for mergers involving certain types of unregistered entities, (iii) include in the rule certain factors that fund directors must consider, if relevant, in assessing mergers, and (iv) require that the merger be approved by the shareholders of each merging fund that will not survive the merger.

II. Discussion

A. Mergers Between Registered Investment Companies

Since the adoption of rule 17a–8, and particularly in recent years, we have

David Schenker, Chief Counsel of the Commission's Investment Trust Study, which served as the basis for the Investment Company Act)).

[7] We use the term ''merger'' in the proposed amendments to rule 17a–8 and this release to include a merger, consolidation, or purchase or sale of substantially all of an entity's assets. Proposed rule 17a–8(b)(1). A fund merger typically occurs in one of three ways, each of which involves the purchase or sale of fund assets: (i) One fund purchases the portfolio assets of the other; (ii) one fund purchases all securities issued by the other; or (iii) securities issued by one fund are exchanged for all or substantially all of the portfolio assets of the other fund.

[8] Funds may be affiliated with one another in a number of different ways, including through: (i) A common investment adviser that controls both funds; (ii) a shareholder that owns five percent or more of both funds; (iii) ownership by one fund of more than five percent of the other, for example, in the master-feeder context; or (iv) the funds' status as series or portfolios of the same registered investment company that are controlled by the same investment adviser and officers and directors. *See* Marco Adelfio and Melissa Ivers, *Consolidations of Bank Proprietary Funds—Dealing with Additional Affiliations,* The Investment Lawyer, Nov. 1999, at 13–14; Philip H. Newman and Edward T. O'Dell, *Master-Feeder Funds,* ALI–ABA Course of Study, June 11, 1998, 37 at 41; Philip H. Newman and Edward T. O'Dell, *Series Companies,* ALI–ABA Course of Study, June 11, 1998, 51 at 55. *See also infra* note 20.

[9] Congress intended the Act to cover mergers. *See* 15 U.S.C. 80a–1(b)(6) (''the national public interest and the interest of investors are adversely affected— * * * when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders'').

[10] 15 U.S.C. 80a–17(b).

[11] *See* Mergers and Consolidations Involving Registered Investment Companies, Investment Company Act Release No. 11053 (Feb. 19, 1980) [45 FR 12408 (Feb. 26, 1980)] (''1980 Adopting Release''). Funds with the same investment advisers, officers, and/or directors do not fit explicitly within one of the categories of affiliation set forth in section 2(a)(3) of the Act, 15 U.S.C. 80a–2(a)(3). *See supra* note 3. Such funds, however, may be affiliated under section 2(a)(3)(C), because they are under common control. The determination of whether these funds are under common control turns on whether the adviser, officers, or directors control the funds, which depends on the relevant facts and circumstances. *See, e.g.,* 1980 Adopting Release, *supra,* at n.2 (rule 17a–8 ''does not represent a Commission finding that investment companies having common officers, directors or investment advisers are always affiliated persons or affiliated persons of an affiliated person. They may or may not be, depending on the facts.''); 1979 Proposing Release, *supra* note 6, at n.5 (''An investment company is usually 'controlled' by its investment adviser. 'Only in the very rare case where the adviser's role is simply that of advising others who may or may not elect to be guided by his advice . . . can the adviser realistically be deemed not in control.' '') (quoting Steadman Security Corp., Investment Company Act Release No. 9830 (June 29, 1977) [12 SEC Docket 1041 (July 12, 1977)] at n.81).

[12] *See* 1979 Proposing Release, *supra* note 6, at text accompanying nn.8–9 (in a merger between two funds affiliated by reason of sharing an investment adviser, directors and/or officers, ''no person who is responsible for evaluating and approving the terms of the transaction . . . would have a significant personal financial interest in improperly influencing these terms''). The Commission, in its 1939 report to Congress, identified numerous instances in which fund assets had been diverted to fund affiliates as a result of mergers. *See* Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 1st Sess., at 1414–15 (1939) (''Investment Trust Study''). In addition, mergers often effected changes in the nature of the funds' assets, the rights associated with certain shares, management contracts, and the corporate structure of the funds involved. *See id.* at 1024–28.

[13] We use the term independent director in this release to mean a director who is not an ''interested person'' of the fund, as that term is defined in section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)].

[14] Rule 17a–8(a).

[15] Rule 17a–8(c)(1). Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)] (''Fund Governance Release''). The compliance date for the new conditions is July 1, 2002.

[16] Rule 17a–8(c)(2). *See* 17 CFR 270.0–1(a)(6)(i) (defining ''independent legal counsel'').

[17] The staff estimates, based on an analysis of data from Morningstar, Inc., that the annual number of mergers increased from less than 50 in 1994 to 119 in 1995, and approximately 180 in both 1998 and 1999. In calendar year 2000, there were 252 mergers. Industry observers have remarked on the increasing pace of mergers. *See, e.g., Business in Brief,* Boston Herald, June 21, 2001 (''Mutual fund companies, faced with falling asset levels, are killing ailing funds at almost double the rate of last year.''); Tamiko Toland, *How Many Fund Mergers in 2000,* MutualFundWire.com, Apr. 11, 2001 (citing data from Wiesenberger Financial suggesting that in 2001 the number of mergers could be 40% higher than it was in calendar year 2000); Lisa Singhania, *Companies Consolidate Funds to Get Rid of Laggards,* Milwaukee Journal Sentinel, Feb. 11, 2001, at 4D (''Mutual fund consolidations and liquidations are becoming more frequent because of the industry's rapid growth in the 1990s.''); Lori Pizzani, *Marketing: Scudder Kemper Merges, Eliminates Funds,* Mutual Fund Market News, Feb. 14, 2000, at 2,10 (observing trend towards consolidation in fund offerings by advisers).

[18] *See, e.g.,* Narayanan Jayaraman, *et al., An Analysis of the Determinants and Shareholder Wealth Effects of Mutual Fund Mergers,* J.Fin. (*forthcoming*) (manuscript at 23, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=279971#Paper_Download) (finding that target shareholders benefit from improved performance and lower expense ratios).

issued many exemptive orders permitting affiliated fund mergers that were unable to take advantage of the rule because the funds were affiliated for reasons other than having a common adviser, director or officer.[19] In many of these cases, an affiliate of the merging funds (often an investment adviser) held more than five percent of one or both merging funds, giving the affiliated party what we have presumed to be both the incentive (a substantial economic interest in the terms of the merger) and the means (influence that comes with being a large shareholder) to affect the terms of the merger for its own benefit.[20] In each case, after reviewing the exemptive application, we (or our staff acting under delegated authority) determined that the merger was fair and did not involve overreaching.

Today, we are proposing to extend the rule to permit mergers between registered funds regardless of the nature of the affiliation. As discussed in more detail below, in extending relief in this manner, we would rely on the fund board (including independent directors) to scrutinize the merger, and would require the merger to be approved by the shareholders of any fund not surviving the merger. Finally, we would add a provision to rule 17a–8 designed to prevent the use of the rule to circumvent the prohibitions against affiliated transactions.

We request comment on the proposed expansion of rule 17a–8 to permit mergers between affiliated funds regardless of the nature of their affiliation. We also request comment on whether the proposed conditions of the relief under the expanded rule are sufficient to protect investors, or whether any of the conditions are unnecessary to protect investors.

1. Board Determinations

Mergers of funds are governed not only by federal law, but also by state corporate or other law under which funds are organized. Those laws place substantial duties on fund directors considering a merger to act in the best interests of the fund and its shareholders.[21] Rule 17a–8 similarly relies on fund boards to review mergers of affiliated registered funds. The rule prescribes a special role for independent directors, a majority of whom must make the findings and thus consent to the merger and its terms.[22] As noted above, we recently amended rule 17a–8, along with a number of other exemptive rules, to strengthen the role that independent directors play. Under these exemptive rules, independent directors must constitute a majority of the board; they must be selected and nominated by other independent directors; and if they hire legal counsel, that counsel must be an independent legal counsel.[23] These amendments give us greater confidence, in proposing the amendments in this release, that independent directors will be in a position to influence the terms of the merger and to prevent abuses.

Relief under rule 17a–8 is conditioned on a determination by the board (including a majority of independent directors) of each participating fund that the merger is in the best interests of the fund.[24] In addition, a fund board must determine that the merger will not dilute the interests of the merging fund's shareholders.[25] In order to satisfy this latter provision, most mergers are effected on the basis of each merging fund's net asset value (''NAV''), as determined for the purpose of daily pricing under our rules.[26] The transparency of share value at which mergers occur reduces considerably the opportunity for affiliated persons to take advantage of the fund by mispricing the transaction.

Mispricing is not the only problem that can arise in connection with fund mergers. A merger could result in an increase in fees and expenses borne by shareholders (despite the greater economies of scale that a merger typically will achieve),[27] and could have negative tax consequences for shareholders. The merger also could result in a combination of funds with different investment objectives, thereby substantially changing the character of the surviving fund,[28] or the costs of the merger could be unfairly allocated to or among the merging funds. We have taken these issues into account in considering applications for exemptive relief under section 17(b).[29] In order to ensure that boards weigh these issues in their deliberations, we are proposing to include in the rule a number of factors that directors must consider, if relevant, in determining whether the merger is in the best interests of the fund:[30]

[19] From the beginning of 1989 through the end of 2000, we received 130 applications for exemption from section 17(a) for affiliated fund mergers. In calendar year 2000 alone the staff issued 22 orders for exemptive relief covering 165 fund mergers that did not qualify for relief under rule 17a–8. (Typically, one exemptive order gives relief to mergers between multiple series or portfolios of the participating investment companies.)

[20] Ownership by an affiliate of one fund of five percent or more of the other fund gives rise to an affiliation that precludes funds from relying on current rule 17a–8. The affiliate of the first fund, by virtue of its five percent ownership, would be affiliated with the second fund also. Each fund, therefore, would be a second-tier affiliate of the other. *See supra* note 3, which sets forth the Act's definition of ''affiliated person.'' *See, e.g.,* Boston 1784 Funds, Investment Company Act Release Nos. 24379 (Apr. 6, 2000) [65 FR 19941 (Apr. 13, 2000)] (notice) and 24435 (May 2, 2000) [72 SEC Docket 1058] (order); Touchstone Advisors, Inc., Investment Company Act Release Nos. 24371 (Mar. 31, 2000) [65 FR 18393 (Apr. 7, 2000)] (notice) and 24405 (Apr. 26, 2000) [72 SEC Docket 874] (order); HT Insight Funds, Inc., Investment Company Act Release Nos. 24270 (Jan. 28, 2000) [65 FR 5709 (Feb. 4, 2000)] (notice) and 24313 (Feb. 23, 2000) [71 SEC Docket 2214] (order). *See generally* Adelfio and Ivers, *supra* note , at 14.

[21] ''Directors of investment companies, like all directors, are subject to state law duties of care and loyalty.'' Edward Brodsky and M. Patricia Adamski, Law of Corporate Officers and Directors: Rights, Duties, and Liabilities § 17.02 (Supp. 2000). In the context of a merger, directors ''must be diligent and vigilant in examining critically the proposal and any alternatives, must act in good faith, must act with due care in considering all material information reasonably available, including information necessary to compare an offer to alternative courses of action, and, in certain contexts, negotiate actively to obtain the best available transaction for stockholders.'' Diane Holt Frankle, *Fiduciary Duties of Directors Considering a Business Combination,* PLI/Corp. 525, 531 (June 2000).

[22] Rule 17a–8(a).

[23] Rule 17a–8(c). *See also* 17 CFR 270.10f–3; 17 CFR 270.12b–1; 17 CFR 270.15a–4; 17 CFR 270.17a-7; 17 CFR 270.17d–1(d)(7); 17 CFR 270.17e–1; 17 CFR 270.17g–1(j); 17 CFR 270.18f–3; and 17 CFR 270.23c–3.

[24] Rule 17a–8(a)(1).

[25] Rule 17a–8(a)(2). sp;

[26] *See* rule 2a–4 [17 CFR 270.2a–4] (defining ''current net asset value''). Adjustments to NAV may be necessary for tax reasons. *See, e.g.,* Travelers Equities Fund, Inc., Investment Company Act Release Nos. 13840 (Mar. 22, 1984) [49 FR 12349–02 (Mar. 24, 1984)] (notice) and 13893 (Apr. 17, 1984) [30 SEC Docket 474] (order) (adjusting price at which merger would take place to compensate shareholders of acquired fund for capital gains taxes that might be incurred as a result of unrealized appreciation on pre-merger assets of the acquiring fund). p;

[27] *See e.g.,* Charles Gasparino, *Do Fund Mergers Hurt Small Investors?,* Wall Street Journal, July 8, 1997, at C1 (questioning whether economies of scale result in lower fees for shareholders). *But see Jayaraman, supra* note 18, at 23 (study of fund mergers showing that ''target fund shareholders also benefit from a reduction in their fund's expense ratio after the merger'').

[28] *See, e.g.,* Sandra Block, *Mergers Put More Funds on Extinction List,* USA Today, Mar. 22, 1999, at 1B (''We're seeing a lot of mergers where the new fund doesn't have the same objectives''') (quoting Christine Benz of Morningstar Inc.); Carole Gould, *Poof! For More and More Mutual Funds, A Quick Disappearing Act,* New York Times, Aug. 16, 1998, at 11 (''While mergers can sweep poor track records under the rug, they can pose a danger: Companies don't necessarily merge funds with similar objectives, so shareholders may end up with a different investment than they started with.''); Charles Jaffe, *Which Fund's Next to be Vaporized?* Could be Yours, Seattle Times, Oct. 16, 2000, at E2 (''Some mergers move money from one lackluster fund to the next while changing the kinds of assets your money is buying.'').

[29] As discussed above, one of the standards for exemptive relief for affiliated transactions under section 17(b) is that the terms of the transaction, including consideration paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned.

[30] Proposed rule 17a–8(a)(2)(ii).

• Direct or indirect federal income tax consequences of the merger to fund shareholders; [31]

• Fees or expenses that will be borne directly or indirectly by the fund in connection with the merger;[32]

• Effects of the merger on annual fund operating expenses and shareholder fees and services; [33] and

• Changes in the investment objectives, restrictions, and policies after the merger.[34]

This list of factors is not intended to be exhaustive and none of the factors would necessarily be determinative.[35] Nor would the addition of specific factors for consideration relieve a fund's board of directors or adviser of any obligation, under federal or state law, to consider other relevant factors.

We anticipate that our examinations staff, in the course of its periodic and other reviews of fund compliance, would review the board's analysis of the specific factors that we are proposing to include in rule 17a–8. In order to facilitate this review, the amended rule would continue to require that the board document its determinations and the factors underlying them in the minute books of the fund and retain the minute books as part of the record of the merger.[36]

The Commission requests comment whether the rule should include a list of factors for consideration by a fund's board in making its determination under the rule. Alternatively, should the factors be discussed in the adopting release rather than in the rule? Should any factors be omitted or modified? Should there be additional factors?

2. Shareholder Voting

a. Shareholder Approval

When we adopted rule 17a–8, we assumed that shareholders of acquired funds in an affiliated merger would have an opportunity to vote on the merger. State corporation statutes that govern funds typically impose such a requirement.[37] Congress recognized the importance of shareholder consent when it adopted section 1(b)(6) of the Act, which states that ''the national public interest and the interest of investors are adversely affected * * * when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders.''[38] When funds have sought exemptive orders for affiliated mergers, they have typically represented in their applications to us that shareholder approval would be obtained by the acquired fund before consummation of the merger.[39] Increasingly, however, funds have organized or reorganized as business trusts, which may not be required to receive shareholder approval before being acquired by another fund.[40] In light of this trend, we are proposing to amend the rule to require that shareholders of acquired funds have an opportunity to vote on affiliated mergers.[41] While a fund's board of directors is well-equipped to assess a merger, individual shareholders are best able to gauge the impact of the merger in light of their personal circumstances.

We request comment on the requirement that the merger be approved by the outstanding voting securities of any fund that will not survive the merger. Are there instances in which such a vote should not be required? We request comment on whether this provision would be inconsistent with the state laws under which some funds are organized. Would it be more appropriate to defer to state law? Do these state laws anticipate issues raised by mergers of affiliated funds? Would approval by independent directors be sufficient to protect investors in these funds? In the absence of a shareholder vote, would shareholders receive sufficient advance notice of the change in their investment through a merger? Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?

b. Echo Voting

As discussed above, when we adopted rule 17a–8 in 1980, we designed the rule to be limited to affiliated mergers in which fund affiliates would not have both the ability and pecuniary incentive to affect the terms of the merger. An affiliate of one fund could have the ability to affect the terms of the merger if, for example, it held a large position in a second fund that is merging into the first fund. To prevent this, we propose to require that if an owner of more than five percent of the shares (''owner affiliate'') of the fund holding the vote is another merging fund, or an investment adviser, principal underwriter, or owner affiliate of another merging fund (''related shareholder''), the related shareholder must vote its shares in the same proportion as non-related shareholders (''echo voting'').[42]

We propose two exceptions to the echo voting requirement.[43] First, a related shareholder's securities could be voted in accordance with instructions received from the beneficial owner of the securities, provided that the beneficial owner is not also a related shareholder.[44] Second, a related shareholder's securities could be voted in accordance with instructions received from a person appointed to

[31] Proposed rule 17a–8(a)(2)(ii)(A).

[32] Proposed rule 17a–8(a)(2)(ii)(B).

[33] Proposed rule 17a–8(a)(2)(ii)(C) and (D).

[34] Proposed rule 17a–8(a)(2)(ii)(E).

[35] We set forth some of these factors when we proposed rule 17a–8 in 1979. *See* 1979 Proposing Release, *supra* note 6, at text accompanying nn.17–19.

[36] Proposed rule 17a–8(a)(2)(iv) and 17a–8(a)(6). Rule 31a–1(b)(4) [17 CFR 270.31a–1(b)(4)] requires funds to ''maintain and keep current'' minute books of directors' meetings, among other things. The Commission would not expect funds to maintain duplicate copies of the minute books (or relevant portions thereof) in the same place as other merger records.

[37] *See, e.g.*, Del. Code Ann. tit. 8, § 251(c) (2000); Md. Code Ann., Corps. & Ass'ns § 3–105(e) (2000); Mass. Gen. Laws Ann. ch. 156B, § 78(c)(1)(i), 79(c) (2000).

[38] 15 U.S.C. 80a–1(b)(6).

[39] *See, e.g.*, Barr Rosenberg Series Trust, Investment Company Act Release Nos. 24884 (Mar. 2, 2001) [66 FR 13983 (Mar. 8, 2001)] (notice) and 24914 (Mar. 26, 2001) [74 SEC Docket 1770] (order); Nationwide Mutual Funds, Investment Company Act Release Nos. 24855 (Feb. 7, 2001) [66 FR 10041 (Feb. 13, 2001)] (notice) and 24880 (Feb. 28, 2001) [74 SEC Docket 1257] (order); Strategist Growth Fund, Inc., Investment Company Act Release Nos. 24487 (June 1, 2000) [65 FR 36177 (June 7, 2000)] (notice) and 24546 (June 27, 2000) [72 SEC Docket 2345] (order).

[40] *See, e.g.*, Del. Code Ann. tit. 12, § 3806(a) (2000); Md. Code Ann., Corps. and Ass'ns § 12–207(b)(3) (2000) (the governing instrument for a business trust ''[m]ay provide for the taking of any action, including * * * the accomplishment of a merger or consolidation * * * without the vote or approval of any particular trustee or beneficial owner, or class, group, or series of trustees or beneficial owners''). *See also* Sheldon A. Jones, *et al., The Massachusetts Business Trust and Registered Investment Companies*, 13 Del. J. Corp. L. 421, 458 (1988) (''[T]he business trust continues to offer a flexibility that corporations may not enjoy * * * The declaration of trust may provide that * * * the shareholder vote required to approve an action such as a consolidation, the sale of assets or an amendment to the declaration of trust can be less than required by state corporate law or can be eliminated * * *'').

[41] Proposed rule 17a–8(a)(3). The proposed rule requires that the outstanding voting securities of any fund that will not survive the merger approve the fund's participation in the merger, but defers to state law and the fund's governing documents to determine the percentage required for approval.

[42] Proposed rule 17a–8(a)(4)(i). Some fund advisers have represented in applications for exemptive relief in connection with fund mergers that they will echo vote shares held in their name. *See, e.g.*, John Hancock Variable Series Trust I, Investment Company Act Release Nos. 24776 (Nov. 30, 2000) [65 FR 76313 (Dec. 6, 2000)] and 24797 (Dec. 22, 2000) [73 SEC Docket 4190]; Prudential Series Fund, Investment Company Act Release Nos. 15190 (July 2, 1986) [51 FR 24959 (July 9, 1986)] and 15229 (July 29, 1986) [36 SEC Docket 347].

[43] Proposed rule 17a–8(a)(4)(ii).

[44] Often an investment adviser holds shares in a fiduciary capacity for the beneficial owners of the shares. In such a case, the fiduciary would be permitted to seek voting instructions from the beneficial owners. The proposed rule would not prevent a fiduciary or other related shareholder from advising the beneficial owners how the shares should be voted, after disclosing the nature of its affiliation with the other merging fund.

provide guidance on the voting of securities by a fiduciary of a plan under the Employee Retirement Income Security Act (ERISA).[45] Under these circumstances affiliates of merging funds would not seem to be able to influence the shareholder vote, and echo voting therefore would be unnecessary to protect the interests of shareholders.[46]

We request comment on our echo voting proposal. Does this provision raise any issues under state law? Are protections in addition to the proposed method of echo voting needed to ensure that shareholders and their affiliates do not improperly influence the merger process? Are the two exceptions to echo voting appropriate? Should we include in the rule any other exceptions to echo voting? Should shareholders other than those specified in the proposed rule be required to echo vote?

3. Recordkeeping

We propose to require, as a condition of rule 17a–8, that the fund surviving the merger preserve written records that document the merger and its terms.[47] The records would include, among other things, the minute books setting forth the board's determinations and the bases for those determinations, any supporting documents provided to the directors in connection with the merger, the independent evaluator's report in the case of a merger with an unregistered entity, and documentation of the prices at which securities were transferred in the merger. The recordkeeping requirement is intended to ensure that we have adequate information upon which to base an assessment of the merging funds' compliance with the rule's conditions.

B. Mergers of Registered Investment Companies and Certain Unregistered Entities

We are proposing to amend rule 17a–8 to also exempt mergers of funds with bank common trust funds[48] or bank collective trust funds[49] as long as the survivor of the merger is a registered investment company.[50] Currently, rule 17a–8 is available only for mergers of *registered* investment companies. When we proposed rule 17a–8 in 1979, we deferred consideration of whether transactions involving unregistered entities should be eligible for relief under the rule.[51] Today, there are a growing number of these transactions, particularly mergers involving bank common trust funds and bank collective trust funds.[52] These mergers may be effected pursuant to a Commission exemptive order under section 17(b).[53] Alternatively, these mergers may proceed under rule 17a–7, which generally permits purchase and sale transactions of readily marketable securities between a fund and certain of its affiliates if a number of conditions are met.[54]

Funds merging with affiliated common and collective trust funds under the proposed amendments to rule 17a–8 would also have to comply with a special pricing condition.[55] As noted above, when two funds merge, each board, as part of its determination that the interests of existing shareholders will not be diluted, generally has concluded that the merger is occurring on the basis of the relative NAVs of the merging funds.[56] Funds' practice of daily calculating their NAVs according to well-established procedures diminishes the likelihood that assets will be mispriced for purposes of a merger.[57] No such safeguard against mispricing of assets exists for mergers with affiliated unregistered entities, which may not calculate NAV on a daily basis or in accordance with well-established procedures as funds do. Therefore, the proposed rule would require that the board of directors of any fund that is merging with an affiliated unregistered entity approve procedures for the valuation of the unregistered

[45] 29 U.S.C. 1001–1461.

[46] For purposes of echo voting, the votes of securities that are voted pursuant to either of these exceptions would be treated as votes of securities held by shareholders who are not related in calculating the proportional voting of securities. Proposed rule 17a–8(a)(4)(iii).

[47] Proposed rule 17a–8(a)(6) (requiring the company to keep these records for six years after the merger and, for the first two years, in an easily accessible place). Thus, the Commission anticipates that the merger records of the acquired fund would be retained together with those of the surviving fund.

[48] Generally, common trust funds and similar funds—for convenience, this release refers to all of these funds as ''common trust funds''—are eligible to be exempt from registration under section 3(c)(3) of the Act [15 U.S.C. 80a–3(c)(3)], which provides for the exemption of ''any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose; (B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—(i) advertised; or (ii) offered for sale to the general public; and (C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.''

[49] Collective trust funds, which are also known as ''collective investment funds,'' are exempt from registration under section 3(c)(11) of the Act [15 U.S.C. 80a–3(c)(11)], which provides for the exemption of ''any collective trust fund maintained by a bank consisting solely of assets of [any employee's stock bonus, pension or profit-sharing trust which meets requirements for qualification under section 401 of the Internal Revenue Code of 1986 or any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933] or both.''

[50] *See* proposed rule 17a–8(a)(1).

[51] *See* 1979 Proposing Release, *supra* note 6, at n.14 (''The proposed rule * * * would not apply, for example, to a transaction involving a company which is not registered under the Act * * * However, should such transactions begin to occur frequently the Commission then will consider whether those transactions would merit consideration as a separate subject for rulemaking.'').

[52] *See generally* Kathy Anderson and Peter Cappacio, *The Issue of Converting Common Trust Funds to Mutual Funds*, Trusts and Estates, Sept. 1994, at 18 (discussing reasons for converting common trust funds into proprietary mutual funds).

[53] Generally, exemptive applications involving the transfer of substantially all of the assets of bank common trust funds or collective trust funds to affiliated registered open-end investment companies represent that these transfers will satisfy the conditions in rules 17a–7 [17 CFR 270.17a–7] and 17a–8 with the exception of the requirement in rule 17a–7(a) that cash be the only consideration. *See, e.g.*, Nations Fund Trust, Investment Company Act Release Nos. 24335 (Mar. 9, 2000) [65 FR 14000 (Mar. 15, 2000)] (notice) and 24373 (Mar. 31, 2000) [72 SEC Docket 378] (order) (common trust fund); Wilmington Trust Company, Investment Company Act Release Nos. 23238 (June 2, 1998) [63 FR 31252 (June 8, 1998)] (notice) and 23285 (June 25, 1998) [67 SEC Docket 1248] (order) (collective investment fund).

[54] *See* rule 17a–7 [17 CFR 270.17a–7]. Affiliated mergers generally are not able to satisfy all of the conditions in rule 17a–7, particularly the requirement in rule 17a–7(a) [17 CFR 270.17a–7(a)] that the only consideration paid be cash. Typically, assets of the unregistered entity are exchanged for shares of the acquiring fund rather than for cash. The staff has issued no-action letters under section 17(a) and rule 17a–7 to funds seeking to merge with unregistered entities despite noncompliance with the cash consideration condition. *See, e.g.*, DFA Investment Trust Company, SEC No-Action Letter (Oct. 17, 1995); Federated Investors, SEC No-Action Letter (Apr. 21, 1994); First National Bank of Chicago, SEC No-Action Letter (Sept. 22, 1992). In the event that we adopt the proposed amendments to rule 17a–8, it is our intention that all mergers of funds with other funds, bank common trust funds, and bank collective trust funds, or any other affiliated entities will occur either (i) in compliance with rule 17a–8 or (ii) pursuant to an exemptive order under section 17(b).

[55] Proposed rule 17a–8(a)(2)(iii). The trustees of a common trust fund or collective trust fund participating in a merger would not be required to make the determinations and underlying findings set forth in rule 17a–8(a)(2) because those entities are not investment companies under the Act.

[56] *See* 1979 Proposing Release, *supra* note 6, at text accompanying n.3 (''The number of shares exchanged for shares of the liquidating investment company typically is determined on the basis of the relative net asset values of the participating investment companies so that the interests of existing shareholders of either investment company are not diluted.''). Each merging fund generally calculates its NAV in accordance with the valuation procedures set forth in the fund's prospectus and statement of additional information. The fund's board may determine that adjustments to NAV should be made for assets subject to large capital gains taxes or for assets that carry with them capital losses.

[57] Rule 22c–1(b) [17 CFR 270.22c–1(b)] requires, subject to certain exceptions, that funds compute NAV at least daily.

entity's assets.[58] These procedures, among other things, must provide for the preparation of a report by an independent evaluator[59] that sets forth the current fair market value[60] (as of the date of the merger) of each asset that will be transferred by the unregistered entity to the fund in the merger.[61]

We request comment on the expansion of rule 17a–8 to include mergers with common and collective trust funds. We also request comment on the proposal to require directors of a fund merging with an unregistered entity to approve procedures for the valuation of the assets of the unregistered entity and on the use of an independent evaluator to value the assets of unregistered entities. We request comment on whether the rule should include any additional guidelines for the selection of an independent evaluator. Should the availability of exemptive relief for mergers involving these unregistered entities be subject to any other special conditions? Should mergers with other types of unregistered entities be permitted under the rule?

C. Prohibition of Reliance on Rule 17a–8 for Certain Transactions

Rule 17a–8 is designed to facilitate mergers between affiliated funds that will generate benefits for each participating fund and its shareholders. We are concerned, however, that non-merger affiliated transactions that would otherwise be prohibited under the Act could be structured as mergers under rule 17a–8.[62] Accordingly, we propose to make the rule's exemptive relief available only for mergers that are not part of a plan or scheme to evade the affiliated transaction prohibitions of section 17(a) of the Act.[63]

We request comment on this proposed amendment to rule 17a–8. Is the proposed amendment necessary in light of section 48(a) of the Act, which prohibits a person from doing indirectly through another person what the person is prohibited from doing directly?[64] Would this provision serve to bring attention to such issues, or create uncertainty concerning the availability of the exception? Alternatively, should the rule prohibit specific improper transactions that are structured as mergers?

III. General Request for Comment

The Commission requests comment on the proposed rule amendments that are the subject of this release, suggestions for additional provisions or changes to the rule, and comments on other matters that might have an effect on the proposals contained in this release. The Commission encourages commenters to provide data to support their views.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The proposed amendments to rule 17a–8 are designed to reduce costs incurred by funds and advisers by eliminating the need for Commission approval of mergers. The amendments also would supplement existing conditions of the rule, in order to ensure continued protection of fund shareholders in connection with affiliated fund mergers. The Commission has identified certain costs, which are discussed below, that may result from the proposed rule amendments. We request comment on the costs and benefits of the proposed rule amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

We anticipate that funds, their shareholders, and their advisers and other affiliates would benefit from the proposed expansion of the scope of the rule to include mergers of affiliated funds, regardless of the nature of the affiliation, and mergers with common or collective trust funds. More merging funds would be able to rely on the rule and therefore would not have to obtain exemptive relief, which can be costly to merging funds, their shareholders, and their affiliates.[65] Thus, the proposed amendments would remove an obstacle to mergers of affiliated funds and could thereby reduce the costs of affiliated mergers.[66] Mergers give shareholders of small or poorly performing funds an opportunity to shift their assets to a better performing fund without negative tax consequences.[67] Liquidations are taxable events for fund shareholders, whereas fund mergers can be structured to be non-taxable. Investment advisers also could benefit from the greater ease with which mergers could be effected under the proposed amended rule because they often bear all or a portion of the costs of obtaining exemptive relief. In addition, investment advisers could realize enhanced economies of scale through fund mergers, which spread the costs of management, some of which are fixed, across a larger pool of assets.[68] Shareholders may benefit from these economies of scale in the form of lower fees and expenses.[69]

[58] Proposed rule 17a–8(a)(2)(iii).

[59] We propose to define an ''independent evaluator'' as ''a person having expertise in the valuation of securities and other financial assets who is not an interested person, as defined in section 2(a)(19) of the Act, of the Common or Collective Trust Fund or any affiliate thereof except the Merging Company.'' Proposed rule 17a–8(b)(5).

[60] We propose to define ''current fair market value'' as the ''current market price of securities or similar investments determined in accordance with rule 17a–7(b) under the Act * * * or, if market quotations are not readily available, the fair value of such investments.'' Proposed rule 17a–8(b)(6).

[61] The independent evaluator's report would be included in the records of the merger that the surviving fund would be required to maintain under proposed rule 17a–8(a)(6).

[62] For example, an adviser could structure a sale of assets to an affiliated fund by transferring the assets to an unregistered entity and then merging that entity with the affiliated fund.

[63] Proposed rule 17a–8(a)(7).

[64] 15 U.S.C. 80a–47(a).

[65] In calendar year 2000, exemptive orders were necessary for over 30% of affiliated fund mergers. We believe that these mergers would have been able to proceed under proposed rule 17a–8. As set forth below, we anticipate that there will be approximately 400 mergers annually. Thus, assuming that 30% of these would have had to proceed under an exemptive order, annually, approximately 120 mergers for which individualized exemptive relief would have been necessary will instead be able to proceed under the rule. The staff estimates, based on conversations with persons who have prepared exemptive applications for merger-related relief under section 17(b), that it costs an average of $36,000 to obtain an exemptive order permitting mergers of multiple portfolios of one or more affiliated registered investment companies. As discussed below, some funds may incur costs in complying with the rule's conditions that they otherwise would not have incurred. *See infra* Section IV.B.

[66] The Commission staff anticipates that eliminating the need for merging funds to obtain individualized exemptive relief would not cause a significant increase in the number of mergers.

[67] *See, e.g.,* Jayaraman, *supra* note 18, at 24 (finding that smaller funds are more likely to merge and that ''poor past performance increases the probability of a fund merger''); Michael L. Sapir and James A. Bernstein, *Reorganizations of Investment Companies,* 50 Bus. Law. 817, 823 (1995) (explaining that the elimination of a ''stunted fund'' is a common reason for a fund merger and can benefit the shareholders of that fund).

[68] *See* Sapir and Bernstein, *supra* note, at 822 (mergers can ''increase the larger resulting fund's operating efficiencies,'' ''enhance the ability of the investment adviser to this larger fund to effect portfolio transactions on more favorable terms,'' and ''give the investment adviser greater flexibility and the ability to select a larger number of portfolio securities for the resulting fund, with the attendant ability to spread investment risks among a larger number of portfolio securities'').

[69] *See* Jayaraman, *supra* note, at 23 (after a merger, ''target fund shareholders also benefit from a reduction in their fund's expense ratio after the merger''). *See also* Division of Investment Management, Securities and Exchange Commission, Report on Mutual Fund Fees and Expenses 56 (2000) (finding an inverse relationship between a fund's asset size and its expense ratio); Sapir and Bernstein, *supra* note, at n.22 (citations omitted) (''When one investment adviser acquires another investment adviser that provides substantially the same investment management and other services to another company that has a similar investment objective and policies as an investment company advised by the acquiring adviser, a reorganization of the two separate investment companies would benefit shareholders.'').

We believe that the proposed amendments, in addition to reducing costs faced by funds in connection with mergers, also may enhance the protections afforded by the rule to fund shareholders. We believe that the enumeration of certain factors for consideration by the board, if relevant, would assist a fund board, and particularly its independent directors, in scrutinizing a fund merger to ensure that it is in the best interests of the fund.[70] We believe that director scrutiny could serve as an effective tool for preventing the types of problems, discussed above, that can arise in connection with fund mergers.[71] The proposal to condition the rule's relief on approval of the merger by a majority of the outstanding voting securities of any acquired fund could benefit fund shareholders by giving them an opportunity to assess the merger in light of their own financial circumstances. Shareholders could benefit from the proposed restrictions on voting by related shareholders whose interests in the merger are defined primarily by an affiliation with another merger participant and may run counter to the interests of the fund holding the vote. These related shareholders would not be able to determine the outcome of a shareholder vote. Finally, we believe that the proposed rule's recordkeeping requirements would ensure that the Commission could assess merging funds' compliance with the rule and, therefore would encourage fund boards to carefully assess mergers. Shareholders could benefit from the resulting incentive on fund boards, because the directors are charged with representing shareholders' interests. We request comment on the nature and magnitude of the benefits afforded by the rule to funds, their investment advisers, and their shareholders.

B. Costs

Merging funds that choose to rely on proposed rule 17a–8, and their advisers, would incur certain costs in complying with the rule's conditions.[72] The supplemental conditions included in the proposed amendments, together with the increased numbers of merging funds likely to rely on the rule, could result in an increase in the aggregate annual cost of compliance with rule 17a–8.

The proposed amendments would eliminate the expenses of filing an exemptive application for certain merging funds.[73] Some of these expenses, however, are shared by a number of merging funds, and there may be certain increased compliance costs under the proposed rules for these merged funds.[74] In addition, some merging funds that would have been able to comply with current rule 17a–8, may face higher costs under the proposed amendments.[75] Finally, funds merging with bank common or collective trust funds will be able to avoid the expense of filing an exemptive application, but some funds may incur greater costs under the rule than they would have incurred otherwise, such as higher valuation costs because of the required independent evaluator's report. We believe, however, that even for these mergers the rule's costs would be justified by the combination of quantifiable benefits and intangible benefits afforded by the rule, such as enhanced shareholder protection and the elimination of the delay associated with obtaining an exemptive order.

The proposed rule is intended to ensure that boards thoroughly review merger transactions and their terms. Even in the absence of the amended rule, fund boards would meet to consider the merger.[76] Because the proposed rule would simply add factors for the board to consider during this meeting, the incremental costs attributable to consideration of these factors are likely to be minimal. We request comment on the nature and magnitude of these costs.

In conjunction with the expansion of the rule to unregistered entities, we are proposing to require that fund boards establish procedures for valuing the assets held by any common or collective trust funds participating in the merger. A mandatory part of the valuation procedures would be the preparation of a report by an independent evaluator, which the staff estimates would impose an aggregate annual cost of approximately $150,000.[77] We request comment on the cost of complying with the proposed provision governing the valuation of the assets of common or collective trust funds participating in a merger.

We anticipate that the condition in the rule requiring non-surviving funds to obtain shareholder approval would result in shareholder votes by only a few funds each year that otherwise would not have conducted shareholder votes.[78] The staff estimates that the cost of obtaining shareholder approval for a fund merger is approximately $75,000.[79] We request comment on the cost of complying with the proposed shareholder approval provision.

The echo voting requirement is likely to cause a merging fund that conducts a shareholder vote to incur some incremental administrative costs.[80] The fund holding a vote will have to provide a list of related shareholders to the entity charged with tabulating the votes and directions for implementing the voting method set forth in proposed rule 17a–8. The staff estimates, based on discussions with representatives of funds and service providers, that each acquired fund will incur a cost of $5,000 in complying with this provision.[81] We request comment on the nature and magnitude of these administrative costs.

We believe that the incremental costs associated with the recordkeeping

[70] *See supra* Section II.A.1 for a discussion of these factors.

[71] *See id.*

[72] The costs of a fund merger may be borne totally or in part by the investment adviser to one or both of the merging funds or may be borne by one or both of the merging funds. The allocation of costs of the merger is a product of negotiation between the boards of the merging funds and their investment adviser(s).

[73] *See supra* note 65 and accompanying text.

[74] Except in rare circumstances, it is unlikely that funds will experience significantly higher costs in conducting a merger under the amended rule. *See infra* notes 78–79 and accompanying text (discussing costs associated with conducting a shareholder vote).

[75] These increased costs may be attributable to the proposed rule's factors for board review, shareholder voting provisions, or recordkeeping requirements.

[76] For a discussion of factors that a board may consider during these meetings, *see* Sapir and Bernstein, *supra* note 67, at 825.

[77] The staff estimates, based on a review of fund filings, that there will be approximately 10 mergers each year involving common or collective trust funds. It is further estimated, based on discussions with professionals who have prepared similar valuation reports, that the preparation of an independent evaluator's report in each of these instances would cost approximately $15,000. We request comment on these estimates.

[78] For purposes of our Paperwork Reduction Act analysis, it is assumed that twenty funds each year will be affected. *See infra* Section VI. This estimate is based on the fact that the staff rarely sees fund mergers in which a shareholder vote is not held. Many funds are constrained by state law to conduct a shareholder vote in the event of a merger. Even funds that are not required by state law to obtain shareholder approval may do so in order to maintain good relations with their shareholders. We request comment on this estimate.

[79] This estimate, which is based on conversations with representatives of funds and service providers, includes the legal, mailing, printing, solicitation, and tabulation costs associated with a shareholder vote. For the estimated twenty affected funds, the annual aggregate cost of holding a shareholder vote (at a cost of $75,000 per fund) would be approximately $1,500,000. We request comment on these estimates.

[80] As described above, the fund's securities must be voted through echo voting or according to instructions by the beneficial owners of the securities (or according to the guidance provided by a person appointed by a named fiduciary acting on behalf of an ERISA plan).

[81] Although some acquiring funds may solicit shareholder approval, in a typical merger, only the shareholders of the acquired fund vote on the merger.

requirements in proposed rule 17a–8 would not be significant. We believe that most funds already retain the types of records that would be required by the proposed rule as a matter of good business practice. The current rule requires that the directors' findings and their bases be recorded in the minute books of the fund. The amended rule would retain this requirement at what we anticipate would continue to be a minimal cost even though the proposed amendments set forth a number of factors that the board must consider along with other relevant factors.[82] The amended rule would require the retention of written records describing the merger and its terms. Although the proposed six-year retention period for merger records may exceed the period for which funds would otherwise keep these types of records, it is consistent with the retention period applicable to many other records.[83] We believe, therefore, that the proposed recordkeeping requirement is unlikely to impose significant additional costs on funds. We request comment on the nature and magnitude of the costs of this requirement.

C. Request for Comment

The Commission requests comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposal. We request comment on the anticipated costs and benefits of the proposed amendments to rule 17a–8 compared to the costs and benefits of the rule in its current form. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[84] the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[85] The proposed rule amendments are intended to make rule 17a–8 available to a greater percentage of affiliated merging funds, thereby eliminating the need for most merging funds to obtain specific exemptive relief, which can be costly and time consuming.[86] The Commission anticipates that the modest amount of cost savings associated with the proposed rule amendments would not significantly affect the number of mergers, and therefore the amendments would not significantly affect efficiency, competition, or capital formation.[87] The proposed amendments also could eliminate disparities in costs incurred by affiliated funds that would have merged under the existing rule, versus those that would have merged through an exemptive order. This might create a positive, secondary competitive effect. As discussed above, however, a small number of funds could incur higher costs under the amended rule, and those costs might have some secondary effects on efficiency.

The Commission requests comments on whether the proposed rule amendments, if adopted, would promote efficiency, competition, and capital formation. Will the proposed amendments materially affect the number of fund mergers? Will any costs that result from the proposed amendments affect efficiency, competition, or capital formation? Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Paperwork Reduction Act

Rule 17a–8 enables affiliated investment companies to engage in mergers and similar business combinations without first obtaining from the Commission exemptive relief from section 17(a). The proposed amendments would both expand the rule's scope and include in the rule new conditions, some of which constitute new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Commission is submitting these proposals to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The title for the current collection of information is ''Rule 17a–8 under the Investment Company Act of 1940 [17 CFR 270.17a–8], 'Mergers of Certain Affiliated Investment Companies.' '' 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. The approved collection of information, which would be revised by the proposed amendments, displays control number 3235–0235. The staff believes that the proposed amendments will increase the annual hour burden associated with the rule, which is currently estimated to be 120 hours, and introduce an annual cost burden associated with the rule. The provision of information in accordance with amended rule 17a–8 would be voluntary, because rule 17a–8 is an exemptive rule and, therefore, funds may choose whether or not to rely on it. Because the proposed amendments do not require the provision of information to the Commission, this release does not address the confidentiality of responses under the proposed amendments to rule 17a–8.

The Commission staff anticipates that substantially all funds that engage in mergers with affiliated funds would rely on proposed rule 17a–8. Assuming that there will be approximately 400 mergers between affiliated funds or fund portfolios annually, we estimate that approximately 800 registered investment companies, or, in many cases, portfolios or series thereof, would be subject to the rule's information collection requirements annually.[88] The Commission staff estimates that merging funds would spend annually an aggregate of 600 hours—200 hours of professional time and 400 hours of clerical time—recording the relevant determinations of the boards of directors and preserving written records of the mergers and their terms.[89] The proposed amendments would require that written

[82] For purposes of the Paperwork Reduction Act analysis, the staff estimates that personnel of each fund will spend approximately .75 hours (.25 hours of professional time and .5 hours of clerical time) to satisfy the proposed rule's recordkeeping requirements in connection with a merger. *See infra* Section VI. We request comment on this estimate.

[83] *See* rule 31a–2 [17 CFR 270.31a–2].

[84] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[85] 15 U.S.C. 80a–2(c).

[86] *See supra* Section IV.B.

[87] *See supra* Section IV.A. for a discussion of the cost savings.

[88] The staff estimate of approximately 400 mergers annually is higher than the approximately 279 mergers predicted for calendar year 2002 by a simple linear projection of merger data from 1993 through 2000. The staff believes, based on an evaluation of the number of mergers in recent years and current industry conditions, that 279 is an underestimate of the number of mergers that are likely to occur annually.

[89] The staff estimates, based on estimates made by the staff in 1999 in connection with the application for an extension of OMB's approval for the rule 17a–8 paperwork collection burden, that the proposed amendments would cause each of the approximately 800 participating portfolios or series of registered investment companies to incur an annual burden of .75 hours (.25 hours of professional time and .5 hours of clerical time) to record board resolutions documenting the board's findings and to preserve records of the merger transaction.

records describing the merger transaction and terms be maintained for six years after the merger, the first two in an easily accessible place.

The amended rule would require that directors of funds merging with unregistered entities [90] approve procedures for the valuation of the assets held by each unregistered entity. The approved procedures must provide for the preparation of a report by an independent evaluator to be used to value assets acquired in connection with the merger that sets forth the current fair market value (as of the date of the merger) of each security to be conveyed. Because a limited number of fund mergers involve a common or collective trust fund, the staff estimates that approximately ten merging funds would be covered by this provision in the first year following the adoption of this rule.[91] The Commission staff estimates, based on discussions with professionals who have prepared similar valuation reports, that an independent evaluator's report would cost approximately $15,000 and that, in the aggregate, the annual burden associated with this aspect of the rule will be approximately $150,000.[92]

The Commission staff believes that funds will incur a cost in connection with the echo voting provision in the proposed rule. A fund that conducts a vote will have to compile a list of each owner affiliate of the fund holding the vote that is another merging fund, or an investment adviser, principal underwriter, or owner affiliate of another merging fund (''related shareholder''). The fund will then have to ensure that the securities of related shareholders are echo voted unless they are voted according to instructions from the beneficial owners or a person appointed by a named fiduciary acting on behalf of an ERISA plan. The staff estimates, based on conversations with representatives of funds and service providers, that each acquired fund will incur a cost of $5,000 in complying with this provision.[93] The staff estimates, therefore, that the total annual cost associated with this provision will be approximately $2,000,000.[94]

There is a cost associated with obtaining the approval of the acquired fund's outstanding voting securities. The staff estimates that shareholder approval will be sought by approximately twenty funds each year that would not otherwise have conducted a shareholder vote.[95] The funds or their advisers incur legal, mailing, printing, solicitation, and tabulation costs in connection with a shareholder vote. We estimate, based on discussions with representatives of funds and service providers, that the total cost to an acquired fund of obtaining shareholder approval for a fund merger is approximately $75,000. Thus, we anticipate that the total annual cost associated with this provision will be approximately $1,500,000.

The Commission staff estimates that the paperwork burden arising from the proposed amendments reflects an increase in the paperwork burden associated with rule 17a–8 of 480 hours and an increase in the annual cost burden of approximately $3,650,000.[96] Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rule should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–21–01. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–21–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed amendments to rule 17a–8 under the Investment Company Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposed amendments. The IRFA also discusses the reasons for the proposed amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in this release.

The IRFA discusses the effect of the proposed amendments on small entities. A small business or small organization (collectively, ''small entity'') for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[97] Of approximately 3,650 active funds, approximately 200 are small entities. Funds that are small entities, like other funds, will be affected by the proposed amendments only if they seek to merge with an affiliated fund or bank common trust fund or bank collective trust fund.

The IRFA states that the proposed rule amendments should not have a substantial impact on small entities. Like other funds, small entities will be affected by rule 17a–8 only if they enter into a merger with an affiliate and choose to rely on the rule.

[90] As discussed above, the proposed amendments would extend rule 17a–8 to mergers with only certain types of unregistered entities, namely common and collective trust funds. *See supra* Section II.B.

[91] This estimate is based on a review of fund filings.

[92] *See supra* note 77, which sets forth the basis for this estimate.

[93] Although some acquiring funds may solicit shareholder approval, in a typical merger, only the shareholders of the acquired fund vote on the merger.

[94] In each of the estimated 400 mergers each year, we assume that there will be one acquired fund.

[95] This estimate is based on the fact that many funds are constrained by state law to conduct a shareholder vote in the event of a merger. Moreover, even funds that are not required by state law to obtain shareholder approval may do so in order to maintain good relations with their shareholders. We request comment on whether the estimate of twenty funds is reasonable.

[96] This figure is the total of the estimated $150,000 annual cost associated with valuing the securities of common and collective trust funds, the $1,500,000 annual cost associated with obtaining shareholder approval, and the approximately $2,000,000 annual cost associated with the echo voting provision.

[97] Rule 0–10 [17 CFR 270.0–10].

The IRFA states that Commission staff believes that the proposed rule amendments would not impose any reporting requirements on any person and would not materially increase other compliance requirements. As amended, the rule would continue to require that the board's findings and bases for those findings be recorded in the minute books of each registered company. The proposed rule would specify certain factors that the board must consider, if relevant, in connection with the finding that the merger is in the best interests of the fund. As a basis for the non-dilution finding, the board of directors of a merging fund would be required to establish procedures for valuing securities to be transferred to the fund by an unregistered entity participating in the merger. These procedures would include the preparation of a report by an ''independent evaluator'' setting forth the ''current fair market value'' of any securities to be received from an unregistered entity.[98] The IRFA describes the two provisions in the proposed rule related to shareholder voting.[99] Finally, the IRFA describes the requirement that any surviving fund maintain records relating to the merger transaction for six years, the first two in an easily accessible place, following the merger.

The IRFA explains that the proposed amendments could benefit funds, including small entities, by making the rule available to a greater number of merging funds. Funds that currently would have to file applications for exemptive relief could rely on the proposed rule.

The IRFA explains that the Commission has not identified any federal rules that duplicate or conflict with the proposed rule and rule amendments. The written records describing the merger and its terms that are required by the proposed rule may sometimes include some of the same records required by rules 31a–1 and 31a–2 under the Investment Company Act, but the IRFA explains that any overlap with these rules is expected to be insignificant.[100] The proposed rule would not require the maintenance of duplicate copies of any overlapping records.

The IRFA explains that the Commission has considered significant alternatives to the proposed amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the proposed amendments.

The Commission encourages the submission of comments on matters discussed in the IRFA. Specifically, comment is requested on the effects the proposed rule would have on small entities and the number of small entities that would be affected. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule amendments. A copy of the IRFA may be obtained by contacting Hester M. Peirce, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is proposing amendments to rule 17a–8 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.17a–8 is revised to read as follows:

§ 270.17a–8 Mergers of affiliated companies.

(a) *Exemption of affiliated Mergers.* A Merger of a registered investment company (or a series thereof) and one or more other registered investment companies (or series thereof), Common Trust Funds, or Collective Trust Funds is exempt from sections 17(a)(1) and (2) of the Act if:

(1) *Surviving Company.* The Surviving Company is a registered investment company (or a series thereof).

(2) *Board determinations.* As to any registered investment company (or series thereof) participating in the Merger (''Merging Company''):

(i) The board of directors, including a majority of the directors who are not interested persons of the Merging Company or of any other company or series participating in the Merger, determines that:

(A) Participation in the Merger is in the best interests of the Merging Company; and

(B) The interests of the Merging Company's existing shareholders will not be diluted as a result of the Merger.

(ii) The directors, in making the determination in paragraph (a)(2)(i)(A) of this section, consider at least the following factors, if relevant:

(A) Any direct or indirect federal income tax consequences of the Merger to the shareholders of the Merging Company;

(B) Any fees or expenses that the Merging Company will pay (directly or indirectly) in connection with the merger;

(C) Any change in fees or expenses to be paid or borne by shareholders of the Merging Company (directly or indirectly) after the Merger;

(D) Any change in services to be provided to shareholders of the Merging Company after the Merger; and

(E) Any change in investment objectives, restrictions, and policies after the Merger.

(iii) The directors, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets held by each Common or Collective Trust Fund participating in the merger. The approved procedures provide for the preparation of a report by an Independent Evaluator to be used to value assets acquired in connection with the Merger that sets forth the Current Fair Market Value as of the date of the Merger of each security and similar investment to be conveyed by each Common or Collective Trust Fund.

(iv) The determinations of the directors required in paragraph (a)(2)(i) of this section and the bases thereof are recorded fully in the minute books of the Merging Company.

(3) *Shareholder approval.* The outstanding voting securities of any Merging Company that is not a

[98] An ''independent evaluator'' would be defined as ''a person having expertise in the valuation of securities and other financial assets who is not an interested person, as defined in section 2(a)(19) of the Act, of the Common or Collective Trust Fund or any affiliate thereof except the Merging Company.'' Proposed rule 17a–8(b)(5). ''Current fair market value'' would be defined as ''the current market price of securities or similar investments determined in accordance with rule 17a–7(b) * * * or, if market quotations are not readily available, the fair value of such investments.'' Proposed rule 17a–8(b)(6).

[99] Proposed rule 17a–8(a)(3) and 17a–8(a)(4). These provisions are discussed above. *See supra* Section II.A.2.

[100] 17 CFR 270.31a–1 and 270.31a–2.

Surviving Company approve its participation in the Merger.

(4) *Echo voting.* (i) *General.* If a shareholder vote of a Merging Company is required to approve the Merger, any person who owns, controls, or holds with the power to vote more than five percent of the voting securities (''owner affiliate'') of the Merging Company and who is another Merging Company, or an investment adviser, principal underwriter, or owner affiliate of another Merging Company (collectively, ''related shareholders''), must vote those securities in the same proportion as the securities voted by shareholders who are not related shareholders (''echo voting'').

(ii) *Exceptions.* Echo voting of securities is not required if the related shareholder votes the securities in accordance with the instructions of the beneficial owner of the securities (if the beneficial owner is not a related shareholder), or in accordance with the instructions of a person who is not a related shareholder and who was appointed, for the purpose of providing guidance on the voting of securities of the Merging Company, by a fiduciary of a plan established under the Employee Retirement Income Security Act, 29 U.S.C. 1001–1461, that holds securities of the Merging Company.

(iii) *Calculating the vote.* In determining how to vote securities according to paragraph (a)(4)(i) of this section, securities voted pursuant to the exceptions of paragraph (a)(4)(ii) of this section must be treated as the votes of securities of shareholders that are not related shareholders.

(5) *Board composition; independent directors.* (i) A majority of the directors are not interested persons of the Merging Company and those directors select and nominate any other disinterested directors.

(ii) Any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

(6) *Merger records.* Any Surviving Company that is a registered investment company preserves written records that describe the Merger and its terms for six years after the Merger (and for the first two years in an easily accessible place).

(7) *Prohibition against evasion.* The Merger is not part of a plan or scheme to evade the affiliated transaction prohibitions of section 17(a) of the Act.

(b) *Definitions.* For purposes of this section:

(1) *Merger* means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered investment company (or a series thereof) and another company;

(2) *Collective Trust Fund* means a collective trust fund, as described in section 3(c)(11) of the Act;

(3) *Common Trust Fund* means a common trust fund or similar fund, as described in section 3(c)(3) of the Act;

(4) *Surviving Company* means a company in which shareholders of a Merging Company will obtain an interest as a result of a Merger;

(5) *Independent Evaluator* means a person having expertise in the valuation of securities and other financial assets who is not an interested person, as defined in section 2(a)(19) of the Act, of the Common or Collective Trust Fund or any affiliate thereof except the Merging Company; and

(6) *Current Fair Market Value* means the current market price of securities or similar investments determined in accordance with rule 17a–7(b) (§ 270.17a–7(b)) under the Act or, if market quotations are not readily available, the fair value of such investments.

By the Commission.

Dated: November 8, 2001.

Margaret H. McFarland,

Deputy Secretary.

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November 15, 2001

Part VI

Securities and Exchange Commission

17 CFR Part 270

Actively Managed Exchange-Traded Funds; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25258; File No. S7–20–01]

RIN 3235–AI35

Actively Managed Exchange-Traded Funds

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Concept release; request for comments.

SUMMARY: The Commission is seeking comment on various issues relating to actively managed exchange-traded funds (''ETFs''). All existing ETFs are based on various equity market indices. An actively managed ETF would not track an index. This type of ETF currently does not exist, and the Commission is interested in public comments on this concept to help inform the Commission's consideration of any proposals for actively managed ETFs.

DATES: Comments must be submitted on or before January 14, 2002.

ADDRESSES: Persons wishing to submit written comments should send three copies of the comment letter to Jonathan G. Katz, Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–20–01, and comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site *(http://www.sec.gov).* The Commission does not edit personal identifying information, such as names or E-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Senior Special Counsel, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management, Commission, 450 Fifth Street, NW., Washington, DC 20549–0506).

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I. Introduction

A. The Popularity of ETFs

The growing interest in exchange-traded funds (''ETFs'') is one of the notable developments in the area of investment management over the past few years. During the year 2000, the number of ETFs increased from 30 to 80, and the amount of assets held by ETFs nearly doubled from $34 billion to $66 billion.[1] While the total amount of ETF assets at the end of 2000 was still relatively small when compared to the approximately $4 trillion of assets in equity open-end investment companies (''open-end funds'' or ''mutual funds''), ETF assets were much closer to the $89 billion of total assets invested in unit investment trusts (''UITs'') and the $135 billion of total assets invested in closed-end investment companies (''closed-end funds'').[2] Moreover, during the first three quarters of 2001, net new investment in ETFs amounted to approximately $24 billion, as compared to approximately $13 billion for equity mutual funds.[3] By the end of September 2001, shareholders had invested more than $64 billion in a total of 92 ETFs.[4] Trading in ETF shares reportedly has accounted for as much as two-thirds of the daily volume on the American Stock Exchange (''AMEX'').[5]

B. What Are ETFs?

ETFs are investment companies that are registered under the Investment Company Act of 1940 (''Act'') as open-end funds or UITs.[6] Unlike typical open-end funds or UITs, ETFs do not sell or redeem their individual shares (''ETF shares'') at net asset value (''NAV'').[7] Instead, ETFs sell and redeem ETF shares at NAV only in large blocks (such as 50,000 ETF shares). In addition, national securities exchanges list ETF shares for trading, which allows investors to purchase and sell individual ETF shares among themselves at market prices throughout the day. ETFs therefore possess

[1] Investment Company Institute (''ICI''), *Exchange-Traded Funds Statistical Collection,* Feb. 8, 2001. Except for this ICI release, the ICI statistical releases cited in this concept release may be found under ''Current Statistical Releases'' or ''Additional Statistical Releases'' at http://www.ici.org/facts_figures/.

[2] ICI, *Trends in Mutual Fund Investing July 2001,* Aug. 30, 2001 (for year-end 2000 mutual fund assets); *Unit Investment Trust Data July 2001,* Aug. 21, 2001 (for year-end 2000 UIT assets); *Closed-End Fund Assets, 1990–2000* (for year-end 2000 closed-end fund assets).

[3] ICI, *Exchange-Traded Fund Assets,* Oct. 19, 2001 (for third quarter 2001 net investment in ETFs); ICI, *Exchange-Traded Fund Assets June 2001,* July 24, 2001 (for second quarter 2001 net investment in ETFs); ICI, *Exchange-Traded Fund Assets March 2001,* Apr. 26, 2001 (for first quarter 2001 net investment in ETFs); and ICI, *Trends in Mutual Fund Investing September 2001,* Oct. 29, 2001 (for year-to-date net investment in mutual funds through third quarter 2001).

[4] ICI, *Exchange-Traded Fund Assets,* Oct. 19, 2001.

[5] Aaron Lucchetti and Ken Brown, *Spiders and WEBS: Amex Is Back, Thanks To a Tradable Variety of Index Mutual Funds,* Wall St. J., Feb. 22, 2000, at A1.

[6] Section 5(a)(1) of the Act defines an open-end fund as an investment company that is a management company which offers or has outstanding any redeemable security of which it is the issuer. 15 U.S.C. 80a–5(a)(1). Section 4(2) of the Act defines a UIT as an investment company that is organized under a trust indenture or similar instrument, that does not have a board of directors, and that issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 U.S.C. 80a–4(2).

[7] The NAV of a share of an investment company is equal to the value of the investment company's total assets, minus liabilities, divided by the number of outstanding shares.

characteristics of traditional open-end funds and UITs, which issue redeemable shares, and of closed-end funds, which generally issue shares that trade at negotiated prices on national securities exchanges and are not redeemable.[8] A fundamental characteristic of all existing ETFs traded in the United States is that they are based on specific domestic and foreign market indices. An ''index-based ETF'' seeks to track the performance of an index by holding in its portfolio either the contents of the index or a representative sample of the securities in the index.

C. The Purpose of the Concept Release

Recently, the concept of an ''actively managed ETF'' has attracted significant attention, even though many of the details regarding the potential operations of actively managed ETFs are apparently still in development.[9] Unlike an index-based ETF, an actively managed ETF would not seek to track the return of a particular index by replicating or sampling index securities. Instead, an actively managed ETF's investment adviser could select securities consistent with the ETF's investment objectives and policies without reference to the composition of an index.

Because of their unique operations, index-based ETFs first must apply to the Commission to obtain exemptive relief from certain provisions of the Act. For example, exemptive relief is necessary for index-based ETFs to redeem ETF shares only in large aggregations and for ETF shares to trade at negotiated prices in the secondary market. An actively managed ETF also would be required to obtain exemptive relief from the Act.

Before we can grant the exemptions necessary to permit the introduction of actively managed ETFs, we must conclude that the exemptions are in the public interest and consistent with the protection of investors and the purposes of the Act.[10] As part of this process, we are issuing this release to seek comment from the public regarding the concept of actively managed ETFs. We expect that this concept release will generate comments and ideas from a wide range of parties, including individual and institutional investors, shareholder organizations, financial planners, investment advisers, fund organizations, market makers, arbitrageurs, ETF sponsors, and national securities exchanges. Our goal is to gain a better understanding of the various perspectives on the concept of actively managed ETFs. We then will be able to evaluate better any proposals for these types of products as they are presented to us through the exemptive process on a case-by-case basis.

II. Background

A. The Development of Existing ETFs

1. ETFs Organized as UITs

In January 1993, a subsidiary of the AMEX introduced the first ETF ''the SPDR Trust. The SPDR Trust, which issues ETF shares referred to as SPDRs (pronounced ''spiders''), is a UIT that tracks the Standard & Poor's 500 Composite Stock Price Index (''S&P 500 Index'') by holding substantially all of the securities in the S&P 500 Index in substantially the same weightings as in the S&P 500 Index. The trustee adjusts the portfolio of the SPDR Trust only to reflect changes in the composition of the S&P 500 Index.[11]

In order to offer SPDRs, the SPDR Trust obtained exemptions from various provisions of the Act.[12] Among other things, the exemptions allow the SPDR Trust to redeem SPDRs in large aggregations only, SPDRs to trade at negotiated prices in the secondary market, dealers to sell SPDRs to purchasers in the secondary market unaccompanied by a prospectus (when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act'')), and certain affiliated persons of the SPDR Trust to deposit securities into, and receive securities from, the SPDR Trust in connection with the purchase and redemption of large aggregations of SPDRs. Since the introduction of SPDRs, ETF sponsors have launched three additional ETFs organized as UITs. The MID CAP SPDR Trust tracks the Standard & Poor's (''S&P'') MidCap 400 Index; the Diamonds Trust (which issues units known as ''Diamonds'') tracks the Dow Jones Industrial Average; and the Nasdaq-100 Trust (which issues units known as ''Cubes'') tracks the Nasdaq-100 Index. Each of these ETFs obtained exemptive relief similar to the relief granted to the SPDR Trust.

2. ETFs Organized as Open-End Funds

In March 1996, ETF sponsors introduced the first two ETFs organized as open-end funds. The CountryBaskets Index Fund, Inc., advised by Deutsche Morgan Grenfell/C. J. Lawrence Inc., consisted of different portfolios (''series'') that tracked various country indices of the Financial Times/S&P Actuaries World Indices.[13] The Foreign Fund, Inc., advised by BZW Barclays Global Fund Advisers (''Barclays''), offers series that track various Morgan Stanley Capital International (''MSCI'') country indices.[14] These ETFs obtained exemptions from various provisions of the Act that were generally analogous to the exemptions obtained by the ETFs organized as UITs.[15]

Many ETFs organized as open-end funds replicate the holdings of their corresponding indices to track the performance of the indices. However, because ETFs organized as open-end funds employ investment advisers, some of these ETFs instead may use ''sampling strategies'' to track the performance of an index. Using a sampling strategy, an investment adviser can construct a portfolio that is a subset of the component securities in the corresponding index, rather than a replication of the index. The investment adviser also may acquire securities for the ETF portfolio that are not included in the corresponding index. While these ETFs still seek to track the performance of their respective indices, they have greater flexibility in accomplishing that goal. In addition, ETFs that are open-end funds are not prohibited from participating in securities lending

[8] Section 5(a)(2) of the Act defines a closed-end fund as any management company other than an open-end company. 15 U.S.C. 80a–5(a)(2)

[9] *See, e.g.,* Anthony Ragozino and Charlie J. Gambino, *Actively-Managed Exchange Traded Funds: Coming Soon to a Market Near You?,* 8 Investment Lawyer, No. 5, May 2001, at 3 (''market professionals on Wall Street [are] scrambling to make [actively managed ETFs] available in the United States''); Dan Weil, *Exchange-traded Funds Boosts AMEX Growth,* The Palm Beach Post, Mar. 9, 2001, at 2D (reporting that AMEX president says AMEX will probably begin trading actively managed ETFs within 12 to 18 months); Yuka Hayashi, *New Generation of ETFs on Horizon,* Wall St. J. Europe, Sept. 26, 2000, at 16 (reporting that fund companies are ''pouring money into development'' of actively managed ETFs); Aaron Lucchetti, *Firms May Explore Funds that Trade on Stock Markets,* Wall St. J., May 16, 2000, at C21 (reporting that AMEX official says about six mutual-fund companies are interested in launching actively managed ETFs).

[10] 15 U.S.C. 80a–6(c).

[11] Because the structure of a UIT does not include the means of providing management, the UIT portfolio is relatively fixed, and elimination and substitution of securities only takes place under unusual circumstances. However, a UIT that tracks an index (like the SPDR Trust) may make adjustments to its portfolio to ensure that the portfolio continues to replicate the index.

[12] SPDR Trust, Series 1, Investment Company Act Rel. Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order) (''SPDR Order'').

[13] The CountryBaskets Index Fund, Inc. ceased operations in March 1997 and deregistered as an investment company in 1998.

[14] The shares issued by The Foreign Fund were known as ''World Equity Benchmark Shares'' or ''WEBs.'' The ETF recently was renamed iShares Inc., and the shares are now known as ''iShares.''

[15] The CountryBaskets Index Fund, Inc., Investment Company Act Rel. Nos. 21736 (Feb. 6, 1996) (notice) and 21802 (Mar. 5, 1996) (order); The Foreign Fund, Inc., Investment Company Act Rel. Nos. 21737 (Feb. 6, 1996) (notice) and 21803 (Mar. 5, 1996) (order).

programs or from using futures and options in achieving their investment objectives. The revenue generated by these activities may help the ETF to offset expenses that otherwise could cause the performance of the ETF to lag behind the performance of its index (because an index does not have any expenses). Eighty-eight of the 92 ETFs in existence at the end of September 2001 were organized as open-end funds.[16]

B. How Existing ETFs Operate

Regardless of the organizational structure of an ETF, all existing ETFs operate in essentially the same manner. Unlike typical open-end funds or UITs, ETFs issue shares only in large aggregations or blocks (such as 50,000 ETF shares) called ''Creation Units.'' An investor, usually a brokerage house or large institutional investor, may purchase a Creation Unit with a ''Portfolio Deposit'' equal in value to the aggregate NAV of the ETF Shares in the Creation Unit. The investment adviser or sponsor of the ETF announces the contents of the Portfolio Deposit at the beginning of each business day. The Portfolio Deposit generally consists of a basket of securities that mirrors the composition of the ETF's portfolio. Because the purchase price of the Creation Unit must equal the NAV of the underlying ETF shares, the required Portfolio Deposit generally also includes a small amount of cash to account for the difference between the value of the basket of securities and the NAV of the ETF shares. The value of a Creation Unit typically exceeds several million dollars. After purchasing a Creation Unit, the investor may hold the ETF shares, or sell some or all of the ETF shares to investors in the secondary market.

1. Secondary Market Trading

Like operating companies or closed-end funds, ETFs register offers and sales of shares under the Securities Act and list their ETF shares for trading on a national securities exchange under the Securities Exchange Act of 1934 (''Exchange Act''). As with any listed security, investors also may trade ETF shares in off-exchange transactions. In either case, ETF shares trade at negotiated prices. The development of the secondary market in ETF shares depends upon the activities of the exchange specialist assigned to make a market in the ETF shares and upon the willingness of Creation Unit purchasers to sell ETF shares in the secondary market.

ETF shares purchased in the secondary market are not redeemable from the ETF except in Creation Unit aggregations. If an investor presents a Creation Unit to the ETF for redemption, the redeeming investor receives a ''Redemption Basket,'' the contents of which are identified by the ETF investment adviser or sponsor at the beginning of the day. The Redemption Basket (usually the same as the Portfolio Deposit) consists of securities and a small amount of cash. As with purchases from the ETF, redemptions from the ETF are priced at NAV (*i.e.*, the value of the Redemption Basket is equal to the NAV of the ETF shares in the Creation Unit). An investor holding fewer ETF shares than the amount needed to constitute a Creation Unit may dispose of those ETF shares only by selling them in the secondary market. The investor receives market price for the ETF shares, which may be higher or lower than the NAV of the ETF shares. The investor also pays customary brokerage commissions on the sale.

2. Arbitrage Opportunities

Because of arbitrage opportunities inherent in the ETF structure, ETF shares generally have not traded in the secondary market at a significant premium or discount in relation to NAV. If ETF shares begin to trade at a discount (*i.e.*, a price less than NAV), arbitrageurs may purchase ETF shares in the secondary market and, after accumulating enough shares to equal a Creation Unit, redeem them from the ETF at NAV, and thereby acquire the more-valuable securities in the Redemption Basket. In purchasing the ETF shares, arbitrageurs create greater market demand for the shares, which may raise the market price to a level closer to NAV. If ETF shares trade at a premium (*i.e.*, a price greater than NAV), arbitrageurs may purchase the securities in the Portfolio Deposit, use them to obtain the more-valuable Creation Units from the ETF and then sell the individual ETF shares in the secondary market to realize their profit. As the supply of individual ETF shares available in the secondary market increases, the price of the ETF shares may fall to levels closer to NAV. An exchange specialist designated to maintain a market in the ETF shares also works to provide appropriate amounts of shares in the secondary market in response to supply and demand.

In addition, because the ETF investment adviser or sponsor announces the identities of the securities in the Portfolio Deposit and Redemption Basket each day, arbitrageurs also may decide to engage in arbitrage transactions based on their need for particular securities (for example, to replace borrowed securities that the arbitrageur previously sold ''short'') or on their own assessment of the relative value of the Portfolio Deposit or Redemption Basket in comparison to the price of the ETF shares. As an apparent result of this arbitrage discipline, ETF sponsors and market participants report that the average deviation between the daily closing price and the daily NAV of ETFs that track domestic indices is generally less than 2%.[17] With respect to ETFs that track certain foreign indices, the deviations may be more significant.[18]

C. Reported Uses and Benefits of Existing ETFs

In exemptive applications to permit the operations of ETFs, applicants have argued that ETFs provide investors and the markets with a number of benefits. First, applicants have argued that ETFs provide investors with the opportunity to invest in a diversified basket of securities through the purchase of a

[16] ETFs organized as open-end funds include the Select Sector SPDR Trust, consisting of series that track various S&P sector indices; iShares Inc. and iShares Trust, consisting of series that domestic and foreign equity indices compiled by S&P, Dow Jones & Company, Inc. (''Dow Jones''), Frank Russell & Co., and MSCI, and streetTRACKS Series Trust, consisting of series that track indices compiled by Dow Jones, Morgan Stanley Dean Witter, and FORTUNE.

[17] *See, e.g,* Second Amended and Restated Application of Barclays Global Fund Advisors, File No. 812–11600, filed May 11, 2001 (''Barclays Application'') at 57–58 (stating that average deviations between the daily closing price and the daily NAV of ETF shares of ETFs tracking domestic indices range from a premium of .05% to a discount of .02%). Persons may obtain copies of applications cited in this concept release for a fee from the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone 202/942–8090).

See also John Spence, *Salomon Releases ETF Premium/Discount Study,* indexfunds.com, Oct. 23, 2000 (reporting that a Salomon Smith Barney study of the trading of ETF shares found that shares of ETFs tracking domestic indices had an average bid price that was a .17% discount to the ETFs' respective estimated intra-day NAVs, as recorded at random points during the trading days in September 2000), at http://www.indexfunds.com/Pfarticles/20001023_SSMBstudy_iss_etf_JS.htm.

[18] *See. e.g.,* Barclays Application at 36 (stating that the Malaysia (Free) WEBs Index Fund traded at wider spreads to NAV following the imposition of capital controls by the Malaysian government in 1998).

See also Memorandum in Support of Hearing Request filed by Fund Democracy, LLC, and the Consumer Federation of America with respect to the Barclays Application (arguing that arbitrage opportunities do not ensure that the difference between the market price and NAV of ETF shares will remain narrow, and citing in particular the experience of ETFs tracking various foreign indices), available at http://www.funddemocracy.com/hearing_request_docs.htm.

single exchange-traded security.[19] As a result, investors can have the diversification benefits of an investment company with the trading flexibility of a stock. In addition, ETF applicants have stated that unlike closed-end funds (the traditional type of investment company that issues exchange-traded shares), ETFs can avoid the discounts and premiums in market price often associated with closed-end fund shares by continually issuing and redeeming ETF shares in Creation Units, and thereby creating an arbitrage mechanism.[20]

1. ETFs as a Tool for Individual Investors

As the ETF marketplace has developed, individual investors apparently have accepted ETFs as an index investment with trading flexibility.[21] Certain individual investors reportedly invest in ETF shares as a long-term investment for asset allocation purposes, while other individual investors apparently trade ETF shares frequently as part of market timing investment strategies.[22] For those investors who trade more frequently, ETFs offer the ability to purchase and sell ETF shares in the secondary market at a known price anytime during the trading day, to purchase ETF shares on margin, and to sell ETF shares short.

2. The Uses of ETFs for Institutional Investors

Institutions also may purchase ETF shares in the secondary market for a variety of reasons. For example, certain pension funds whose investment restrictions preclude investment in index derivatives may instead invest in ETF shares.[23] Other institutions reportedly prefer to hold ETF shares instead of index futures because ETF shares do not have the margin requirements or expiration dates of futures.[24] Some private investment companies (such as hedge funds) reportedly employ ETF shares in hedging strategies by taking certain short or long positions in individual securities of a certain market sector, while taking opposite positions in ETF shares tracking that sector.[25] Other institutional money managers and mutual funds may use ETFs as a temporary means of keeping cash invested in a broad market segment during transitions in investment strategy or management.[26]

3. The Efficiency of ETFs

ETFs also appear to attract investors as a low-cost and tax efficient investment vehicle.[27] Like index-based mutual funds (''index funds''), index-based ETFs are passively managed to track an index and do not have significant turnover in portfolio securities. As a result, ETF expenses are typically lower than the expenses of actively managed mutual funds, which generally have higher management fees and brokerage expenses due to portfolio trading. In addition, ETF expenses are often lower than the expenses of index funds. Because most ETF shareholders purchase and sell ETF shares through secondary market transactions rather than through transactions with the ETF, ETFs do not have the same degree of shareholder recordkeeping and service expenses as index funds.[28] However, investors who purchase and sell ETF shares in secondary market transactions pay brokerage commissions in connection with those transactions, which can represent an additional cost to investors that is not reflected in the expense ratio of an ETF.

With respect to tax efficiency, ETFs reportedly offer advantages over many mutual funds. When a mutual fund sells portfolio securities to pursue its investment strategies or to generate cash for shareholder redemptions, the mutual fund may realize capital gains if the value of the securities increased while they were in the fund portfolio. A mutual fund distributes accumulated capital gains to its shareholders, and shareholders generally must pay taxes on those distributions. An ETF also may accumulate and distribute capital gains to investors. However, like index funds, an ETF may be more tax efficient than many mutual funds because of the low turnover in its portfolio securities. In addition, the ETF structure may allow an ETF to avoid capital gains to an even greater extent than index funds. Because an ETF typically redeems Creation Units of ETF shares by delivering securities in the Redemption Basket, an ETF does not have to sell securities (and possibly realize capital gains) in order to pay redemptions in cash.[29] The Redemption

[19] *See, e.g.*, Fourth Amended and Restated Application of SPDR Trust, Series 1, File No. 812–7545, filed Aug. 7, 1992 (''SPDR Application''), at 42–43. In the SPDR Application, applicants stated that SPDRs were developed in response to the suspension of trading in ''index participants'' (''IPs''), contracts of indefinite duration based on the value of a basket (index) of securities. *See* SPDR Application at p. 45. Trading in IPs was suspended after the U.S. Court of Appeals for the Seventh Circuit found that IPs represented a futures contract within the exclusive jurisdiction of the Commodity Futures Trading Commission. *Chicago Mercantile Exchange, et al. v. Securities and Exchange Commission, et al.*, 883 F.2d 537 (7th Cir. 1989), *cert. denied* 496 U.S. 936, 110 S. Ct. 3214 (1990). Because SPDRs represented an interest in an actual portfolio of securities, SPDRs did not present the futurity issues of IPs.

[20] *See, e.g.*, Fifth Amended and Restated Application of The CountyBaskets Index Fund, Inc., File No. 812–9188, filed June 30, 1995, at 11.

[21] *See, e.g.*, Lee Barney, *Exchange-Traded Funds Continue to Grow in 2001,* TheStreet.com, May 16, 2001 (''The first and foremost reason investors like ETFs is because, like index funds, they offer exposure to a variety of sectors. * * *.''), at http://www.thestreet.com/funds/funds,1430991.html; Lee Clifford, *All Your Stocks in One Basket,* Fortune, Mar. 5, 2001, at 200 (explaining how ETFs can be useful of tracking an index, balancing a portfolio, or gaining exposure to a market segment); Barbara Eisner Bayer, *The Latest Indexing Craze,* Fool.com, June 27, 2000 (''Perhaps the greatest benefit of ETFs is that investors will now have instant exposure to a diversified portfolio of stocks.''), at http://www.fool.com/Server/FoolPrint.asp?File+/ddow/2000/ddow000627.htm.

[22] *See, e.g.*, Aaron Lucchetti, *Tradable Shares Bring Some Buzz to Mutuals,* Wall St. J., June 5, 2000, at R1 (profiling different types of ETF investors); Jerry Morgan, *ETFs, An Alternative to Index Funds,* Newsday, Jan. 29, 2000, at F05; John Spence, *FRC Study Examines Future of ETFs,* indexfunds.com, Nov. 6, 2000 (reporting on a survey conducted by Financial Research Corporation that found that 75% of retail investors surveyed who either owned or had inquired about ETFs intended to use ETFs primarily for buy-and-hold strategies, while 25% intended to use ETFs for a mix of long-term and trading strategies), at http://www.indexfunds.com/Pfarticles/20001106_FRCstudy_iss__etf_JShtm.

[23] *See, e.g.*, Elgin, Peggie R., *SPDR Web Ensnares Both Active, Passive Fund Managers,* 14 Corporate Cashflow Magazine, No. 13, Dec. 1993, at 5.

[24] *See, e.g.*, Barney, *supra* note 21.

[25] *See, e.g.*, Allison Bisbey Colter, *Exchange-Traded Funds Are Booming,* Wall St. July 12, 2001, at C19 (noting also that some hedge funds use ETF shares instead of index futures to avoid licensing requirements of the Commodity Futures Trading Commission).

[26] *See, e.g.*, Fred Williams, *Interest Accelerates: ETFs: Market up 82% to Nearly $76 Billion,* Pensions and Investments, Mar. 5, 2001, at 25.

[27] *See, e.g.*, John Spence, *Retail Investor Perception of Exchange-Traded Funds*, indexfunds.com, Feb. 22, 2001 (reporting on survey conducted by Financial Research Corporation that found ''tax efficiency,'' ''trading and tax flexbility,'' and ''lower expense ratios'' to be the three most commonly cited reasons for potential interest in ETFs among retail investors), at http://www.indexfunds.com/Pfarticles/20010223_ETFperception_iss-etf-JS.htm; Theo Francis, *Navigating the New World of ETFs*, Wall St. J., May 11, 2001, at C1; Sara Robinson, *A Mutual Fund Rival on the Trading Floor,* N.Y. Times, Nov. 7, 1999, at 8.

[28] *See, e.g.*, Frederick P. Gabriel Jr., *ETFs, May Be Losing Pricing Edge: Some to Have Fees that Match Top Funds*, Investment News, Aug. 27, 2001, at 3 (reporting that an analysis by Lipper Inc. found only a few examples of index funds that are less expensive than ETFs with the same investment objective); Aldo Svaldi, *ETFs Take Aim at Ailing Mutual Funds*, The Denver Post, Mar. 4, 2001, at J–03 (reporting that ETFs that track the larger U.S. indices have an average annual expense ratio of .34%, compared to .50% for an index fund, and 1 to 1.5% for an actively managed mutual fund); Aaron Lucchetti, *Index Mutual Funds Have a Price War*, Wall St. J., at C–1, May 12, 2000 (noting that ETFs may have expense advantages over index funds because they do not deal directly with individual investors through expensive telephone centers and retail offices).

[29] Because an ETF does not have to maintain cash reserves to pay redemptions, an ETF also may be able to remain more fully invested in the securities of its corresponding index, which could help an

Continued

Basket also may include securities from the ETF portfolio that have the highest unrealized capital gains (*i.e.*, securities that have appreciated in value the most while in the ETF portfolio). Because the ETF may be able to eliminate securities with significant unrealized capital gains from its portfolio through the redemption process, the ETF may avoid realizing some capital gains if the ETF needs to sell securities at a later date to track its index.[30]

III. The Concept of an Actively Managed ETF

As noted above, market participants are interested in developing an ''actively managed ETF''—an ETF with an actively managed portfolio that does not seek to replicate the performance of any particular market index. Like existing ETFs, an actively managed ETF would be registered under the Act (as an open-end fund rather than a UIT, because a UIT cannot be managed) and would issue and redeem its shares only in Creation Units. The ETF would list its shares on a national securities exchange, and investors would trade the ETF shares throughout the day at market prices in the secondary market. As with index-based ETFs, the ability to buy and redeem Creation Units at NAV would present arbitrage opportunities if the market price of the individual ETF shares deviated from NAV.

Despite these general similarities, there may be significant structural and operational differences between the two types of products.[31] For example, it is not clear whether an actively managed ETF would propose to inform investors of the contents of its portfolio in the same manner as index-based ETFs (through the daily announcement of the Portfolio Deposit and Redemption Basket).[32] Because the portfolio of an actively managed ETF likely would change more frequently and in less foreseeable ways than the portfolio of an index-based ETF, it is not clear how or whether an actively managed ETF would propose to communicate intra-day changes to investors.[33] This potential for less transparency in the portfolio holdings of an actively managed ETF may make the process of creating and redeeming Creation Units more difficult or present greater investment risk for arbitrageurs. As a result, an actively managed ETF could have a less efficient arbitrage mechanism than index-based ETFs, which could lead to more significant premiums or discounts in the market price of its shares.

In addition to potential operational differences, an actively managed ETF may not have the same uses and benefits as those associated with index-based ETFs. As described above, many of the uses of existing ETFs, particularly for institutional investors, relate to the fact that ETF shares serve as a proxy for an index, which would not be the case for ETF shares of actively managed ETFs. In addition, an actively managed ETF may have greater turnover in its portfolio securities, which could result in higher expenses and less tax efficiency than index-based ETFs.[34]

We need to consider carefully whether actively managed ETFs are in the public interest and consistent with the protection of investors and the purposes of the Act before we grant the relief necessary to allow for the introduction of these products. To facilitate this process, we are seeking public comment on a wide range of issues posed by the possible introduction of actively managed ETFs. In addition to the specific questions outlined in the following sections, we seek comment on these broad issues:

- How are actively managed ETFs likely to be structured, managed and operated?
- How will investors use, and benefit from, actively managed ETFs?
- Would the exemptive relief that the Commission has granted to index-based ETFs be appropriate for actively managed ETFs?
- Are there any new regulatory concerns that might arise in connection with actively managed ETFs?

IV. Areas for Comment

A. Index-Based ETFs vs. Actively Managed ETFs

For purposes of this release, we have assumed that any ETF that would not seek to track the performance of a market index by either replicating or sampling the index securities in its portfolio would be an actively managed ETF. Thus, actively managed ETFs would include, for example, an ETF that seeks to achieve a multiple (or the reverse) of the performance of a market index. Actively managed ETFs also would include any ETF that, although it may be using a market index as a benchmark for measuring its performance, pursues an investment objective that is not tied to the index.

Is this an appropriate way to distinguish between index-based and actively managed ETFs? Are there any reasons to distinguish between different types of actively managed ETFs? If there are different types of actively managed ETFs, are there any reasons to regulate the various types differently?

B. Operational Issues Relating to Actively Managed ETFs

The unique structure of an ETF—in which investors can buy and redeem Creation Units at NAV, and can sell and purchase individual ETF shares in the secondary market at market price—is designed, among other things, to ensure arbitrage opportunities that would reduce any deviations between the NAV and the market price of ETF shares. The expectation that the market price of ETF shares would track NAV (and the performance of an index) is important to many of the uses of ETF shares as index-based securities. An ETF also is thought to offer advantages over a closed-end fund structure in which discounts from NAV are common. The existing ETFs, as a general matter, have not experienced significant deviations between the NAV and the market price of their ETF shares.[35]

Is it important that ETFs be designed to enable arbitrage and thereby

ETF track its index more effectively than some index funds. *See, e.g.*, Albert B. Crenshaw, *Funds that Trade Like Stocks; ETFs Offer Some Advantages over Traditional Mutuals*, Wash. Post, July 9, 2000, at H02.

[30] *See, e.g.*, Karen Damato, *Tax Advantages Are Promised by Fund Rivals*, Wall St. J., Sept. 1, 2000, at C1; Dagen McDowell, *Exchange-Traded Funds Are Tax-Efficient, but Not Tax Perfect*, TheStreet.com, Aug. 22, 2000, at http://www.thestreet.com/funds/deardagen/1049339.html.

[31] As noted above, many of the details regarding the potential operations of an actively managed ETF are apparently in development. *See, e.g.*, Andrew Greene, *AMEX Plans Active Exchange-Traded Fund*, *Mutual Fund Market News*, Aug. 14, 2000 (quoting a fund industry observer who describes the development of an actively managed ETF as ''the financial industry's equivalent of the space program back in the 1960's'' and states that fund companies and exchanges are scrambling to develop something without knowing what it will look like).

[32] *See, e.g.*, Dagen McDowell, *Non-Index Exchange-Traded Funds on the Horizon*, TheStreet.com, May 16, 2000 (''a stumbling block to creating an actively managed [ETF] is the transparency of the underlying portfolio * * *. No fund company or fund manager would want to reveal everything that's in a fund on a regular basis.'') at http://www.thestreet.com/funds/deardagen/940643.html.

[33] *See, e.g.*, Lucchetti and Brown, *supra* note 5 (reporting that for an actively managed ETF to be priced continuously throughout the day, the ETF manager would have to disclose what the ETF was buying and selling during the day, which most active managers would not wish to do).

[34] *See, e.g.*, Michael Santoli, *Great Pretenders: New-fashioned ''Funds'' No Threat to Old Ones*, Barron's, Apr. 9, 2001, at F18 (noting that some observers do not believe that actively managed ETFs, will offer the cost and tax benefits of index-based ETFs); Scott Cooley, *The Time Isn't Right for Actively Managed ETFs*, Morningstar.com (noting that unless managers reduce portfolio trading, an actively managed ETF would not be a tax-efficient vehicle) at http://news.morningstar.com/doc/article/01,1,3073,00.html.

[35] *See supra* note 17.

minimize the probability that ETF shares will trade at a large premium or discount? In considering whether to grant the exemptive relief necessary to permit actively managed ETFs, should we be concerned about whether their shares will trade at a significant premium or discount?

It appears that two factors may contribute significantly to the effectiveness of arbitrage in the ETF structure—the transparency of an ETF's portfolio and the liquidity of the securities in the ETF's portfolio.

1. Transparency of an ETF's Portfolio

Existing ETFs generally create and redeem Creation Units through in-kind transactions. At the beginning of each day, the investment adviser or sponsor of the ETF makes available the identities of the securities in the Portfolio Deposit and the Redemption Basket (generally through the National Securities Clearing Corporation, a clearing agency that effects the sales and redemptions of Creation Units for many ETFs). These baskets generally reflect the contents of the portfolio of the ETF on that day and do not change during the day.[36] In addition, the listing exchange makes available the current value of the Portfolio Deposit on a per ETF share basis at 15 second intervals throughout the day and disseminates intra-day values of the relevant index. This high degree of transparency in the investment operations of an ETF helps arbitrageurs determine whether to purchase or redeem Creation Units based on the relative values of the ETF shares in the secondary market and the securities contained in the ETF's portfolio.

What level of transparency in portfolio holdings is necessary to allow for effective arbitrage activity in the shares of an actively managed ETF? Should an actively managed ETF be required to disclose the full contents of its portfolio? Is it sufficient for an actively managed ETF to disclose only a sample of its portfolio or the general characteristics of its portfolio? Can effective arbitrage occur without any disclosure of the specific securities in an ETF's portfolio (*i.e.*, arbitrage that is based strictly on the NAV and market price of ETF shares)?

How frequently would the investment adviser of an actively managed ETF need to disclose the portfolio securities or characteristics of the ETF portfolio? Would an investment adviser need to disclose intra-day changes in the portfolio of an actively managed ETF? Would there be a need to permit or require the specified Portfolio Deposit or Redemption Basket to change during the day to reflect changes in the ETF's portfolio? If so, what type of notice would be necessary to inform investors of any changes to the Portfolio Deposit or Redemption Basket in the course of a day? Are intra-day values of the Portfolio Deposit meaningful to investors if investors do not know the contents of the ETF portfolio?

Would frequent disclosure of portfolio holdings lead to ''front running'' of the ETF portfolio, where other investors would trade ahead of the ETF and the Creation Unit purchasers who must assemble Portfolio Deposits?[37] Would frequent disclosure of portfolio holdings lead to ''free riding,'' where other investors would mirror the investment strategies of an actively managed ETF while the ETF investors pay the advisory fees? Would an investment adviser to an actively managed ETF face a conflict between maximizing performance and facilitating arbitrage by informing the marketplace of the adviser's investment strategies (*e.g.*, would there be a reluctance on the part of a portfolio manager to make frequent adjustments in the portfolio because of the possible impact on the arbitrage mechanism)?

2. Liquidity of Securities in an ETF's Portfolio

Existing ETFs track various equity indices including foreign and domestic indices, broad-based indices, and sector indices. All of the indices have specified methodologies for selecting their component securities. The methodologies generally ensure that an index consists of a certain number of component securities, and that those securities will have significant market capitalization and will be actively traded. Because ETFs either replicate or sample the indices, their portfolio securities also should possess these characteristics. Effective arbitrage depends in part upon the ability of investors to readily assemble the Portfolio Deposit for purchases of Creation Units and to sell securities received upon redemption of Creation Units. The liquidity of portfolio securities is an important factor in this process.

Should actively managed ETFs be limited to certain investment objectives or policies that are designed to ensure that the portfolio securities are sufficiently liquid to permit effective arbitrage? If so, what types of parameters are necessary to ensure that an ETF invests in securities that can be readily purchased or sold by arbitrageurs? Should an actively managed ETF be permitted to invest in securities other than equity securities? Should an actively managed ETF be permitted to invest in any illiquid securities or securities that could not be included in a Portfolio Deposit or Redemption Basket? Should an actively managed ETF be prohibited from investing in securities that are not registered under section 12 of the Exchange Act?[38] Should an actively managed ETF be prohibited from investing in securities that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act?[39]

Is it necessary for an actively managed ETF to create and redeem Creation Units through in-kind transactions (rather than cash transactions)?[40] Would there be any consequences to permitting cash purchases and redemptions of Creation Units for an actively managed ETF? Could the cash component of a Portfolio Deposit or Redemption Basket be used to account for portfolio securities that could not be included in a Portfolio Deposit or Redemption Basket?[41]

3. Other Operational Issues

What other issues could cause an actively managed ETF to operate differently than an index-based ETF? Would the clearance and settlement procedures for Creation Unit transactions for actively managed ETFs be the same as for index-based ETFs? Are there other operational issues that could affect the willingness of investors to purchase shares of an actively managed ETF either on the secondary market or in Creation Units from the ETF? Would significant deviations

[36] Because an index-based ETF seeks to track the performance of an index, often by replicating the component securities of the index, the ETF investment adviser or sponsor has no reservations about informing the marketplace of the contents of the ETF's portolio.

[37] *See, e.g.*, Hayashi, *supra* note 9 (stating that disclosure of the portfolio of an actively managed ETF could lead to front running and create unwanted demand for the stocks identified by the ETF for inclusion in its portfolio).

[38] 15 U.S.C. 78*l*.

[39] 15 U.S.C. 77d(3)(C).

[40] Though existing ETFs primarily transact in-kind, they generally reserve the possibility of cash purchases and redemptions under certain circumstances, such as on days when a substantial rebalancing of an ETF's portfolio is required. *See, e.g.*, Barclays Application at 23–24. Certain iShares ETFs that invest in certain foreign markets currently effect creations and redemptions through cash transactions.

[41] Most ETFs currently reserve the possibility that cash may be substituted for certain securities in a Portfolio Deposit or Redemption Basket under unusual circumstances, such as when an investor who purchases or redeems a Creation Unit is not permitted to transact in particular securities. *See, e.g.*, Barclays Application at 28–29.

between the market price of shares of an actively managed ETF and the NAV of the ETF shares compromise the operations of the ETF?

C. Uses, Benefits and Risks of Actively Managed ETFs

As noted, in granting exemptions under section 6(c), the Commission must find that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[42] The Commission is interested in learning about the ways in which investors may use actively managed ETFs and the benefits that this new investment product may be expected to bring. The Commission also is seeking comment generally on any aspects of actively managed ETFs that may be relevant to the determination that the Commission would be making under section 6(c).

In determining whether the relief we have granted to permit ETFs should be expanded to permit actively managed ETFs, we think it is appropriate to consider the uses and benefits of existing index-based ETFs, as well as any concerns regarding ETFs generally. What are the most important uses and benefits of index-based ETFs? Have index-based ETFs encountered any problems of which the Commission should be aware in evaluating future ETF proposals?[43] Are investors confused about the differences between ETFs and mutual funds? What measures could be taken to address any potential investor confusion? Does trading in ETF shares have any relation to market volatility, and if so, in what ways?[44] Has the introduction of ETFs generally led to any undesirable consequences for investors?

With respect to the potential for actively managed ETFs, should investors expect that any mutual fund could be transformed into an ETF, or would only certain types of actively managed portfolios lend themselves to the ETF structure? Would closed-end funds seek to convert into actively managed ETFs as a possible means of addressing discounts in share price?[45] Why would an actively managed ETF be a desirable alternative to a mutual fund or closed-end fund that pursues the same investment objectives or strategies?

What would be the principal uses of actively managed ETFs by investors? Would an actively managed ETF serve primarily as a short-term trading vehicle? Could an actively managed ETF be used to gain exposure to an asset category in a manner similar to index-based ETFs? Would an actively managed ETF have any role in hedging strategies? Would an actively managed ETF appeal more to individual investors or institutional investors?

What would be the principal benefits of actively managed ETFs? Would an actively managed ETF possess the low expenses and tax efficiency associated with existing ETFs? Would the introduction of actively managed ETFs be detrimental to investors, and if so, how? Would investors be confused about the nature of actively managed ETFs? Could actively managed ETFs lead to greater market volatility?[46] Is the development of actively managed ETFs important for U.S. financial institutions to maintain a competitive position in global securities markets?[47]

D. Exemptive Relief From the Investment Company Act for Actively Managed ETFs

Because of their unique structure, ETFs must obtain exemptive relief from certain provisions of the Act. An ETF organized as an open-end fund generally requests an order (i) under section 6(c) of the Act granting relief from sections 2(a)(32) and 5(a)(1) of the Act so that the ETF may register under the Act as an open-end fund and issue shares that are redeemable in Creation Units only; (ii) under section 6(c) granting relief from section 22(d) of the Act and rule 22c–1 under the Act to permit the purchase and sale of individual ETF shares in the secondary market at negotiated prices; and (iii) under sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and (a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons who may be affiliated with the ETF by reason of owning more than 5%, and in some cases more than 25%, of its outstanding securities. Certain ETFs that track foreign indices also have obtained relief under section 6(c) from section 22(e) of the Act so that they may satisfy redemption requests more than seven days after the tender of a Creation Unit for redemption due to delivery cycles for securities in the local markets.

Because actively managed ETFs necessarily would be organized as open-end funds (rather than as UITs with fixed portfolios), these ETFs likely would seek exemptive relief from the same provisions of the Act as existing ETFs that are organized as open-end funds. In considering whether to grant relief from each of the sections outlined above pursuant to section 6(c), the Commission must find that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.[48] Under section 17(b), the Commission may exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.[49] In evaluating any exemptive applications to permit actively managed ETFs, we would assess whether these exemptive standards are met.

1. Relief for ETFs To Redeem Shares in Large Aggregations Only

Section 5(a)(1) defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer.[50] Section 2(a)(32) defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is

[42] *See supra* note 10.

[43] *See, e.g.*, Karen Damato and Aaron Lucchetti, *Critics Worry About Risks of Exchange-Traded Funds*, Wall St. J., July 7, 2000, at C1 (reporting on criticism that ETFs may not disclose adequate information about the potential for ETF shares to trade at a premium or discount to NAV).

[44] *See* Carol Vinzant, *NASDAQQQ: Trading in ''Cubes'' is Skyrocketing, and Some Critics Fear the Nasdaq 100-Based vehicles Are Contributing to Volatility*;, Wash. Post, May 10, 2001, at E1 (reporting that some critics believe trading in cubes has increased market volatility).

But see The October 1987 Market Break, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, Feb. 1988, at 3–18 (suggesting that market basket trading could provide an additional layer of liquidity in the market that could reduce volatility).

[45] *See, e.g.*, Aaron Lucchetti, *In Closed-ends, a Possible Way to Get Rid of Discounts to NAV*, Wall St. J., Apr. 10, 2000, at R14 (reporting on idea to convert closed-end funds to ETFs to eliminate discounts in share prices).

[46] *See, e.g.*, Andrew Brent, *SEC Guidance Expected for Exchange Funds*, Mutual Fund Market News, May 28, 2001 (reporting that some analysts believe there are several scenarios in which an actively managed ETF could cause increased market volatility).

[47] A type of actively managed exchange-traded investment company was introduced by Deutsche Bank in Germany in November 2000 and has reportedly experienced some success among retail investors in Germany. *See, e.g.*, Stephan Kueffner, *Exchange-Traded Funds Make Their Mark in German Market*, Capital Markets Report, April 23, 2001. As a general matter, investment companies that are not organized or created under the laws of the United States cannot offer, sell, or deliver shares to investors in the United States unless they obtain an order of the Commission. 15 U.S.C. 80a–7(d).

[48] *See supra* note 10.

[49] 15 U.S.C. 80a–17(b)

[50] *See supra* note 6.

entitled to receive approximately the holder's proportionate share of the issuer's current net assets, or the cash equivalent.[51] Because ETF shares are not individually redeemable, an ETF requests relief to permit the ETF to register and operate as an open-end fund and to issue shares that are redeemable in Creation Units only.

In support of the relief, ETFs have noted that investors may redeem ETF shares in Creation Units from each ETF. ETFs also have noted that because the market price of Creation Units is disciplined by arbitrage opportunities, investors in ETF shares generally should be able to sell ETF shares in the secondary market at approximately their NAV. ETFs organized as open-end funds have agreed as a condition to the exemptive relief that the ETF will not be advertised or marketed as an open-end fund or mutual fund. The prospectuses and advertising materials for ETFs prominently disclose that ETF shares are not individually redeemable and that shareholders may acquire shares from an ETF and tender those shares for redemption to the ETF in Creation Units only.[52]

Would actively managed ETFs present any issues with respect to these exemptions that do not exist with respect to index-based ETFs? Should the potential for more significant deviations between the market price of actively managed ETF shares and the NAV of the shares affect any relief requested from the definition of ''redeemable security''? Are greater disclosure efforts necessary to address any potential investor confusion regarding the nature of actively managed ETFs and their shares?

2. Relief for ETF Shares To Trade at Negotiated Prices

Section 22(d), among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus.[53] Rule 22c–1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV.[54] Because secondary market trading in ETF shares takes place at negotiated prices, and not at a current offering price described in the prospectus or based on NAV, existing ETFs have obtained exemptions from section 22(d) and rule 22c–1.

In support of their requests for relief, ETFs generally have noted that the provisions of section 22(d), as well as rule 22c–1, appear to be designed to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, to prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and to assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. The ETFs submit that secondary market trading in ETF shares does not cause dilution for ETF shareholders because the secondary market transactions do not directly involve ETF portfolio assets (the transactions are with other investors, not the ETF), and thus have no impact on the NAV of ETF shares held by other investors. In addition, ETFs have stated that to the extent that different prices for ETF shares exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces, such as supply and demand, and not as a result of discrimination or preferential treatment among purchasers. With respect to the orderly distribution of ETF shares, ETFs have noted that anyone may acquire Creation Units from the ETF, and that no dealer should have an advantage over any other dealer in the sale of ETF shares. ETFs also have argued that the distribution system for ETF shares should be orderly because arbitrage activity ensures that the difference between the market price of shares and their NAV remains narrow.[55]

Would actively managed ETFs present any issues with respect to these exemptions that do not exist with respect to index-based ETFs? Would the potential for more significant deviations between the market price of actively managed ETF shares and the NAV of the shares create any potential for discrimination or preferential treatment among investors purchasing and selling shares in the secondary market and those purchasing and redeeming Creation Units? Would more significant deviations lead to a less orderly distribution system for actively managed ETF shares? Are greater disclosure efforts necessary to address potential investor confusion regarding the fact that individual shares of actively managed ETFs would be sold at market price while Creation Unit aggregations of ETF shares would be redeemable at NAV?

3. Relief for In-Kind Transactions Between an ETF and Certain Affiliates

Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company.[56] Because purchases and redemptions of Creation Units may be in-kind rather than cash transactions, section 17(a) may prohibit affiliated persons of an ETF from purchasing or redeeming Creation Units. Section 2(a)(3)(A) of the Act defines ''affiliated person'' as any person owning 5% or more of an issuer's outstanding voting securities. ETFs indicate that certain large investors may be affiliated persons of an ETF under section 2(a)(3)(A) of the Act (''5% Affiliates''). In addition, some investors may own more than 25% of an ETF's outstanding voting securities and therefore may be deemed an affiliated person of the ETF under section 2(a)(3)(C) of the Act (''25% Affiliates'').[57] ETFs have obtained exemptions from section 17(a) to permit 5% Affiliates and 25% Affiliates to purchase and redeem Creation Units through in-kind transactions.

In seeking this relief, ETFs have submitted that because 5% Affiliates and 25% Affiliates are not treated differently from non-affiliates when engaging in purchases and redemptions of Creation Units, there is no opportunity for these affiliated persons to effect a transaction detrimental to the other ETF shareholders. The securities to be deposited for purchases of Creation Units and to be delivered for redemptions of Creation Units are announced at the beginning of each day and are equally applicable to all investors. All purchases and redemptions of Creation Units are at an ETF's next calculated NAV, and the securities deposited or received upon redemption are valued in the same manner, using the same standards, as those securities are valued for purposes of calculating the ETF's NAV.[58]

Would actively managed ETFs present any issues with respect to this exemption that do not exist with respect to index-based ETFs? If an actively managed ETF proposed to alter the contents of its Portfolio Deposit or Redemption Basket during the day to reflect changes in its portfolio, would this process introduce the potential to

[51] 15 U.S.C. 80a–2(a)(32).

[52] *See, e.g.*, Barclays Application at 63–70, 81.

[53] 15 U.S.C. 80a–22(d).

[54] 17 CFR 270.22c–1

[55] *See, e.g.*, Barclays Application at 70–74.

[56] 15 U.S.C. 80a–17(a).

[57] 15 U.S.C. 80a–2(a)(3).

[58] *See, e.g.*, Barclays Application at 74–79.

favor affiliated persons of the ETF? If so, how should this be addressed? Could a 5% Affiliate or 25% Affiliate influence decisions by the investment adviser to an actively managed ETF regarding the securities in the Portfolio Deposit or Redemption Basket on a given day? Would the structure of an actively managed ETF present greater concerns with respect to potential advance communication of information about portfolio changes to affiliates?

4. Relief for Certain ETFs To Redeem Shares in More Than Seven Days

Section 22(e) of the Act generally prohibits a registered open-end investment company from suspending the right of redemption, or postponing the date of payment or satisfaction of redemption requests more than seven days after the tender of a security for redemption.[59] Some ETFs that track foreign indices have stated that local market delivery cycles for transferring securities to redeeming investors, together with local market holiday schedules, require a delivery process in excess of seven days. These ETFs request relief from section 22(e) so that they may satisfy redemptions up to a specified maximum number of calendar days depending upon specific circumstances in the local markets, as disclosed in the ETF's prospectus or statement of additional information (''SAI''). Other than in the disclosed situations, these ETFs satisfy redemptions within seven days.[60]

These ETFs state in their exemptive applications that section 22(e) of the Act is designed to prevent unreasonable, undisclosed, and unforeseen delays in the payment of redemption proceeds and assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. The anticipated delays in the payment of redemption proceeds would occur principally due to local holidays in the foreign markets. The ETFs state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI) that are expected to prevent the delivery of redemption proceeds in seven days and the maximum number of days needed to deliver redemption proceeds.[61]

Would actively managed ETFs present any issues with respect to this exemption that do not exist with respect to index-based ETFs? Could the investment adviser to an actively managed ETF manage the ETF so as to comply with section 22(e)?

E. Potential New Regulatory Issues

In evaluating any specific proposal for an actively managed ETF, the Commission will be considering whether the proposal presents any new regulatory concerns. In this regard, we are interested in public comment on the issues raised below, as well as any additional issues that might be identified by the commenters.

1. Potential Discrimination Among Shareholders

Section 1(b)(3) of the Act states that the public interest and the interest of investors are adversely affected when investment companies issue securities containing inequitable or discriminatory provisions.[62] One potential difference between the existing ETFs and an actively managed ETF is that, in the latter case, significant deviations could develop between the market price and the NAV of the ETF shares. It might also be possible that, during any particular time, the NAV of an actively managed ETF could be increasing while the market price of its shares could be falling, and vice versa.

Would the operation of an actively managed ETF place investors who have the financial resources to purchase or redeem a Creation Unit at NAV in a different position than most retail investors who may buy and sell ETF shares only at market price? Would the operation of an actively managed ETF give rise to a type of discriminatory treatment of shareholders that section 1(b)(3) of the Act was designed to prevent? Commenters who believe that this concern might be raised by an actively managed ETF are encouraged also to discuss the ways in which they believe the Commission should address it.

2. Potential Conflicts of Interest for an ETF's Investment Adviser

Section 1(b)(2) of the Act states that the public interest and the interest of investors are adversely affected when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of persons other than shareholders, including directors, officers, investment advisers, or other affiliated persons, and underwriters, brokers, or dealers.[63] The operation of an ETF—specifically, the process in which a Creation Unit is purchased by delivering a basket of securities to the ETF, and redeemed in exchange for a basket of securities—may lend itself to certain conflicts for the ETF's investment adviser, who has discretion to specify the securities included in the baskets. These conflicts would appear to be minimized in the case of an index-based ETF because the universe of securities that may be included in the ETF's portfolio generally is restricted by the composition of its corresponding index. The same would not appear to be the case for an actively managed ETF. The increased investment discretion of the adviser to an actively managed ETF would seem to increase the potential for conflicts of interest. For example, an adviser to an index-based ETF would have little ability to create a market for certain securities in a way that would favor an affiliate. Because the adviser to an actively managed ETF would have greater discretion to designate securities to be included in the Portfolio Deposit or Redemption Basket, a greater potential for conflicts appears to exist.

What potential conflicts of interest would exist for the investment adviser to an actively managed ETF? Would the adviser to an actively managed ETF be in a position to create supply or demand for securities that would favor an affiliate by designating those securities for inclusion in the daily Portfolio Deposit or Redemption Basket? Would the increased value of the information regarding the identity of future deposit or redemption securities create additional conflicts and potential for abuse? What measures should be taken to address any potential conflicts?

3. Prospectus Delivery in Connection With Secondary Market Purchases

Open-end funds and UITs are required to deliver a prospectus in connection with a sale of their shares. Specifically, section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end fund or UIT.[64] For transactions in ETF shares in the secondary market, the Commission has granted exemptions under section 6(c) of the Act from section 24(d) to permit

[59] 15 U.S.C. 80a–22(e).

[60] In their applications, ETFs acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they may otherwise have under rule 15c6–1 under the Exchange Act. *See, e.g.,* Second Amended and Restated Application of Barclays Global Fund Advisors, File No. 812–11598, filed May 11, 2001 (''Barclays Foreign Application'') at 76. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date. 17 CFR 240.15c6–1

[61] *See, e.g.,* Barclays Foreign Application at 76–84.

[62] 15 U.S.C. 80a–1(b)(3).

[63] 15 U.S.C. 80a–1(b)(2).

[64] 15 U.S.C. 80a–24(d); 15 U.S.C. 77d(3).

dealers selling shares of certain ETFs to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[65] ETFs that have received this relief continue to be subject to prospectus delivery requirements in connection with sales of Creation Units and transactions involving an underwriter.

In support of the relief, applicants have noted that the ETF shares would be listed on a national securities exchange and would be traded in a manner similar to shares of closed-end funds, for which dealers selling shares in the secondary market generally are not required to deliver a prospectus. These ETFs also have agreed that dealers selling their shares will provide investors with a ''product description'' describing the ETF and its shares.[66] While not intended as a substitute for a prospectus, the product description contains information about the ETF shares that is tailored to meet the needs of investors purchasing the shares in the secondary market. The product description provides a plain English description of the salient features of the ETF shares, including the fact that the shares are index-based securities, the manner in which the ETF shares trade on the secondary market, and the manner in which Creation Units are purchased and redeemed. The product description discloses that the ETF shares are not redeemable individually, and that an investor selling the shares in the secondary market may receive less than the NAV of the ETF shares.[67]

To the extent that actively managed ETFs would seek similar relief from prospectus delivery requirements, would the relief be consistent with the public interest and the protection of investors? Are there any aspects of an actively managed ETF that would make this relief inappropriate? For example, should an actively managed ETF be required to deliver its prospectus in order to communicate its investment strategy or fundamental policies? If the relief is granted on the condition that actively managed ETFs provide investors with a product description, what information about an actively managed ETF is particularly important to include or highlight in the product description?

F. The Concept of an Actively Managed ETF as a Class of a Mutual Fund

1. Multiple Class Open-End Funds

Open-end funds often offer multiple classes of shares representing interests in the same portfolio of securities. An open-end fund may establish a multiple class arrangement generally to offer investors a choice of methods for paying distribution costs or to allow the fund to use alternative distribution channels more efficiently. For example, a fund may offer a class of shares that carries only a front-end sales load, and another class that carries a deferred sales load and an asset-based distribution fee (known as a ''rule 12b–1 fee'' because it is permitted by rule 12b–1 under the Act)[68].

A multiple class arrangement requires an exemption from sections 18(f)(1) and 18(i) of the Act.[69] Rule 18f–3 under the Act provides that exemption and establishes a framework governing the multiple class arrangements of open-end funds.[70] Rule 18f–3 addresses issues that may create various conflicts among the different classes of shares of a fund. One requirement of rule 18f–3 is that, other than certain differences allowed by the rule, each class must have the same rights and obligations as each other class.

2. An Index-Based ETF as a Class of an Existing Open-End Fund

In December 2000, the Commission issued the first order to permit certain existing index funds to create a class of shares (''ETF class'') that would be listed on a national securities exchange and traded in the secondary market at negotiated prices in the same manner as shares of ETFs (''ETF Class Order'').[71] By creating an ETF class, the index funds hope to provide short-term investors and market timers with an attractive means of purchasing shares that can be bought and sold continuously throughout the day at market prices.[72] In their exemptive application, the index funds stated that the purchase and redemption requests by short-term investors in the conventional classes increase a fund's realization of capital gains, increase fund expenses, and hinder a fund's ability to achieve its investment objective of tracking its index. Because transactions in the individual shares of the ETF class would occur in the secondary market, these transactions would not involve the funds, and as a result, would not disrupt the funds' portfolio management or increase the funds' transaction costs.[73]

In the ETF Class Order, exemptive relief from sections 18(f)(1) and 18(i) of the Act was required because, among other reasons, the index funds stated that the conventional shares and exchange-traded shares would have certain different rights.[74] For example, the conventional shares would be individually redeemable from the fund, while exchange-traded shares would be redeemable only in Creation Units. In addition, the exchange-traded shares would be traded in the secondary market, while conventional shares would not. The funds asserted that these different rights were necessary for the proposal to have the desired benefits, and that the different rights did not implicate the concerns underlying section 18 of the Act, including conflicts of interest and investor confusion. With respect to the potential for investor confusion, the funds agreed to take a variety of steps to ensure that investors understand the key differences between the classes of exchange-traded shares and conventional shares.[75]

3. ETF Class of an Actively Managed Open-End Fund

Would actively managed mutual funds seek to introduce exchange-traded classes? Do short-term investors such as market timers and day traders use actively managed funds in the same way that they use index funds? If not, are there different reasons to permit existing actively managed mutual funds to establish ETF classes?

Would ETF classes of actively managed funds present any issues with respect to exemptions from section 18 that do not exist with respect to ETF classes of index funds? Would the portfolio disclosure required to make fund operations transparent for

[65] *See, e.g.,* SPDR Order.

[66] ETFs that possess relief from section 24(d) are listed on the American Stock Exchange, which has adopted rules requiring the delivery of product descriptions. *See* American Stock Exchange Constitution and Rules & Arbitration Awards, Rules 1000 and 1000A.

[67] *See, e.g.,* SPDR Applicaiton at 82–98.

[68] 17 CFR 270.12b–1.

[69] Section 18(f)(1) of the Act, in relevant part, prohibits an open-end fund from issuing any class of ''senior security,'' which includes any stock of a class having a priority over any other class as to the distribution of assets or the payment of dividends. 15 U.S.C. 80a–18(f)(1). Section 18(i) of the Act requires that every share of stock issued by an open-end fund be voting stock, with the same voting rights as every other outstanding voting stock. 15 U.S.C. 80a–18(i).

[70] 17 CFR 270.18f–3.

[71] Vanguard Index Funds, Investment Company Act Rel. Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order).

[72] Transactions in an index fund's conventional shares would continue to be priced at that day's NAV. The purchase and redemption of Creation Units also would be priced at NAV.

[73] Application and Vanguard Index Funds, File No. 812–12094, filed July 12, 2000 (''Vanguard Application''), at 6–8.

[74] In addition to relief from section 18, the ETF Class Order also granted the exemptive relief typically obtained by index-based ETFs organized as open-end funds and prospectus delivery relief.

[75] Vanguard Application at 36–47.

purposes of the ETF class prove detrimental to the performance of the conventional shares? Would significant redemptions of conventional shares create undesirable tax consequences for ETF class shareholders? Would the existence of an ETF class add volatility to an actively-managed fund? Is there any additional potential for conflicts of interest in connection with an ETF class of an actively managed fund?

Is there additional potential for investor confusion about the nature of the ETF class shares? How would potential investor confusion be addressed? Would prospectus delivery relief be appropriate in connection with ETF classes of actively managed funds, and if so, what information should be included in the product description?

V. Solicitation of Additional Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address relating to actively managed ETFs. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: November 8, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–28572 Filed 11–14–01; 8:45 am]

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Federal Register

Thursday,
November 15, 2001

Part VII

The President

Proclamation 7494—National Employer Support of the Guard and Reserve Week, 2001

Federal Register
Vol. 66, No. 221
Thursday, November 15, 2001

Presidential Documents

Title 3—

The President

Proclamation 7494 of November 9, 2001

National Employer Support of the Guard and Reserve Week, 2001

By the President of the United States of America

A Proclamation

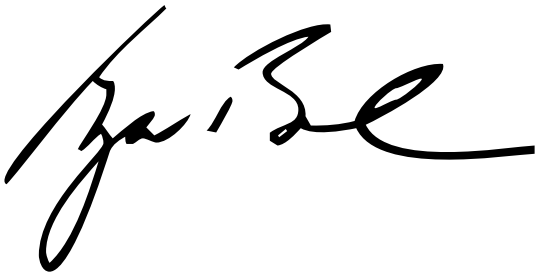
Our National Guard and Reserve forces play a vital role in helping America respond when our interests are threatened around the world. They are an indispensable part of our Nation's efforts to promote democracy, peace, and freedom, and, in the wake of the September 11 attacks, National Guard and Reserve units are deploying to help fight and win the war against terrorism.

Americans understand and appreciate the importance of our National Guard and Reserve forces, but many do not know the contributions their employers make in supporting these civilian soldiers. Employers share their greatest resource, their people; and, in so doing, they subordinate their own interests for the good of our country. Employers' willingness to sacrifice and bear the inevitable financial hardships and organizational disruptions that result are important contributions to our Nation's war against terrorism. By placing America's well-being above their own, they help our National Guard and Reserve units provide mission-ready forces to help preserve our freedoms and protect our national interests.

Because this generosity enables Guard and Reserve troops to play an essential role in responding to the terrorist attacks, it is appropriate to honor the sacrifice American businesses are making in releasing their employees for military service. We express our heartfelt appreciation to these patriots for the burden they bear as their workers depart to serve our Nation and help keep America strong, secure, and free.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning November 11, 2001, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the civilian employers of the members of our National Guard and Reserve for their extraordinary sacrifices on behalf of our Nation. I also call upon State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Federal Register

Thursday,
November 15, 2001

Part VIII

The President

Proclamation 7495—Chronic Obstructive Pulmonary Disease Month, 2001

Proclamation 7496—National Alcohol and Drug Addiction Recovery Month, 2001

Proclamation 7497—National Alzheimer's Disease Awareness Month, 2001

Proclamation 7498—National Family Caregivers Month, 2001

Proclamation 7499—World Freedom Day, 2001

Proclamation 7500—National American Indian Heritage Month, 2001

Proclamation 7501—National Farm-City Week, 2001

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7495 of November 9, 2001

Chronic Obstructive Pulmonary Disease Month, 2001

By the President of the United States of America

A Proclamation

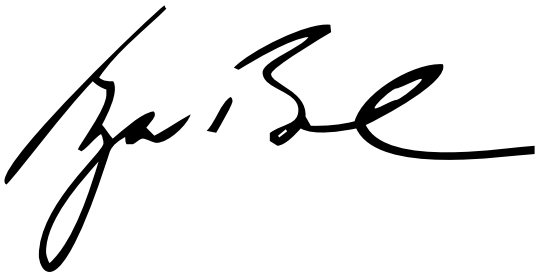
Approximately 16 million American adults suffer from a devastating disease for which there is no cure. The disease is called Chronic Obstructive Pulmonary Disease (COPD), and it is a growing problem in this country and throughout the world. COPD claims more than 100,000 lives per year, drains the American economy of an estimated $30.4 billion each year, and is the fourth leading cause of death in the United States today, exceeded only by heart disease, cancer, and stroke.

COPD is a medical term for a group of respiratory conditions that includes emphysema and chronic bronchitis. COPD results in gradual, irreversible damage to the lungs. Since the symptoms progress gradually, COPD patients may not even realize in the early stages that they have the disease. Over the years, as the lung damage continues, breathing becomes increasingly difficult.

Although some patients have an inherited version of the disease, smoking is the most common cause of COPD. Exposure to toxic substances in the environment such as industrial pollutants, aerosol sprays, nontobacco smoke, and internal combustion engine exhaust may also aggravate or contribute to COPD. While our ultimate goal is to prevent this often-fatal disease, we now need better treatments. Chronic Obstructive Pulmonary Disease Month offers us the opportunity to increase our knowledge of this disease and to consider what we can do to reduce its occurrence.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001, as Chronic Obstructive Pulmonary Disease Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities to raise awareness of COPD and its impact on communities and to improve the quality of life of those who suffer from the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Presidential Documents

Proclamation 7496 of November 9, 2001

National Alcohol and Drug Addiction Recovery Month, 2001

By the President of the United States of America

A Proclamation

Alcohol and drug addiction exacts a devastating toll on our Nation. Approximately 14 million adults are alcoholics or abusers of alcohol, and one in four of our children are exposed to alcoholism or alcohol abuse in their families before age 18. Three million children between the age of 14 and 17 drink regularly and face future problems with alcohol. And recent statistics show that more than 14 million Americans used illicit drugs last year.

The costs of these widespread addictions are staggering. More than 100,000 Americans die each year from alcohol-related causes. Recent estimates suggest that the abuse of alcohol and drugs costs taxpayers more than $294 billion annually in preventable health care costs, extra law enforcement, automobile accidents, crime, and lost productivity. Addiction to nicotine adds an additional $138 billion to our country's financial burden.

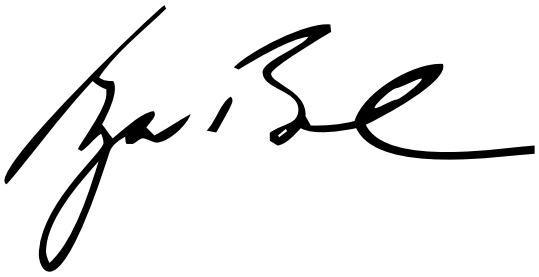
My proposed budget provides assistance to those addicted to drugs. My Administration's proposal for enhanced treatment will increase funding for the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse and provides $111 million of additional funding to increase access to substance abuse treatment. The budget includes $74 million for the Residential Substance Abuse Treatment program, which provides formula grants supporting drug and alcohol treatment in State and local correctional facilities. This initiative is evidence-based and requires real accountability from recipients.

Scientific research also holds a great deal of promise in treating drug and alcohol addiction. Publicly funded biomedical research, supported by the National Institutes of Health, plays an important role in finding effective means of preventing and treating these disorders. These research efforts allow scientists to target optimal points for intervention. Through Federally supported clinical trials, new treatments can be developed for communities in need across our country.

Alcohol and drug addiction destroys lives and threatens the well-being of our country, and we must address it with concerted, sustained, and purposeful strategies. If we focus more of our Nation's attention, energy, and resources on fighting these addictions, we will rescue lives and restore hope.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001, as National Alcohol and Drug Addiction Prevention Month. I call upon all public officials and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28801
Filed 11–14–01; 9:34 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7497 of November 9, 2001

National Alzheimer's Disease Awareness Month, 2001

By the President of the United States of America

A Proclamation

Approximately four million Americans suffer from Alzheimer's disease. It is a progressive degenerative disorder of the brain that robs those affected of their memory and much of their mental and physical function, leading to their total dependence on caregivers, and ultimately death. Slightly more than half of Alzheimer's disease patients receive care from their family and friends at home. Years of providing for the emotional, physical, and financial needs of a loved one with this difficult disease can be emotionally painful and exhausting for a caregiver.

The chance of having Alzheimer's disease rises significantly with age, and as older Americans become a larger percentage of our Nation's population, the number of people expected to develop Alzheimer's will rise dramatically. It has been estimated that 14 million Americans, mostly seniors, will suffer from Alzheimer's by the middle of this century.

My Administration is strongly committed to meeting the challenges of Alzheimer's disease by increasing funding for Federal medical research programs as well as providing improved support to Alzheimer's patients and their families and care givers. Through the efforts of scientists at the National Institutes of Health (NIH) and in the private sector, we are making great strides in defining genetic and environmental risks, diagnosing the disease in its earliest stages, and testing potential treatments. In addition, the NIH and the Department of Veterans Affairs are sponsoring research that focuses on improving care and easing the burden on those providing care at home and in nursing facilities. Finally, the Administration on Aging is working under the Alzheimer's Disease Demonstration Project Grants to States Program to expand the availability of diagnostic and support services available for Alzheimer's disease patients, their families, and their caregivers.

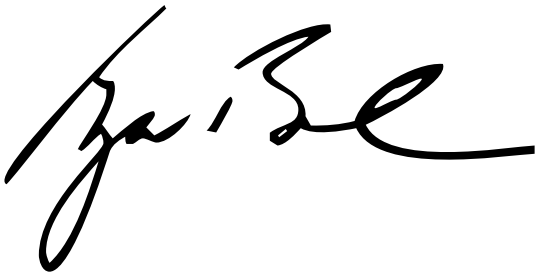
Our Nation's medical research programs have produced significant advances in the delivery of health care for our older generations. In recent years, our seniors' retirement years have been fuller, more productive, and healthier. Despite this overall improvement in health care, Alzheimer's disease continues to take many of the best and most enjoyable years of life from millions of seniors. Much progress has been made in the study of Alzheimer's disease, but the fight to determine what causes it and to develop effective ways to treat and prevent the disease continues.

As we observe National Alzheimer's Disease Awareness Month, I call on all Americans to learn more about the disease and to take time to honor and support Alzheimer's disease patients and their families. We should also acknowledge the scientists, physicians, nurses, and other medical and health professionals who are working diligently to advance knowledge and understanding of Alzheimer's disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001, as National Alzheimer's Disease Awareness Month. I call upon the people

of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28802
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Presidential Documents

Proclamation 7498 of November 9, 2001

National Family Caregivers Month, 2001

By the President of the United States of America

A Proclamation

During November, we traditionally give thanks for our many blessings, which include the dedication and sacrifice of our Nation's many family caregivers who enhance the lives of loved ones by helping them live at home, despite challenges that hinder independent living.

More than 7 million Americans devote themselves to this noble responsibility. Family caregivers dedicate an average of 20 hours per week in care for their loved ones and, in some cases, fulfill their multiple responsibilities around the clock. Those who provide in-home care for the elderly and for persons with disabilities face many demands. In performing such challenging and compassionate duties, family caregivers must sacrifice considerable time, resources, and personal comfort.

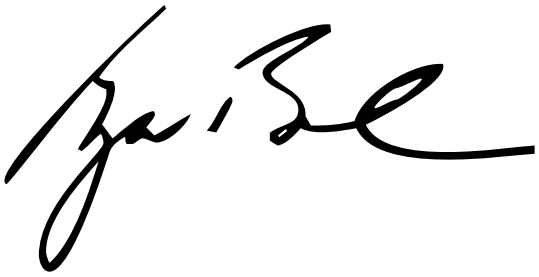
But these caregivers allow many older Americans to remain at home who would otherwise have to live in nursing homes. Seniors who live at home usually live longer, enjoy a more active life, and spend more time with their families and communities. As they lead fuller lives, this great generation continues to enrich our country by sharing their valuable wisdom and experience with younger generations.

To support those who work to keep their loved ones at home, my Administration has begun to implement the ''National Family Caregiver Support Program.'' Through a national network of state and area agencies on aging, the program provides information to caregivers about available counseling, support groups, training, and other services. In addition, the program provides respite care to temporarily relieve caregivers.

Family caregivers deserve our support and respect. They tirelessly assume demanding responsibilities for the benefit of those they love. During this challenging time for our Nation, their selfless heroism demonstrates the quiet determination and courage of the American spirit.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001 as National Family Caregivers Month. I encourage all Americans to recognize the importance of the family, of our older citizens, and the millions of caregivers who work to keep their loved ones at home.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28803
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Presidential Documents

Proclamation 7499 of November 9, 2001

World Freedom Day, 2001

By the President of the United States of America

A Proclamation

During the Cold War, freedom and authoritarianism clashed. Countries and entire regions suffered under repressive ideologies that sought to trample human dignity. Today, freedom is again threatened. Like the fascists and totalitarians before them, Al Qaida, the Taliban regime that supports them, and other terrorist groups across the world seek to impose their radical views through threats and violence.

The fall of the Berlin Wall on November 9, 1989, stands as the turning point of the Cold War and a significant landmark in freedom's victory over tyranny. The Wall stood as a grim symbol of the separation of free people and those living under dictatorships. We honor the spirit and perseverance of those who strived for freedom in East Germany and under other repressive regimes. Since the fall of the Berlin Wall, many countries have achieved freedom via the ballot box, through political pressure rising from their citizens, or as a result of the settlement of internal or regional conflicts. We celebrate the new freedom in which much of the world lives today.

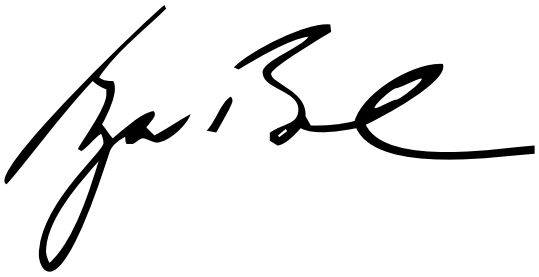
On World Freedom Day, we also recognize that more than 2 billion people still live under authoritarian regimes. From Burma to Cuba, Belarus to Zimbabwe, citizens of many countries suffer under repressive governments. Our thoughts today especially turn to the people of Afghanistan. These men, women, and children suffer at the hands of the repressive Taliban regime, which, as we know, aids and abets terrorists.

In every oppressive nation, pro-democracy activists are working to stoke the fires of freedom, often at great personal risk. As we mark November 9, World Freedom Day, I encourage Americans to support those who seek to lead their people out of oppression.

On World Freedom Day, we also honor those who, at this moment, fight for freedom half a world away. On September 11, freedom was attacked, but liberty and justice will prevail. Like the fall of the Berlin Wall and the defeat of totalitarianism in Central and Eastern Europe, freedom will triumph in this war against terrorism.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 9, 2001, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and to reaffirm their devotion to the aspirations of all people for freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28804
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Presidential Documents

Proclamation 7500 of November 12, 2001

National American Indian Heritage Month, 2001

By the President of the United States of America

A Proclamation

The strength of our Nation comes from its people. As the early inhabitants of this great land, the native peoples of North America played a unique role in the shaping of our Nation's history and culture. During this month when we celebrate Thanksgiving, we especially celebrate their heritage and the contributions of American Indian and Alaska Native peoples to this Nation.

Since our Nation's birth, pluralism and diversity have been hallmarks of the American experience and success. In 1782, the Founding Fathers chose as our national motto ''E Pluribus Unum,'' which means ''out of many, one.'' Today, America's unity, derived from a mix of many diverse cultures and people, grandly embodies the vision expressed by our Founders. American Indian and Alaska Native cultures have made remarkable contributions to our national identity. Their unique spiritual, artistic, and literary contributions, together with their vibrant customs and celebrations, enliven and enrich our land.

As we move into the 21st century, American Indians and Alaska Natives will play a vital role in maintaining our Nation's strength and prosperity. Almost half of America's Native American tribal leaders have served in the United States Armed Forces, following in the footsteps of their forebears who distinguished themselves during the World Wars and the conflicts in Korea, Vietnam, and the Persian Gulf.

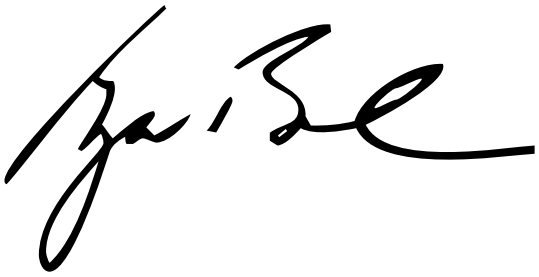
Their patriotism again appeared after the September 11 attacks, as American Indian law enforcement officers volunteered to serve in air marshal programs. On the local level, American Indians and Alaska Natives are strengthening their communities through education and business development, opening the doors to opportunity, and contributing to a brighter future for all.

My Administration will continue to work with tribal governments on a sovereign to sovereign basis to provide Native Americans with new economic and educational opportunities. Indian education programs will remain a priority, so that no American child, including no Native American child, is left behind. We will protect and honor tribal sovereignty and help to stimulate economic development in reservation communities. We will work with the American Indians and Alaska Natives to preserve their freedoms, as they practice their religion and culture.

During National American Indian Heritage Month, I call on all Americans to learn more about the history and heritage of the Native peoples of this great land. Such actions reaffirm our appreciation and respect for their traditions and way of life and can help to preserve an important part of our culture for generations yet to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2001 as National American Indian Heritage Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–28805
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Presidential Documents

Proclamation 7501 of November 13, 2001

National Farm-City Week, 2001

By the President of the United States of America

A Proclamation

As fall harvesting occurs and Americans gather with family and friends during Thanksgiving to share holiday meals, we celebrate our Nation's farmers and ranchers who provide us with abundant agricultural products, and we recognize all of those who help get those food products from the farm to our tables.

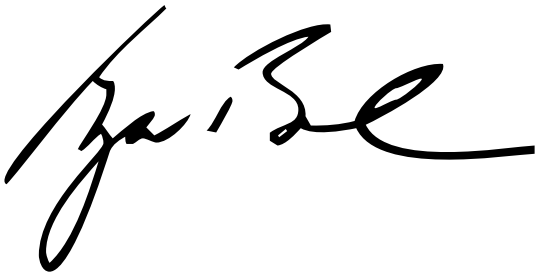
The American agricultural industry is the leading global provider of food. Its remarkable rates of production are a continuing tribute to the ingenuity, diligence, and creativity of our country's farmers and ranchers. But agriculture is not just one industry among many—it is the very heart of our economy. The aggregate output of our food industry is unparalleled in human history. This enormous production makes farmers and ranchers key contributors to the collective wealth of our country. Their extraordinary efforts produce foodstuffs not just for our land but for the world, and they are driven by the American virtues of independence, industry, innovation, and sacrifice.

Our Nation's farmers and ranchers depend upon a complex chain of interrelationships with urban workers to get their products to national and world markets. Shippers, processors, marketers, tradespeople, grocers, truck drivers, food service providers, inspectors, researchers, and scientists are all part of the formula that feeds our land and the world. These urban/agriculture partnerships serve as catalysts for our overall commercial success; and their continued development is essential to sustaining our prosperity.

As we reflect upon the important role these partnerships play in the strength and success of our great Nation, we remember those who devote their lives to meeting an essential national and worldwide need. We are blessed by our agricultural abundance, by the committed and caring farmers and ranchers who strive to provide all we need to feed our people and the people of the world, and by all of those who help accomplish this important undertaking.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 16 through November 22, 2001, as National Farm-City Week. I call upon all Americans, in rural and urban communities alike, to join in recognizing the accomplishments of our farms and ranches, and the hard-working individuals who produce an abundance of affordable, quality agricultural goods that strengthen and enrich our country.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2311/P.L. 107–66

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H.R. 2590/P.L. 107–67

Treasury and General Government Appropriations Act, 2002 (Nov. 12, 2001; 115 Stat. 514)

H.R. 2647/P.L. 107–68

Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2002, and for other purposes. (Nov. 12, 2001; 115 Stat. 560)

H.R. 2925/P.L. 107–69

To amend the Reclamation Recreation Management Act of 1992 in order to provide for the security of dams, facilities, and resources under the jurisdiction of the Bureau of Reclamation. (Nov. 12, 2001; 115 Stat. 593)

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